

RESOLUTION NUMBER R- 288448

ADOPTED ON MAR 17 1997

WHEREAS, on June 21, 1994, the City of San Diego ("City") and the San Diego Unified Port District ("Port") entered into a Memorandum of Understanding (a copy of which is on file in the Office of the City Clerk as Document No. RR-284126) by which the City and the Port agreed to finance and construct an expansion to the San Diego Convention Center (the "Project"); and

WHEREAS, on April 11, 1995, by Ordinance No. O-18170, the Project was first added to the C.I.P. in the City's annual budget; and

WHEREAS, on February 20, 1996, the City Council ("Council"), by Resolution No. R-286956, approved and authorized the City Manager to enter into a contract, the form of which is on file in the Office of the City Clerk as Document No. RR-286956-2, to establish the design and construction of the Project with Golden Turner (the "Design Build Contract"), for a Guaranteed Maximum Price ("GMP") not to exceed \$168 million; and

WHEREAS, in addition to the GMP, the Design Build Contract provided separately for the reimbursement to Golden Turner of certain costs and expenses ("Reimbursable Costs"); and

WHEREAS, on March 5, 1996, by Ordinance No. O-18270, the Council approved the financing leases and other documentation which fixed the method for financing the Project by the issuance of Lease Revenue Bonds ("Bonds"), including the formation of the Convention Center Expansion Financing Authority ("CCEFA"), a joint powers authority created and existing pursuant to state law and empowered to issue the Bonds; and

WHEREAS, also on March 5, 1996, by Ordinance No. O-18271, the Council approved a First Restated and Amended Management Agreement which provided for the means by which the

City and the Port would manage and operate the expanded Convention Center for the life of the Bonds; and

WHEREAS, on March 5, 1996, the Board of Commissioners of the Port thereafter approved all of the agreements and documents necessary to formalize the expansion financing and construction; and

WHEREAS, pursuant to the above referenced authorizations the CCEFA was formed, and in May of 1996 approved all of the agreements and documents necessary to carry out the financing of the Project, and adopted a budget of \$194.8 million for the Project; and

WHEREAS, the City's FY 1997 C.I.P, adopted as part of the FY 1997 Budget by Ordinance No. O-18328, adopted a budget for the Project of \$196.2 million; and,

WHEREAS, the approved budget for the Project included Reimbursable Costs separate from the GMP; and

WHEREAS, the time within which to file a referendum petition on any of the Council actions related to the Project has now passed; and

WHEREAS, on May 5, 1996, Richard Rider and other individuals (collectively, "Rider") filed a lawsuit (the "litigation") challenging the validity of the financing for the Project; and

WHEREAS, the validity of the financing has been upheld in the litigation by the San Diego Superior Court and the Fourth District Court of Appeal, and is now before the California Supreme Court on Rider's petition for review; and

WHEREAS, the litigation has delayed performance under the agreements and documents already authorized, and set forth above, thus increasing the costs of fulfilling the agreements and completing the Project as approved by millions of dollars, including but not limited to, the cost of structural steel; and

WHEREAS, a decision from the California Supreme Court that will deny Rider's petition

for review and allow the Project to proceed is anticipated; and

WHEREAS, the level of Reimbursable Costs to be paid to Golden Turner pursuant to the previously approved Design Build Contract is currently estimated not to exceed \$9,423,803; and

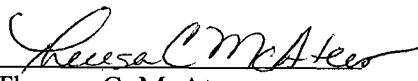
WHEREAS, the \$1,209,579 increase is included in the amendment to the Appropriation Ordinance in the reimbursable cost category, and

WHEREAS, certain additional administrative acts are necessary to carry out the Council's previously approved plan for expansion of the Convention Center; and

WHEREAS, it is the express intention of the City Council that any documents attached as Exhibits hereto, incorporated herein by reference or on file in the Office of the City Clerk comprise, together with the text of this Resolution, the full action of the Council and are necessary for a full understanding of the Council's actions; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Auditor and Comptroller be and he is hereby authorized and empowered to pay to Golden Turner an amount not to exceed \$9,423,803 for Reimbursable Costs, pursuant to the previously approved Design Build Contract, provided that he first furnishes a certificate demonstrating that the funds necessary are, or will be, on deposit in the City Treasury.

APPROVED: CASEY GWINN, City Attorney

By:   
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Deputy City Attorney

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03/11/97  
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R-97-919