

RESOLUTION NUMBER R- 288454

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 Capital Improvements Program ("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, 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, included a budget for the Project of \$196.2 million; 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, 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 expressly including, but not limited to, the Annual Appropriation Ordinance as amended which sets the total budget for the Project; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager be and he is hereby authorized and empowered for and on behalf of the City to execute any agreements, and take any and all actions as are necessary and appropriate to increase the total expenditures for the Project to account for costs that, as certified by the City Manager, have increased during the delay engendered by the litigation, provided, however, that such agreements or actions do not increase the scope of the Project, or do not cause the total expenditures for the Project to exceed the Project budget as set forth in the Annual Appropriations Ordinance as amended, the proposed amendment of which is attached hereto as Exhibit A and incorporated herein by reference.

BE IT FURTHER RESOLVED, that before such agreements are executed by the City Manager, the City Auditor and Comptroller first furnishes certificates as may be necessary demonstrating that the funds necessary are, or will be, on deposit in the City Treasury.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and empowered to make such other non-material, non-substantive changes to the Design Build

Contract, and other agreements entered into pursuant to this Resolution, as the City Manager shall approve as being necessary or in the best interests of the City and which, in the opinion of the City Attorney, do not: 1) increase the financial commitments or the scope of the obligations of the City, or 2) decrease revenue to the City.

APPROVED: CASEY GWINN, City Attorney

By: Theresa C McAteer
Theresa C. McAteer
Deputy City Attorney

TCM:cdk
03/17/97.REV.1
Or.Dept:Mgr.
R-97-918

ORDINANCE NUMBER O-18391 (NEW SERIES)

ADOPTED ON MAR 18 1997

AN ORDINANCE AMENDING ORDINANCE NO. O-18328 (NEW SERIES) TITLED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR 1996-97 BY INCREASING THE CAPITAL IMPROVEMENTS PROGRAM BUDGET FOR THE CONVENTION CENTER EXPANSION PROJECT

WHEREAS, Ordinance No. O-18328, titled "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR 1996-97 AND APPROPRIATING THE NECESSARY MONEY TO OPERATE THE CITY OF SAN DIEGO FOR SAID FISCAL YEAR" was duly adopted by the City Council on July 30, 1996 (the "Appropriation Ordinance"); and

WHEREAS, Section 2 of the Appropriation Ordinance describes, among other things, the existence of the Capital Improvements Program; and

WHEREAS, the C.I.P. includes a budget for the San Diego Convention Center Expansion Project, C.I.P. # 37-010.0; and

WHEREAS, the City desires to increase said Budget; NOW, THEREFORE,

BE IT ORDERED, by the Council of The City of San Diego, as follows:

Section 1. The Appropriation Ordinance, Ordinance No. O-18328, is hereby amended to increase the C.I.P. budget for the San Diego Convention Center Expansion Project, C.I.P. # 37-010.0, from \$196.2 million to \$207,144,878, from the following sources:

- (a) \$5.3 million from the Convention Center Expansion Fund, Fund 102212, and

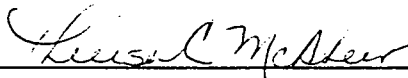
(b) \$5,644,878 in estimated interest earnings on the project construction fund.

Any additional monies deposited for project purposes in excess of estimated revenues are hereby appropriated for the Convention Center Expansion project.

Section 2. The City Auditor and Comptroller is hereby authorized to appropriate and expend up to \$207,144,878 from San Diego Convention Center Expansion Project, C.I.P. # 37-010.0, with the intent that these expenses will be funded or reimbursed from future debt financing and other lawfully available sources.

Section 3. This Ordinance shall take effect and be in force immediately upon its adoption after two public hearings, pursuant to the authority contained in Sections 16, 17 and 71 of the Charter of The City of San Diego.

APPROVED: CASEY GWINN, City Attorney

By 
Theresa C. McAteer
Deputy City Attorney

TCM:cdk
03/11/97
Or.Dept:Mgr.
O-97-82 Rev. 1