

RESOLUTION NUMBER R- 290289

ADOPTED ON JUN 19 1998

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 Improvement 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; and

WHEREAS, on March 5, 1996, by Ordinance Nos. O-18270 and O-18271, the Council approved the financing leases and other documentation which: (1) 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 (2) 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, pursuant to the above referenced authorization 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, on March 18, 1997, by Ordinance No. O-18391, Council adopted a Project budget of \$207.1 million, and on March 17, 1997, by Resolution No. R-288454 authorized the City Manager to execute any agreements, and take all actions necessary and appropriate to increase the total expenditures for the Project to account for costs that, as certified by the City Manager, have increased due to the delay engendered by litigation, provided, 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, and provided that the City Auditor furnishes certificates demonstrating that the funds are, or will be, on deposit in the City Treasury; 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 under review by the California Supreme Court; and

WHEREAS, a decision from the California Supreme Court which will allow the Project to proceed is anticipated; 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, to allow the Project to proceed and to minimize the escalation of costs due to the litigation delay, the City Council on November 25, 1997 adopted Ordinance No. O-18443, approving an alternative financing method using Certificates of Participation (the Certificates); and

WHEREAS, Ordinance No. 18443 has been subject to a vote of the electorate, by virtue of a referendary petition; and

WHEREAS, the City has retained the discretion to use either Bonds or the Certificates to finance the Convention Center Expansion, depending on the outcome of the *Rider* case at the California Supreme Court; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized to enter into a Phase VIII Interim Agreement with Golden Turner, the form of which is on file in the office of the City Clerk as Document No. RR- 290289, to permit Golden Turner to re-mobilize staff and re-establish the job-site office, demolish the USO building, work on the preliminary utility relocation bid package, begin preparation of bid packages, and perform other tasks necessary and related to the Expansion, which Interim Agreement shall be in the amount of \$552,700, subject to certification of the City Auditor and Comptroller that appropriate funding is available.

BE IT FURTHER RESOLVED, that City Auditor and Comptroller is hereby authorized to appropriate and expend, from the Convention Center Expansion Fund 102212, an amount up to \$552,700, as may be required for interim funding of the Golden Turner Phase VIII Interim

Agreement, with the intent that such interim funding may be reimbursed from future Project funding sources, such as bond proceeds and Port District Contribution.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to utilize, if necessary and subject to certification of availability of funds by City Auditor and Comptroller, \$3,000,000 from the Owner's Contingency to fund actual hard construction costs, prior to incorporating deductive alternatives into the Project.

APPROVED: CASEY GWINN, City Attorney

By


Deborah L. Berger
Deputy City Attorney

TCM:DLB:rc:pev
6/1/98
Or.Dept:Mgr.
R-98-1318
Form=auagr.frm

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

AC 9801380

ORIGINATING

DEPT. NO.: 050

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.


Amount \$ 552,700.00

Fund 102212

Purpose Convention Center Expension

Date 06-03-98

By: _____


AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

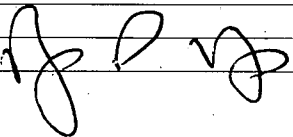
I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ 552,700.00

Vendor Golden Turner

Purpose Convention center Expesion

Date _____



ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/EQUIP	FACILITY	AMOUNT
001	0	102212	102212	100	4222	000009				\$552,700.00
TOTAL AMOUNT										\$552,700.00

FUND OVERRIDE