

RESOLUTION NUMBER R- 291731

ADOPTED ON JUN 01 1999

**RESOLUTION APPROVING AMENDED ENGINEER'S
REPORT, LEVYING ASSESSMENTS, ORDERING
IMPROVEMENTS, AND AUTHORIZING AND
DIRECTING RELATED ACTIONS**

CITY OF SAN DIEGO DEL MAR TERRACES
UNDERGROUNDING ASSESSMENT DISTRICT NO. 99-1

WHEREAS, this City Council has accepted a petition, signed by owners of certain real property situated in the City of San Diego and has directed that special assessment proceedings be undertaken by the terms of such petition; and

WHEREAS, this Council has approved a map and adopted the boundaries shown on such map as describing the extent of the territory included in a proposed assessment district to be known as the Del Mar Terraces Undergrounding Assessment District No. 99-1, City of San Diego, County of San Diego, State of California (the "Assessment District"); and

WHEREAS, by its resolution of intention adopted on March 29, 1999, this Council has declared its intention to order improvements to place underground certain existing overhead utility facilities within the Assessment District and to levy a special assessment upon the specially benefitted land within the Assessment District; and

WHEREAS, at the direction of this Council, the City Engineer of the City, as Engineer of Work for improvement proceedings in the Assessment District, has filed with the City Clerk the report prescribed in Section 10204 of the Streets and Highway Code and Article XIID of the

California Constitution (the "Engineer's Report"); and

WHEREAS, by resolution adopted on March 29, 1999, this Council preliminarily approved the Engineer's Report and scheduled the required public hearing as required by law to occur on June 1, 1999; and

WHEREAS, notice of said hearing was given to property owners by mail, accompanied by the property owner assessment ballot, as required by law, as evidenced by the Certificate of Mailing which has been filed with the City Clerk; and

WHEREAS, prior to the June 1 public hearing, and based upon information learned after filing the Engineer's Report, the City Engineer prepared and filed with the City Clerk an Amended Engineer's Report which contains the following modifications from the Engineer's Report which was initially filed and which was preliminarily approved on March 29:

1. Assessment No. 301 061 18 00 was reduced to zero and eliminated when it was determined that the subject unimproved parcel cannot be developed or inhabited, and therefore was determined not to be specially benefited by the proposed improvements;
2. In Exhibit C (Cost Estimate), under City Costs - Inspection, the City Engineer determined that the project contingency fee could be reduced by \$7,800. This resulted in the contingency fee being reduced from \$126,00 to \$118,200, reducing the total project cost from \$1,170,000 to \$1,162,200;
3. The Apportionment of Costs section, p. 10, per parcel assessment calculation was changed to read, "1,162,200 divided by 150 parcels = \$7,748 per parcel";
4. Exhibit F was modified to reflect updated parcel owner and address information

that was utilized for ballot distribution purposes through May 18, 1999; and

5. Exhibit F was modified based upon sufficient and reasonable documentation of consolidation of Parcel Nos. 301 070 3400 and 301 070 35 00 of Del Mar Terraces to reflect that these lots shall be merged into one and will be subject to one assessment. This modification is contingent upon completion of formal consolidation of the referenced parcels no later than December 31, 1999. Failure to complete consolidation before that date will result in each parcel being assessed individually.

6. Minor non-substantive, grammatical modifications were made.

WHEREAS, the public hearing for June 1, 1999, was conducted, and having provided opportunity for any interested person present to be heard, the hearing was closed; and

WHEREAS, this Council finds and determines that, for purposes of the majority protest provisions of Section 53753 of the California Government Code, of those assessment ballots which were signed, marked, dated and returned to the City Clerk prior to the close of the public hearing on June 1, 1999, the assessment ballots in favor of the proposed levy of assessments exceeded the assessment ballots opposed to the proposed levy of assessments, and therefore there was not a majority protest as defined by Article XIID of the California Constitution and Section 053753 of the California Government Code; and

WHEREAS, this Council finds and determines that the proposed assessment of the cost and expenses of the proposed improvement upon the respective parcels of land in the Assessment District, as set forth in the Amended Engineer's Report, represents a fair and equitable apportionment of such cost and expenses in proportion to the estimated benefits to be received by

each parcel, respectively, from the improvement; 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 said City, as follows:

1. This City Council hereby finds and determines, based upon all of the information known to the Council and presented in the record of these proceedings, that the recommendations set forth in the Amended Engineer's Report are in conformity with legal standards and requirements and that the recommended assessment has been established in a fair and equitable manner reflecting the estimated benefit to the respective parcels in proportion to such estimated benefits.

2. The Amended Engineer's Report filed by the Engineer of Work is hereby approved by this Council without modification.

3. The proposed work and improvement, as described in the Amended Engineer's Report, is authorized at the completion of the appropriate compliance with California Equality Quality Act.

4. The individual assessments, in the amounts stated in the Amended Engineer's Report, are hereby confirmed and levied, and in accordance with Section 10312 of the Streets and Highways Code, this action is final as to all persons.

5. The assessment diagram, as set forth in the Amended Engineer's Report, shall be filed for record in the Office of the County Recorder for San Diego County (the "County Recorder"), as required by Section 3114 of the Streets and Highways Code; a notice of assessment, containing the matters required by said Section 3114 shall be prepared, executed and

recorded by the City Clerk in the County Recorder's office; and notice of recordation of assessment shall be given by publication and by mail in the form and manner required by Section 10404 of the Streets and Highways Code.

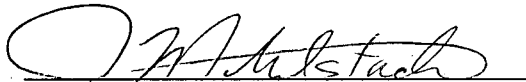
6. Pursuant to Section 10603 of the Streets and Highways Code, the Finance Director is hereby designated to collect and receive the cash payments from property owners on account of the assessments levied, and upon the expiration of the prescribed 30-day cash payment period, the Finance Director shall submit to the City Clerk a certificate re paid and unpaid assessments, with a list of unpaid assessments attached (the "List of Unpaid Assessments").

7. Following receipt of the Certificate re Paid and Unpaid Assessments from the Finance Director, this Council intends to proceed with authorization to collect the unpaid assessments as a one-time installment on the secured property tax roll of the County of San Diego.

BE IT FURTHER RESOLVED, by the Council of The City of San Diego, that the City Auditor and Comptroller is hereby authorized to advance funds from appropriate sources to cover project once California Environmental Quality Act compliance is achieved. The costs are to be prepaid with interest from subsequent assessment proceeds received later in Fiscal Year 2000.

BE IT FURTHER RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby directed to return to the Land Use & Housing Committee with a draft Council Policy that will provide formal guidance for others.

APPROVED: CASEY GWINN, City Attorney

By 
Jacqueline Mittelstadt
Deputy City Attorney

JM:kjk
5/19/99
REV: 9/27/99
Aud.Cert:N/A
Or.Dept:Engineering&Capital Projects
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