

RESOLUTION NUMBER R- 294569

ADOPTED ON FEB 20 2001

WHEREAS, on November 3, 1998, approximately 60% of the electorate of the City of San Diego [City] voting at the General Municipal Election held that day voted to adopt Ordinance No. O-18613 [Ordinance], otherwise known as Proposition C and appearing on the ballot for the City of San Diego; and

WHEREAS, the Ordinance authorized and directed the City Manager to execute for and on behalf of the City the Memorandum of Understanding [MOU] Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project [Project] between the City, the Redevelopment Agency of the City [Agency], the Centre City Development Corporation [CCDC], and Padres L.P. [Padres]; and

WHEREAS, the Ordinance provided that it was the intent of the electorate that the Ordinance and MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the Ordinance; and

WHEREAS, the MOU was executed by all the parties thereto; and

WHEREAS, as authorized and directed by the Ordinance and the MOU, the parties to the MOU, their officers, employees and agents, have, in good faith, undertaken certain administrative and non-legislative actions to implement the MOU, including, without limitation on the part of the City or Agency, the adoption of ordinances and resolutions authorizing contracts and agreements

between some or all of the parties to the MOU, their agents, successors or assigns; and

WHEREAS, a question has arisen regarding the validity of the actions of the City and Agency authorizing contracts and agreements as a result of alleged conflicts of interest on the part of one member of the City Council, which body sits as both the City Council of the City and Board of Directors of the Agency; and

WHEREAS, the subject council member, Valerie Stallings, has been under investigation by a federal grand jury, the U.S. Attorney, and the District Attorney, and reached a plea bargain by which Ms. Stallings pled guilty to one violation of Government Code section 91000 based upon violations of Government Code sections 7203 and 87207, and one violation of Government Code section 91000 based upon violations of Government Code section 87103(e), but which plea bargain and charges do not, in the opinion of the City, affect the validity of the actions authorizing contracts and agreements; and

WHEREAS, as part of the plea bargain referenced above, Ms. Stallings has resigned from the City Council; and

WHEREAS, despite the opinion of the City as set forth above, and solely in order to put to rest any doubt about the validity of the actions authorizing contracts and agreements, it is appropriate for the City Council to validate and ratify any and all previous actions of the City which authorized contracts and agreements related to the Project; and

WHEREAS, one of the actions to be ratified and validated is the approval of a Disposition and Development Agreement [Agreement] between the Agency and JMI Realty, Inc. regarding the proposed Westin Hotel; and

WHEREAS, the Westin Hotel, while an obligation of Padres L.P. pursuant to the MOU, is an independent project that is necessary and will proceed even if the Project is delayed or

canceled; and

WHEREAS, the financing for the Westin Hotel is scheduled to close prior to March 6, 2001, which is the time scheduled for the City Council to consider ratification of other contractual matters; and

WHEREAS, it is therefore now appropriate to consider ratification or validation of the Agreement prior to March 6, 2001, so that financing may close as scheduled; and

WHEREAS, nothing herein modifies the \$225 million cap on the City's investment in the Project specified in Section XV of the MOU, or causes or obligates the City to spend any funds in excess of that cap; and

WHEREAS, the action undertaken by this resolution is fully consistent with the MOU, and does not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City; and

WHEREAS, the adoption of this resolution does not commit the City to obtain its financing for the Project, and does not indicate that the terms of any proposed financing are reasonably acceptable to the City; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the following resolutions [Resolutions] are hereby re-adopted, validated or ratified as necessary to reaffirm their validity, and the validity of the contracts and agreements authorized by them, commencing with their respective times of adoption, and to effectuate their continuing validity, and the continuing validity of the contracts and agreements authorized by them: No. R-292440.

BE IT FURTHER RESOLVED, that all actions of the City, its officers, employees or agents implementing or in furtherance of Resolution No. R-292440 are hereby ratified, validated and approved so as to declare their validity commencing with their respective times of adoption,


and to effectuate their continuing validity.

BE IT FURTHER RESOLVED, that it is the intent of the City Council that, as authorized and directed by the Ordinance and MOU, this action is in furtherance of and implements both the Ordinance and MOU and is thus administrative and non-legislative in character.

BE IT FURTHER RESOLVED, that consistent with Section XXXIII.A of the MOU, the City Council reaffirms and reserves to the City the right to determine that the terms of any City or Agency funding or financing, whether interim or permanent, must be reasonably acceptable to the City, which terms include, but are not limited to, that status of sources of revenue to pay for the funding or financing (including, but not limited to, hotel rooms, transient occupancy taxes and the investment from the Unified Port District) and any other matter which may affect the City's financing not only of the Project but of any other current or future City project.

BE IT FURTHER RESOLVED, that the City Manager, City Attorney, City Clerk and City Auditor & Comptroller are authorized and directed to take any and all necessary or appropriate actions to implement the intent and purpose of this resolution.

APPROVED: CASEY GWINN, City Attorney

By 
Leslie J. Girard
Assistant City Attorney

LJG:js
2/09/01
Or.Dept:Atty
R-2001-1150
Form=r-t.frm