

RESOLUTION NUMBER R- 301438

DATE OF FINAL PASSAGE MAY 24 2006

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE PAYMENT OF
ADDITIONAL FUNDS FOR THE CITY OF SAN DIEGO'S
AUDIT COMMITTEE AND RELATED ENTITIES

WHEREAS, on February 14, 2005, the City Council authorized and directed that the former Mayor, the former City Manager, and the City Attorney execute an agreement with Kroll Associates, Inc. [Kroll] in connection with matters involving the San Diego City Employees' Retirement System [SDCERS], which letter was duly signed and acknowledged, in an amount not to exceed \$250,000; and

WHEREAS, on March 8, 2005, the City Council established an Audit Committee of the City of San Diego [Audit Committee] as contemplated by the Sarbanes-Oxley Act of 2002; and

WHEREAS, on April 19, 2005, the Audit Committee engaged Willkie Farr & Gallagher LLP [WF&G] to serve as its counsel, and on May 10, 2005, the City Council approved the Audit Committee's engagement of WF&G, and increased the amounts payable to Kroll and WF&G to \$1,750,000 and \$500,000, respectively; and

WHEREAS, the City Council authorized additional payments to be made to Kroll and WF&G from time to time for the continued provision of investigative and legal services; and

WHEREAS, the firm of NTI Breakwater has also been retained by the Audit Committee for the compilation of electronic data; and

WHEREAS, the firm of KMPG has been authorized to receive \$3.1 million for services to the Audit Committee and for the auditing of the City's FY 2003 financial statements; and

WHEREAS, the firm of Macias & Gini has been retained to audit the City's FY 2004 and FY 2005 financial statements and \$1,560,456 has previously been authorized for said purpose; and

WHEREAS, on January 17, 2006, the City Council authorized an additional expenditure of funds to Kroll and WF&G for professional services, in an amount not to exceed \$10 million to be paid for any outstanding amounts due and owing to Kroll and WF&G, and to pay for work, exclusive of out-of-pocket expenses, necessary for the Audit Committee to complete the investigation as it sees fit in an exercise of its sound and independent judgment; and

WHEREAS, the Council authorization of January 17, 2006 was for the \$10 million to be paid solely from Fund No. 81140, Dept. No. 82240, Object Account No. 4151, Job Order 062240 and not from the Enterprise Funds; and

WHEREAS, it remains the legal opinion of the City Attorney that the City has failed to show that there has been established a proper nexus between the services of the Audit Committee allocated as either a direct cost or an indirect cost – to justify the use of Enterprise Funds to pay for a portion of those services; and

WHEREAS, the City Council nonetheless with this action will reallocate the funding of these services across the City based upon Full Time Employees; and

WHEREAS, the current authorization of funds by the City Council is not sufficient for the Audit Committee to complete its investigation, for invoices for NTI Breakwater to be paid and for KPMG and Macias & Gini to complete their audits; and

WHEREAS, the Audit Committee has requested an additional \$3.3 million for professional expenses and up to \$800,000 in out of pocket expenses to complete the investigation and issue a report sometime in June 2006; NOW THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego as follows:

1. That the City Council hereby authorizes an increase in funding totaling \$5,625,948 for the Audit Committee, NTI Breakwater, KPMG, and Macias & Gini.
2. That the Council authorizes the reallocation of \$11,427,312.80 in previously approved expenditures charged to the Public Liability Fund across all funds using an allocation based on Full Time Employees.
3. That the City Auditor/Controller be authorized to transfer \$733,367.47 from the General Fund Unappropriated Reserves, Fund 100, to the Public Liability Fund 81140 for the net General Fund portion of these expenditures.
4. That the Mayor is delegated the authority to administer the contract with Kroll and Willkie Farr.
5. That it shall be included, as a condition of this additional funding, that the Audit Committee shall produce all work product and investigation related materials at the conclusion of their engagement.

PREPARED AND APPROVED AS TO FORM, BUT NOT IN AGREEMENT:

MICHAEL J. AGUIRRE, City Attorney

[submitted unsigned – see accompanying memorandum]

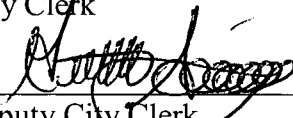
By

Alex W. Sachs
Deputy City Attorney

AWS:aws
05/11/2006
ACs 2600793, 2600794, 2600795, 2600796
Or.Dept:Mayor
R-2006-976

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at its meeting of MAY 08 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5-24-06
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Office of
The City Attorney
City of San Diego

RECEIVED
CITY CLERK'S OFFICE

06 MAY 23 PM 2:53

SAN DIEGO, CALIF.

MEMORANDUM
MS 59

(619) 236-6220

DATE: March 23, 2006
TO: Elizabeth Maland, City Clerk
FROM: City Attorney
SUBJECT: Resolution R-2006-976 Authorizing Payment of Additional Funds for the City of San Diego's Audit Committee and Related Entities

The attached R-2006-976 (City Attorney's numbering) is provided by the City Attorney in accordance with San Diego Charter section 40 that requires that resolutions be prepared in writing and to facilitate the processing and publishing of the resolution by the City Clerk.

However, the fact that we are providing the resolution should not be construed as a judgment of the legality of these actions. As you know, the City Attorney continues to be concerned regarding the allocation of funds for this action across the Departments City-wide.

The resolution, which is unsigned, reflects the actions of the City Council on May 8, 2006 on item S403 as noted in the Clerk's minutes. If you have any questions regarding this matter, please feel free to contact us.

MICHAEL J. AGUIRRE, City Attorney

By



Alex W. Sachs
Deputy City Attorney

AWS:aws
Attachment

R- 301438

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

CERTIFICATE OF UNALLOTTED BALANCE

AC 2600793

ORIGINATING

DEPT. NO:

010

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: _____ Fund: _____

Purpose: _____

Date: _____ 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: \$4,100,000.00

Vendor: Kroll, Inc. / Willkie Farr & Gallagher

Purpose: To authorize the additional funding of \$4,100,000.00 for Audit Committee services related to the FY 2003 audit.

Date: May 5, 2006

By: *Leonard J. Alvarado*
 AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
			see	attached	distribution					
TOTAL AMOUNT										

FUND OVERRIDE

AC 2600793

R- 301438

MAY 08 2006

**AC2600793: Kroll / Willkie Farr & Gallagher
Distribution of Expenses
Pensionable Salaries**

Total Amount: \$ 4,100,000.00

Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
001	0	100			9544		2,923,710.00	71.31%
002	0	41400	730	100	4151	002150	34,850.00	0.85%
003	0	41200	750	1001	4151	001002	7,790.00	0.19%
004	0	41200	751	1002	4151	001500	16,810.00	0.41%
005	0	41200	752	1000	4151	000110	33,620.00	0.82%
006	0	41200	753	010	4151	002000	10,660.00	0.26%
007	0	41200	754	020	4151	004229	2,870.00	0.07%
008	0	41210	755	1002	4151	001500	8,200.00	0.20%
009	0	41210	757	020	4151	004229	39,360.00	0.96%
010	0	41210	758	010	4151	001001	2,460.00	0.06%
011	0	41210	759	010	4151	002010	6,970.00	0.17%
012	0	41500	760	163	4151	000163	336,610.00	8.21%
013	0	41506	776	455	4151	776260	399,340.00	9.74%
014	0	41100	720	2000	4151	001101	6,970.00	0.17%
015	0	50050	850	2000	4151	085010	52,890.00	1.29%
016	0	50050	5431	100	4151	543100	24,190.00	0.59%
017	0	41300	1311	1100	4151	001110	2,050.00	0.05%
018	0	41300	1312	1250	4151	000100	14,350.00	0.35%
019	0	41300	1313	1310	4151	001310	60,270.00	1.47%
020	0	41300	1314	1410	4151	001110	34,850.00	0.85%
021	0	41300	1316	1610	4151	001110	50,840.00	1.24%
022	0	41300	1317	1720	4151	001110	30,340.00	0.74%

Total: 4,100,000.00 100.00%

301438

MAY 08 2006

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

CERTIFICATE OF UNALLOTTED BALANCE

AC 2600794

ORIGINATING

DEPT. NO: 010

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: _____ Fund: _____

Purpose: _____

Date: _____ 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: \$1,300,000.00

Vendor: KPMG

Purpose: To authorize the additional funding of \$1,300,000.00 for audit services related to the City's FY 2003 financial statements.

Date: May 5, 2006 By: *Leonard J. Alvarado*
 AUDITOR AND COMPTROLLER'S DEPARTMENT

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

AC-361 (REV 2-92)

FUND OVERRIDE

AC 2600794

R - 301438

MAY 08 2006

**AC2600794: KPMG
Distribution of Expenses
Pensionable Salaries**

Total Amount: \$ 1,300,000.00

Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
001	0	100			9544		927,030.00	71.31%
002	0	41400	730	100	4151	002150	11,050.00	0.85%
003	0	41200	750	1001	4151	001002	2,470.00	0.19%
004	0	41200	751	1002	4151	001500	5,330.00	0.41%
005	0	41200	752	1000	4151	000110	10,660.00	0.82%
006	0	41200	753	010	4151	002000	3,380.00	0.26%
007	0	41200	754	020	4151	004229	910.00	0.07%
008	0	41210	755	1002	4151	001500	2,600.00	0.20%
009	0	41210	757	020	4151	004229	12,480.00	0.96%
010	0	41210	758	010	4151	001001	780.00	0.06%
011	0	41210	759	010	4151	002010	2,210.00	0.17%
012	0	41500	760	163	4151	000163	106,730.00	8.21%
013	0	41506	776	455	4151	776260	126,620.00	9.74%
014	0	41100	720	2000	4151	001101	2,210.00	0.17%
015	0	50050	850	2000	4151	085010	16,770.00	1.29%
016	0	50050	5431	100	4151	543100	7,670.00	0.59%
017	0	41300	1311	1100	4151	001110	650.00	0.05%
018	0	41300	1312	1250	4151	000100	4,550.00	0.35%
019	0	41300	1313	1310	4151	001310	19,110.00	1.47%
020	0	41300	1314	1410	4151	001110	11,050.00	0.85%
021	0	41300	1316	1610	4151	001110	16,120.00	1.24%
022	0	41300	1317	1720	4151	001110	9,620.00	0.74%

Total: 1,300,000.00 100.00%

301438

MAY 08 2006

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

CERTIFICATE OF UNALLOTTED BALANCE

AC 2600795

ORIGINATING

DEPT. NO.: 010

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: _____ Fund: _____

Purpose: _____

Date: _____ 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: \$150,000.00

Vendor: Macias, Gini, & Company, LLC

Purpose: To authorize the additional funding of \$150,000.00 for audit services related to the City's FY 2004 and FY 2005 financial statements.

Date: May 5, 2006

By: *Leonard J. Alperante*
 AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
			see	attached	distribution					
TOTAL AMOUNT										

FUND OVERRIDE

R-301438

MAY 08 2006

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

CERTIFICATE OF UNALLOTTED BALANCE

AC 2600796

ORIGINATING

DEPT. NO: 010

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: _____ Fund: _____

Purpose: _____

Date: _____ 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: \$75,948.00

Vendor: NTI Breakwater

Purpose: To authorize the additional funding of \$75,948.00 for the completion of electronic data compilation related to the City's audit of the FY 2003 financial statements.

Date: May 5, 2006 By: Leonard J. Alpuente
 AUDITOR AND COMPTROLLER'S DEPARTMENT

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

AC-361 (REV 2-92)

FUND OVERRIDE

AC 2600796

R- 301438

MAY 08 2006

**AC2600796: NTI Breakwater
Distribution of Expenses
Pensionable Salaries**

Total Amount: \$ 75,948.00

Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
001	0	100			9544		54,158.500	71.31%
002	0	41400	730	100	4151	002150	645.560	0.85%
003	0	41200	750	1001	4151	001002	144.300	0.19%
004	0	41200	751	1002	4151	001500	311.390	0.41%
005	0	41200	752	1000	4151	000110	622.770	0.82%
006	0	41200	753	010	4151	002000	197.470	0.26%
007	0	41200	754	020	4151	004229	53.160	0.07%
008	0	41210	755	1002	4151	001500	151.900	0.20%
009	0	41210	757	020	4151	004229	729.100	0.96%
010	0	41210	758	010	4151	001001	45.570	0.06%
011	0	41210	759	010	4151	002010	129.110	0.17%
012	0	41500	760	163	4151	000163	6,235.330	8.21%
013	0	41506	776	455	4151	776260	7,397.340	9.74%
014	0	41100	720	2000	4151	001101	129.110	0.17%
015	0	50050	850	2000	4151	085010	979.730	1.29%
016	0	50050	5431	100	4151	543100	448.090	0.59%
017	0	41300	1311	1100	4151	001110	37.970	0.05%
018	0	41300	1312	1250	4151	000100	265.820	0.35%
019	0	41300	1313	1310	4151	001310	1,116.440	1.47%
020	0	41300	1314	1410	4151	001110	645.560	0.85%
021	0	41300	1316	1610	4151	001110	941.760	1.24%
022	0	41300	1317	1720	4151	001110	562.020	0.74%

Total: 75,948.000 100.00%

301438

MAY 08 2006

Passed by the Council of The City of San Diego on MAY 08 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 24 2006

AUTHENTICATED BY:

(Seal)

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary-Cezeda*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-301438