

RESOLUTION NUMBER R- 302920

DATE OF FINAL PASSAGE AUG 03 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT OF ALL CLAIMS BETWEEN THE CITY OF SAN DIEGO AND 4S KELWOOD GENERAL PARTNERSHIP REGARDING CONTRIBUTIONS MADE TO THE CITY FOR THE IMPROVEMENT OF THE INTERSECTION OF CAMINO DEL NORTE AND BERNARDO CENTER DRIVE AND RELATED ACTIONS

WHEREAS, on December 7, 1987, the City Council approved a Contribution Agreement between the City and 4S Partners whereby 4S Partners agreed to contribute to the City a sum of \$397,892 [Original Contribution] to pay 4S Partners' portion of the cost of improvements to the intersection of Camino Del Norte and Bernardo Center Drive [Project]; and

WHEREAS, the Project was not constructed, and the Original Contribution was retained by the City in an account established therefor; and

WHEREAS, 4S Kelwood General Partnership subsequently constructed a different project at the intersection of Camino Del Norte and Bernardo Center Drive; and

WHEREAS, 4S Kelwood General Partnership has requested the return of the Original Contribution made by it's affiliate, plus interest, but the Contribution Agreement does not contain provisions that address the return of 4S Partners' contribution if the Project was not completed; and

WHEREAS, the City and 4S Kelwood General Partnership have agreed that the return of the Original Contribution, less the City's cost in administering the Contribution Agreement, is an equitable resolution of this issue, and the terms of the settlement are set forth in that Settlement

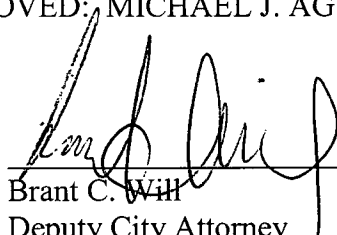
Agreement, on file with the Clerk as document No. RR- 302920; NOW, THEREFORE,

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

1. That the Mayor or his designee is authorized and directed to enter in a Settlement Agreement with 4S Kelwood General Partnership [Settlement Agreement] substantially in the form attached hereto.
2. That the Auditor and Comptroller is authorized and directed to expend up to \$1,000,000 but not less than \$945,679 from the Bernardo Center Drive Interchange Fund (10586) in accordance with the Settlement Agreement.
3. That the Auditor and Comptroller is authorized and directed to retain any funds paid into the Bernardo Center Drive Interchange Fund (10586) after the execution of the Settlement Agreement for future improvements along the I-15 corridor.
4. Authorizing the Auditor and Comptroller upon advice from the administering department to transfer excess funds, if any, to the appropriate reserves.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

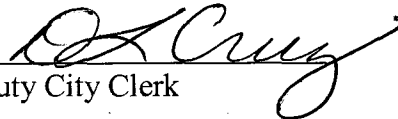


Brant C. Will
Deputy City Attorney


BCW:jdf
07/03/2007
Or.Dept:Planning Dept.
R-2008-7

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 31 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8-3-07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800038

ORIGINATING

DEPT. NO.: 065

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: \$945,679.00 Fund: 10586

Purpose: Authorizing a settlement agreement with 4S Kelwood General Partnership for contributions deposited with the City for improvements to the intersections of Camino Del Norte and Bernardo Center Drive.

Date: July 18, 2007

By: Faye Ponder-Price *Faye Ponder-Price*

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	10586			9544					\$945,679.00
TOTAL AMOUNT										\$945,679.00

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: _____

Vendor: _____

Purpose: _____

Date: July 18, 2007

By: _____

ACCOUNTING DATA

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

AC-361 (REV 2-92)

FUND OVERRIDE

AC 2800038

R **302920**

JUL 31 2007