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RESOLUTION NUMBER R- 303072

DATE OF FINAL PASSAGE OCT 18 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO WAIVING ITS ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT PRIVILEGES IN THE CASE ENTITLED *FURGATCH v. SAN DIEGO UNIFIED PORT DISTRICT, ET AL.*

WHEREAS, in February 2000, the City entered into a purchase and sale agreement with the San Diego Unified Port District [Port] whereby the Port would pay \$21 million for four parcels of land commonly known as Tailgate Park. The agreement benefited the City by providing funds for the ball park development. The Port would obtain the right to use the land for event parking and also enter into a lease agreement with the Padres to operate parking during the baseball games; and

WHEREAS, Plaintiff Harvey Furgatch, a former Port Commissioner, sued the Port to prevent the expenditure of Port funds for this purchase. The City intervened as an interested party. Plaintiff alleged that the land was overvalued, that it was outside of the tidelands managed by the Port and that the Port did not need additional parking; and

WHEREAS, an issue and a barrier to the finalization of the sale was the control the City would have over future use of this property. Thus, the City insisted that the land be subject to a conditional use permit [CUP]. The Port wanted to take the property free of land use restrictions. Because the parties failed to agree on this term, the City terminated the contract in August 2005; and

WHEREAS, The City's termination of the contract occurred during the trial of Furgatch's lawsuit, the trial court deemed the matter moot and dismissed the lawsuit. Plaintiff brought a motion for attorney's fees alleging his lawsuit, despite the dismissal, was a substantial

factor in bringing about the termination of the purchase and sale agreement. The Court denied that motion. Plaintiff appealed and the appellate court remanded this matter to the trial court to allow Plaintiff discovery regarding the reasons why the City terminated the agreement. Further, the motion for attorney's fees will be reheard by the trial court after completion of discovery; and

WHEREAS, the City's ability to defend against Plaintiff's claim that his lawsuit was a substantial factor in the termination of the contract is supported by privileged documents and discussions between the City Attorney's office, the Centre City Development Corporation [CCDC] and the Redevelopment Agency. Specifically identified privileged documents are attached as Exhibit "1" and incorporated by reference herein; and

WHEREAS, waiver of the attorney client and work product privileges is necessary to defend Furgatch's claims;

NOW THEREFORE;

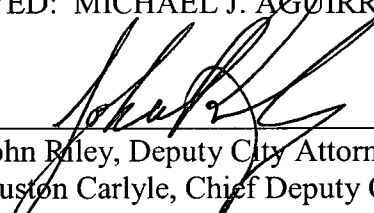
BE IT RESOLVED by the Council of the City of San Diego as follows:

1. That the City of San Diego waives its attorney-client and attorney work product privileges related to the reasons why the City of San Diego terminated the purchase and sale contract with the San Diego Unified Port District for the sale of Tailgate Park. Said termination of the purchase and sale contract is the subject of the waiver of privilege described herein. This waiver of privileges are specifically limited to the lawsuit known as *Harvey Furgatch v. San Diego Unified Port District, et al*, San Diego Superior Court Case No. GIC 775242 and further limited to the documents identified in Exhibit "1" attached hereto, referenced and incorporated herein, together with testimony of City personnel related to the reasons why the City terminated the purchase and sale contract.

2. The waiver of the privileges described herein is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
\_\_\_\_\_  
John Riley, Deputy City Attorney  
Huston Carlyle, Chief Deputy City Attorney

HC:my  
7/18/07  
Or.Dept:Risk  
R-2008-2

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 09 2007.

ELIZABETH S. MALAND  
City Clerk

By   
\_\_\_\_\_  
Deputy City Clerk

Approved: 10/18/07  
\_\_\_\_\_  
(date)

  
\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

EXHIBIT 1

R. 303072

PRIVILEGE LOG

*Harvey Furgatch v. San Diego Unified Port District*  
 San Diego Superior Court No. GIC 775242

#	DOCUMENT DATE	DOCUMENT TYPE	AUTHOR	BATES NO. RANGE	PRIVILEGE
1.	August 3, 2005	Memorandum	Leslie J. Girard	LG00005-00006	Attorney/Client Attorney Work Product
2.	April 28, 2005	Memorandum	Leslie J. Girard	LG00009	Attorney/Client Attorney Work Product
3.	April 28, 2005	Memorandum	Leslie J. Girard	LG00010-00011	Attorney/Client Attorney Work Product
4.	June 2, 1999	Letter	Mayor Golding	LG00153-00155	Attorney/Client Attorney Work Product
5.	May 16, 2005	Memorandum	Leslie J. Girard	LG00166-00169	Attorney/Client Attorney Work Product
6.	October 3, 2005	E-mail correspondence	Dennis Gibson	LG00229	Attorney/Client Attorney Work Product
7.	October 3, 2005	E-mail correspondence	Les Girard	LG00233	Attorney/Client Attorney Work Product
8.	September 20, 2005	E-mail correspondence	Les Girard	LG00234	Attorney/Client Attorney Work Product
9.	November 1, 2004	E-mail correspondence	Kelly Salt	LG00235	Attorney/Client Attorney Work Product
10.	November 4, 2004	E-mail correspondence	Kelly Salt	LG00236	Attorney/Client Attorney Work Product
11.	November 22, 2004	E-mail correspondence	Kelly Salt	LG00237	Attorney/Client Attorney Work Product
12.	October 22, 2004	E-mail correspondence	Kelly Salt	LG00238	Attorney/Client Attorney Work Product
13.	October 25, 2004	E-mail correspondence	Kelly Salt	LG00239	Attorney/Client Attorney Work Product

R 303072

#	DOCUMENT DATE	DOCUMENT TYPE	AUTHOR	BATES NO. RANGE	PRIVILEGE
14.	October 25, 2004	E-mail correspondence	Kelly Salt	LG00240-00241	Attorney/Client Attorney Work Product
15.	December 22, 2004	E-mail correspondence	Kelly Salt	LG00242	Attorney/Client Attorney Work Product
16.	February 13, 2004	E-mail correspondence	Pete Lynch	LG00243-000244	Attorney/Client Attorney Work Product
17.	February 19, 2004	E-mail correspondence	John Dunchack	LG00245	Attorney/Client Attorney Work Product
18.	February 19, 2004	E-mail correspondence	Maroun El-Hage	LG00246	Attorney/Client Attorney Work Product
19.	February 19, 2004	E-mail correspondence	Jon Dunchack	LG00247	Attorney/Client Attorney Work Product
20.	February 19, 2004	E-mail correspondence	Stephen Shushan	LG00248-00249	Attorney/Client Attorney Work Product
21.	April 20, 2004	E-mail correspondence	Les Girard	LG00250	Attorney/Client Attorney Work Product
22.	April 20, 2004	E-mail correspondence	Kelly Salt	LG00251-00252	Attorney/Client Attorney Work Product
23.	April 21, 2004	E-mail correspondence	David Allsbrook	LG00253-00254	Attorney/Client Attorney Work Product
24.	May 20, 2004	E-mail correspondence	Jon Dunchack	LG00255	Attorney/Client Attorney Work Product
25.	May 20, 2004	E-mail correspondence	Kelly Salt	LG00256	Attorney/Client Attorney Work Product
26.	May 20, 2004	E-mail correspondence	David Allsbrook	LG00257	Attorney/Client Attorney Work Product
27.	May 20, 2004	E-mail correspondence	Kelly Salt	LG00258	Attorney/Client Attorney Work Product
28.	May 20, 2004	E-mail correspondence	Pete Lynch	LG00259	Attorney/Client Attorney Work

#	DOCUMENT DATE	DOCUMENT TYPE	AUTHOR	BATES NO. RANGE	PRIVILEGE
					Product
29.	May 20, 2004	E-mail correspondence	Jon Dunchack	LG00260-00261	Attorney/Client Attorney Work Product
30.	May 20, 2004	E-mail correspondence	David Allsbrook	LG00262-00263	Attorney/Client Attorney Work Product
31.	May 20, 2004	E-mail correspondence	Kelly Salt	LG00264-00265	Attorney/Client Attorney Work Product
32.	May 24, 2004	E-mail correspondence	Kelly Salt	LG00266	Attorney/Client Attorney Work Product
33.	May 24, 2004	E-mail correspondence	Pete Lynch	LG00267-00268	Attorney/Client Attorney Work Product
34.	May 25, 2004	E-mail correspondence	Rachel Young	LG00269-00270	Attorney/Client Attorney Work Product
35.	May 25, 2004	E-mail correspondence	David Allsbrook	LG00271	Attorney/Client Attorney Work Product
36.	May 25, 2007	E-mail correspondence	David Allsbrook	LG00272	Attorney/Client Attorney Work Product
37.	August 5, 2003	E-mail correspondence	Brad Richter	LG00273	Attorney/Client Attorney Work Product
38.	August 22, 2003	E-mail correspondence	Maroun El-Hage	LG00274	Attorney/Client Attorney Work Product
39.	January 15, 2004	E-mail correspondence	Douglas Humphreys	LG00281	Attorney/Client Attorney Work Product
40.	April 20, 2004	E-mail correspondence	David Allsbrook	LG00282	Attorney/Client Attorney Work Product
41.	May 20, 2004	E-mail correspondence	Kelly Salt	LG00283	Attorney/Client Attorney Work Product
42.	May 20, 2004	E-mail correspondence	Jon Dunchack	LG00284	Attorney/Client Attorney Work Product
43.	June 14, 2004	E-mail	Richard Opper	LG00285	Attorney/Client

#	DOCUMENT DATE	DOCUMENT TYPE	AUTHOR	BATES NO. RANGE	PRIVILEGE
		correspondence			Attorney Work Product
44.	August 13, 2004	E-mail correspondence	David Allsbrook	LG00286	Attorney/Client Attorney Work Product
45.	November 22, 2004	E-mail correspondence	Richard Opper	LG00323	Attorney/Client Attorney Work Product
46.	February 1, 2005	E-mail correspondence	Pam Hamilton	LG00324	Attorney/Client Attorney Work Product
47.	February 11, 2005	E-mail correspondence	Peter Hall	LG00325	Attorney/Client Attorney Work Product
48.	February 28, 2005	E-mail correspondence	Les Girard	LG00326	Attorney/Client Attorney Work Product
49.	July 21, 2005	E-mail correspondence	Peter Hall	LG00327	Attorney/Client Attorney Work Product
50.	Undated	Correspondence	P. Lamont Ewell	LG00328	Attorney/Client Attorney Work Product
51.	July 29, 2005	E-mail correspondence	Les Girard	LG00330	Attorney/Client Attorney Work Product
52.	August 19, 2005	E-mail correspondence	Charles Black	LG00334	Attorney/Client Attorney Work Product
53.	June 24, 2003	Memorandum	Les Girard	LG00422-00424	Attorney/Client Attorney Work Product
54.	Undated	Attorney notes	Les Girard	LG00500-00504 LG 00537-00539	Attorney/Client Attorney Work Product
55.	Undated	Attorney notes	Les Girard	LG00572-00574	Attorney/Client Attorney Work Product
56.	March 15, 2001	Memorandum	Les Girard	LG00642-00643	Attorney/Client Attorney Work Product
57.	February 6, 2002	Memorandum	Les Girard	LG00655	Attorney/Client Attorney Work



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					Product
58.	June 24, 2003	Memorandum	Les Girard	LG00825-00827	Attorney/Client Attorney Work Product
59.	June 11, 2003	E-mail correspondence	Philip Phillips	LG00828	Attorney/Client Attorney Work Product
60.	June 9, 2003	E-mail correspondence	Phillip Phillips	LG00829-830	Attorney/Client Attorney Work Product
61.	June 10, 2003	E-mail correspondence	Phillip Phillips	LG00831-832	Attorney/Client Attorney Work Product
62.	April 20, 2004	E-mail correspondence	David Allsbrook	KS00001-00002	Attorney/Client Attorney Work Product
63.	May 20, 2004	E-mail correspondence	Les Girard	KS0003	Attorney/Client Attorney Work Product
64.	May 20, 2004	E-mail correspondence	David Allsbrook	KS0004-00006	Attorney/Client Attorney Work Product
65.	May 20, 2004	E-mail correspondence	Les Girard	KS00007	Attorney/Client Attorney Work Product
66.	June 24, 2004	E-mail correspondence	Pete Lynch	KS00008-00009	Attorney/Client Attorney Work Product
67.	May 25, 2004	E-mail correspondence	Les Girard	KS00010	Attorney/Client Attorney Work Product
68.	May 25, 2004	E-mail correspondence	Kelly Salt	KS00011-00013	Attorney/Client Attorney Work Product
69.	May 25, 2004	E-mail correspondence	Kelly Salt	KS00014-00015	Attorney/Client Attorney Work Product
70.	May 25, 2004	E-mail correspondence	Rachel Young	KS00016-00017	Attorney/Client Attorney Work Product
71.	May 25, 2004	E-mail correspondence	Kelly Salt	KS00018	Attorney/Client Attorney Work Product
72.	May 25, 2004	E-mail	Rachel Young	KS00019-00020	Attorney/Client

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		correspondence			Attorney Work Product
73.	May 24, 2004	E-mail correspondence	Kelly Salt	KS00021	Attorney/Client Attorney Work Product
74.	May 24, 2004	E-mail correspondence	Pete Lynch	KS00022-00023	Attorney/Client Attorney Work Product
75.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00024-00025	Attorney/Client Attorney Work Product
76.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00026	Attorney/Client Attorney Work Product
77.	May 20, 2004	E-mail correspondence	Jon Dunchack	KS0002700028	Attorney/Client Attorney Work Product
78.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00029	Attorney/Client Attorney Work Product
79.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00030	Attorney/Client Attorney Work Product
80.	May 20, 2004	E-mail correspondence	Les Girard	KS00031	Attorney/Client Attorney Work Product
81.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00032-00033	Attorney/Client Attorney Work Product
82.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00034	Attorney/Client Attorney Work Product
83.	May 20, 2004	E-mail correspondence	Kelly Salt	KS00035	Attorney/Client Attorney Work Product
84.	November 1, 2004	E-mail correspondence	Kelly Salt	KS00036	Attorney/Client Attorney Work Product
85.	October 25, 2004	E-mail correspondence	Kelly Salt	KS00037-00038	Attorney/Client Attorney Work Product
86.	October 25, 2004	E-mail correspondence	Kelly Salt	KS00039	Attorney/Client Attorney Work Product

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87.	October 22, 2004	E-mail correspondence	Kelly Salt	KS00040	Attorney/Client Attorney Work Product
88.	July 19, 2001	E-mail correspondence	Elizabeth Kelly	DH00001	Attorney/Client Attorney Work Product
89.	March 4, 2005	E-mail correspondence	P. Lamont Ewell	LE00002	Attorney/Client Attorney Work Product
90.	March 19, 2004	E-mail correspondence	Brad Richter	CCDC00001-00002	Attorney/Client Attorney Work Product
91.	August 13, 2004	E-mail correspondence	David Allsbrook	CCDC00007	Attorney/Client Attorney Work Product
92.	November 4, 2004	E-mail correspondence	Les Girard	CCDC00008	Attorney/Client Attorney Work Product
93.	August 26, 2004	E-mail correspondence	Kelly Salt	CCDC00114	Attorney/Client Attorney Work Product
94.	August 13, 2004	E-mail correspondence	Richard Opper	CCDC00117-00118	Attorney/Client Attorney Work Product
95.	July 30, 2004	E-mail correspondence	Ken Cyr	CDDC00130	Attorney/Client Attorney Work Product
96.	July 30, 2004	E-mail correspondence	Jon Dunchack	CCDC00131-00132	Attorney/Client Attorney Work Product
97.	July 30, 2004	E-mail correspondence	Maroun El-Hage	CCDC00133	Attorney/Client Attorney Work Product
98.	May 25, 2004	E-mail correspondence	Rachel Young	CCDC00143-00144	Attorney/Client Attorney Work Product
99.	May 25, 2004	E-mail correspondence	Rachel Young	CCC00146-00147	Attorney/Client Attorney Work Product
100.	May 24, 2004	E-mail correspondence	Jon Dunchack	CCDC00148-00149	Attorney/Client Attorney Work Product
101.	April 27, 2004	E-mail correspondence	Brad Richter	CCDC00150-00153	Attorney/Client Attorney Work

#	DOCUMENT DATE	DOCUMENT TYPE	AUTHOR	BATES NO. RANGE	PRIVILEGE
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102.	March 31, 2004	E-mail correspondence	Les Girard	CCDC00170	Attorney/Client Attorney Work Product
103.	March 25, 2004	E-mail correspondence	Kelly Salt	CCDC00174	Attorney/Client Attorney Work Product