

RESOLUTION NUMBER R- 305754
DATE OF FINAL PASSAGE APR 14 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE ALLOCATION OF SETTLEMENT FUNDS IN THE CONSOLIDATED CASES OF *CRABBE, ET AL. V. CITY OF SAN DIEGO* (SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-0077405-CU-EI-CTL); *AL-QURAINI, ET AL. V. CITY OF SAN DIEGO* (SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-00080246-CU-EI-CTL); *MCCORMICK, ET AL. V. CITY OF SAN DIEGO* (SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-20082194-CU-EI-CTL); *DYER V. CITY OF SAN DIEGO* (SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-00092648-CU-EI-CTL).

WHEREAS, a landslide in the vicinity of Soledad Mountain Road and Desert View Drive occurred on or about October 3, 2007; and

WHEREAS, homeowners in the Soledad Mountain Road and Desert View Drive vicinity brought legal action against the City of San Diego [City] in the consolidated actions entitled *Crabbe, et al. v. City of San Diego* (San Diego Superior Court Case No. 37-2008-0077405-CU-EI-CTL); *Al-Quraini, et al. v. City of San Diego* (San Diego Superior Court Case No. 37-2008-00080246-CU-EI-CTL); *McCormick, et al. v. City of San Diego* (San Diego Superior Court Case No. 37-2008-20082194-CU-EI-CTL); *Dyer v. City of San Diego* (San Diego Superior Court Case No. 37-2008-00092648-CU-EI-CTL) [collectively referred to herein as "Action"]; claiming inverse condemnation damages, property damage and personal injury; and

WHEREAS, a defense verdict was obtained on behalf of the City at trial on October 1, 2009; and

WHEREAS, on November 24, 2009, the City Council approved settlement of the Action by a unanimous vote of 8-0; and

WHEREAS, the Mayor or his designee is authorized to expend payment of up to \$75,000 for the cost of demolishing the Foroozan residence located 5695 Soledad Mountain Road, La Jolla, CA, such demolition to be completed within eighteen months of approval of the Settlement Agreement And Mutual General Release Of All Claims in the Action; and

WHEREAS, the Mayor or his designee is authorized to execute a change order to the construction contract with the Hazard Construction Company in the amount of \$35,000 for the demolition of the McCormick house at 5734 Desert View Drive, La Jolla, CA, at City cost; and

WHEREAS, the Mayor or his designee is authorized to have payment made to Alton and Erin McCormick in the amount of \$37,884 for repairs to their hardscaping and landscaping which were damaged during necessary City repairs to Soledad Mountain Road and Desert View Drive following the landslide of October 3, 2007; and

WHEREAS, the City will demolish and remove the McCormick residence at 5734 Desert View Drive, La Jolla, CA, at its cost; and

WHEREAS, the City agrees to waive its recoverable costs of \$186,100.08 as the prevailing party; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the Council authorizes:

1. The Mayor or his designee to approve the global settlement of the Action.
2. The payment of up to \$75,000 for the cost of demolishing the Foroozan residence at 5695 Soledad Mountain Road if completed within eighteen months of approval of the Settlement Agreement And Mutual General Release Of All Claims.
3. The expenditure of up to \$75,000 using the attached Citywide Modified FTE allocation.

4. The Mayor or his designee to execute a change order to the construction contract with the Hazard Construction Company in the amount of \$35,000 for the demolition of the McCormick house at 5734 Desert View Drive at City cost.

5. The expenditure of \$35,000 using the attached Citywide Modified FTE allocation.

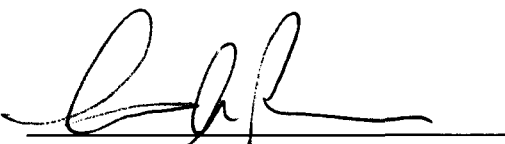
6. The payment of the sum of \$37,884 to Alton and Erin McCormick and The McClellan Law Firm from Fund 600001 WBS S-00979 (Legacy CIP 52-805.0) Soledad Mountain Road Emergency Repair.

7. The Chief Financial Officer to issue one check in the sum of \$37,884.00 made payable to Alton and Erin McCormick and The McClellan Law Firm.

8. The payment of the sum of \$14,000 to Yolanda A. and Donald W. Braunagel and The Law Offices of Michael A. Hearn from Fund 600001 WBS S-00979 (Legacy CIP 52-805.0) Soledad Mountain Road Emergency Repair.

9. The Chief Financial Officer to issue one check in the sum of \$14,000.00 made payable to Yolanda A. and Donald W. Braunagel and The Law Offices of Michael A. Hearn.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Catherine A. Richardson
Deputy City Attorney

CAR:bas
03/25/2010
Or.Dept:City Atty
R-2010-692

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 13 2010.

ELIZABETH S. MALAND
City Clerk

By *Oliver Cruz*
Deputy City Clerk

Approved: 4.14.10
(date)

JS
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor