

000223

**REQUEST FOR COUNCIL ACTION**  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE): 108  
1/15  
3. DATE: December 11, 2007

TO: CITY ATTORNEY 2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

4. SUBJECT: Settlement of litigation entitled Beacon Electric Supply v. Saturn Electric, Inc.  
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.): Tom Zeleny, 6-7718, MS 59  
6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.): Jon Taylor, 5-5898, MS 59  
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

**8. COMPLETE FOR ACCOUNTING PURPOSES**

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:
41506	776	795	4141	765042		\$900,000	\$900,000 in additional funds is available in Sewer Revenue Fund No. 41506. \$1,618,143.25 in previously appropriated funds was withheld by the City and is still available in the project account.

**10. ROUTING AND APPROVALS**

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT.	<i>[Signature]</i>	1/4/08	8	DEPUTY CHIEF		
2	E.O.C.			9	C.O.O.		
3	E.A.S.			10	CITY ATTORNEY	<i>[Signature]</i>	1/4/08
4	C.F.O. / F.M.			11	ORIG. DEPT.	<i>[Signature]</i>	1/4/08
5	C.F.O. / AUDITOR			DOCKET COORD: _____ COUNCIL LIAISON _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 1/15/08			
7							

11. PREPARATION OF:  RESOLUTIONS  ORDINANCE(S)  AGREEMENT(S)  DEED(S)

1. Authorizing the release of \$1,618,143.25 in funds earned by Orion Construction but retained by the City, and to pay an additional amount of \$900,000.00 in the settlement of each and every claim of Orion Construction against the City, its agents and employees, arising from the Rehabilitation of Pump Stations 77A and 77B Project.

2. Authorizing the City Auditor and Comptroller to appropriate and issue one check for \$900,000.00 to Orion Construction in full settlement of all claims arising from the Rehabilitation of Pump Stations 77A and 77B Project

11A. STAFF RECOMMENDATIONS: adopt the resolution

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 5  
 COMMUNITY AREA(S): Rancho Bernardo  
 ENVIRONMENTAL IMPACT: N/A  
 ATTACHMENTS: N/A  
 CITY CLERK INSTRUCTIONS: Please forward a copy of the completed resolution to Tom Zeleny at MS 59.

**EXECUTIVE SUMMARY SHEET**

<b>DATE REPORT ISSUED:</b>	December 11, 2007	<b>REPORT NO.:</b>
<b>ATTENTION:</b>	City Clerk	
<b>ORIGINATING DEPARTMENT:</b>	City Attorney	
<b>SUBJECT:</b>	Settlement of litigation entitled Beacon Electric Supply v. Saturn Electric Inc.	
<b>COUNCIL DISTRICT(S):</b>	5	
<b>STAFF CONTACT:</b>	Tom Zeleny, Deputy City Attorney	

**REQUESTED ACTION:**

adopt the resolution

**STAFF RECOMMENDATION:**

adopt the resolution

**EXECUTIVE SUMMARY:**

This litigation arises from delays associated with the project known as the Rehabilitation of Pump Station 77A & 77B. Sewer pump stations 77A and 77B are the sewer pump stations that convey wastewater from the Rancho Bernardo area of San Diego to the City of Escondido's treatment facility.

Although the original contract duration was 365 calendar days, various issues arose during construction that led to significant delays in the completion of the project. The project was essentially completed in July 2006 and the pumps have been operating for nearly two years. The City and Orion are in general agreement that the project was delayed approximately 934 days from original contract duration until the project finished; however, the responsibility for the various causes of delay remains in dispute.

Negotiations between MWWWD staff and Orion have resulted in a proposed compromise settlement. This compromise settlement results in a total additional payment to Orion of \$900,000. The City will release the contract balance earned by Orion but being held by the City in the amount of \$1,618,143.25. Both parties agreed to sign a release of all claims and Orion agreed it would defend and indemnify the City for any claims by its subcontractors.

**FISCAL CONSIDERATIONS:**

\$900,000 is available in Sewer Fund No. 41506.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

This settlement and payment was considered by the City Council in Closed Session on September 18, 2007. On motion of District 7 and second by District 1, the City Council, by the following vote: Yeas, Districts 1, 2, 3, 4, 6, 7, and 8; Nays, District 5; Not Present, None; approved the settlement of all claims of Orion Construction Company against the City in Beacon Electric Supply v. Saturn Electric, Inc., et al, San Diego Superior Court Case No. GIC 849095, for release of the contract balance of \$1,618,143.25 to Orion and the payment of an additional \$900,000.

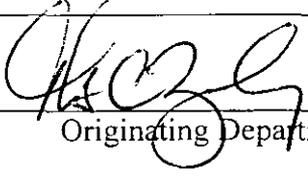
**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

N/A

000225

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

N/A

A handwritten signature in black ink, appearing to be 'Kozl', written over a horizontal line.

Originating Department

Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL APPROVING  
SETTLEMENT OF LITIGATION ENTITLED *BEACON  
ELECTRIC SUPPLY V. SATURN ELECTRIC, INC, ET AL.*

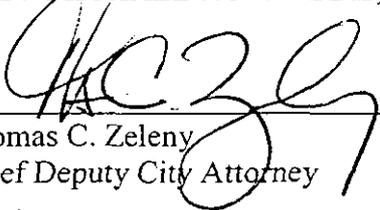
WHEREAS, in Closed Session on September 18, 2007, by motion of District 7 and second by District 1, the City Council, by the following vote: Yeas, Districts 1, 2, 3, 4, 6, 7, and 8; Nays, District 5; Not Present, None; approved the following motion: settlement of all claims of Orion Construction Company against the City in *Beacon Electric Supply v. Saturn Electric, Inc., et al*, San Diego Superior Court Case No. GIC 849095; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee is hereby authorized and empowered to release the amount of \$1,618,143.25 in funds earned by Orion Construction but retained by the City, and to pay an additional amount of \$900,000.00 in the settlement of each and every claim of Orion Construction against the City, its agents and employees, arising from the Rehabilitation of Pump Stations 77A and 77B Project as set forth in San Diego Superior Court Case No. GIC 849095, *Beacon Electric Supply v. Saturn Electric, Inc., et al.*

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to appropriate and issue one check in the amount of \$900,000.00 payable to Orion Construction in full settlement of all claims arising from the Rehabilitation of Pump Stations 77A and 77B Project.

BE IT FURTHER RESOLVED, that said funds are to be payable from Sewer Fund No. 41506.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Thomas C. Zeleny  
Chief Deputy City Attorney

TCZ:mb  
12/11/07  
Or.Dept:CityAtty  
DP No. 4203556  
R-2008-513

I hereby certify that the foregoing resolution was passed by the Council of the City of San Diego, at its meeting of \_\_\_\_\_

ELIZABETH S. MALAND, City Clerk

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

Approved: \_\_\_\_\_  
(date)

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

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

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