THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, APRIL 19, 2004
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Murphy at 2:14 p.m. Mayor Murphy recessed the meeting at 2:39 p.m. to convene the Redevelopment Agency and thereafter a break to allow staff to set up for a presentation. Mayor Murphy reconvened the meeting at 2:46 p.m. with all Council Members present. Mayor Murphy adjourned the meeting at 4:02 p.m. into Closed Session immediately thereafter to discuss pending and potential litigation and Meet and Confer matters.

ATTENDANCE DURING THE MEETING:

(M) Mayor Murphy-present

(1) Council Member Peters-present

(2) Council Member Zucchet-present

(3) Council Member Atkins-present

(4) Council Member Lewis-present

(5) Council Member Maienschein-present

(6) Council Member Frye-present

(7) Council Member Madaffer-present

(8) Council Member Inzunza-present

Clerk-Abdelnour (er)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Abdelnour called the roll:

(M) Mayor Murphy-present
(1) Council Member Peters-present
(2) Council Member Zucchet-present
(3) Council Member Atkins-present
(4) Council Member Lewis-present
(5) Council Member Maienschein-present
(6) Council Member Frye-present
(7) Council Member Madaffer-present
(8) Council Member Inzunza-present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by Pastor Louie Juarez of Serra Mesa Christian Fellowship.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Madaffer.

FILE LOCATION: MINUTES

ITEM-30: Alpha Project Day.

COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-959) ADOPTED AS RESOLUTION R-299086

Recognizing the many accomplishments and dedication of Robert A. McElroy and the Alpha Project; and hereby proclaiming April 19, 2004 to be "Alpha Project Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:19 p.m. – 2:30 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

SPECIAL CLOSED SESSION ITEMS

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

CS-1 Phillip Ngo v. City of San Diego
Claim No. AX03-0110-2960

REFERRED TO CLOSED SESSION ON MONDAY, APRIL 19, 2004

HDCA assigned: Francis M. Devaney

This is a personal injury claim in which claimant contends that he was injured on February 24, 2003, in an automobile accident with a police car. Risk Management requests that the Mayor and City Council consider a possible settlement of this claim in Closed Session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:54 p.m. – 3:54 p.m.)

Mayor Murphy closed the Hearing.

CS-2 Border Business Park v. City of San Diego

REFERRED TO CLOSED SESSION ON TUESDAY, APRIL 20, 2004

Appellate Case No. D039225; SDSC Case No. GIC 692794
Otay Acquisitions v. City of San Diego

SDSC Case No. GIC 753247
National Enterprises, Inc. v. City of San Diego
SDSC Case Nos. GIC 791407; GIC 805465

ACA assigned: Les Girard

These matters involve a variety of disputes between certain companies owned or controlled by Roque de la Fuente and the City of San Diego (City) regarding the Border Business Park in Otay Mesa. The Border Business Park case resulted in a jury verdict against the City which is now on appeal. The National Enterprises and Otay Acquisitions cases are currently awaiting trial in the Superior Court. In closed session, the City Attorney will report on the status of on-going settlement negotiations and request further direction regarding those negotiations.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:54 p.m. – 3:54 p.m.)

Mayor Murphy closed the Hearing.

CS-3 Arena Group 2000 v. City of San Diego
San Diego Superior Court No. GIC 825645

REFERRED TO CLOSED SESSION ON TUESDAY, APRIL 20, 2004

DCA assigned: David King

This matter is an action for breach of contract filed by Arena Group 2000 (AG) against the City of San Diego (City) regarding the lease of the Sports Arena by AG from the City. AG filed a complaint against the City based upon the City's failure to approve auto sales on the Sports Arena site, activity AG contends is permitted under the lease. In closed session, the City Attorney will report on the

status of the litigation, discuss strategy regarding its progress, and seek any appropriate direction from the City Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:54 p.m. – 3:54 p.m.)

Mayor Murphy closed the Hearing.

CS-4 Chargers Football Company, LLC v. City of San Diego
Los Angeles Superior Court No. BC 306 758

REFERRED TO CLOSED SESSION ON TUESDAY, APRIL 20, 2004

ACA assigned: Les Girard

This matter concerns the litigation filed by the San Diego Chargers (Chargers) against the City of San Diego (City), and the City's related cross complaint against the Chargers, over the validity of the "trigger" notice delivered to the City by the Chargers in March of 2003 pursuant to the 1995 agreement for the use of Qualcomm Stadium (1995 Agreement). In closed session, the City's outside litigation counsel and the City Attorney will report on the status of the litigation and the status of any additional discussions with the Chargers concerning a proposal made by certain private citizens to end the litigation and modify the 1995 Agreement. The City Council may give further direction to its attorneys and consultants with regard to the matter.

The proposal made by the private citizens would generally 1) require the Chargers to play at Qualcomm Stadium through the 2008 season; 2) permit the Chargers to play at the stadium on a year-to-year basis thereafter, but the Chargers could terminate the lease and leave San Diego; 3) eliminate the "ticket guarantee"; 4) require the Chargers to pay a flat rent of $2 million per year through the 2008 season, and for each season the Chargers play at Qualcomm Stadium thereafter; and 5) if the Chargers terminate the lease after the 2008 season, the Chargers would pay the remaining principle on the City's bonds issued to improve the stadium in 1997, with a reduction in that payment if the lease is not terminated until after the 2011 season.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:54 p.m. – 3:55 p.m.)

Mayor Murphy closed the Hearing.

Conference with Labor Negotiator, pursuant to Government Code section 54957.6:

CS-5 Agency Negotiators: Lamont Ewell, Cathy Lexin, Mike McGhee

REFERRED TO CLOSED SESSION ON TUESDAY, APRIL 20, 2004

Employee Organizations: Municipal Employees Association, Local 127 AFSCME, AFL-CIO, Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association

HDCA assigned: Chris Morris

In closed session, the City's negotiating team will review with the City Council the City's position with respect to: 1) health benefit plans, and 2) retirement survivor benefits and family leave benefits for domestic partners, and request instructions from the City Council as to those matters.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:55 p.m. – 3:55 p.m.)

Mayor Murphy closed the Hearing.

Conference with Real Property Negotiator, pursuant to California Government Code section 54956.8:

CS-6 Property: Qualcomm Stadium

REFERRED TO CLOSED SESSION ON TUESDAY, APRIL 20, 2004

City Negotiator: Council Member Michael Zucchet, Assistant City Attorney Leslie J. Girard, Deputy City Manager Bruce Herring, Paul Jacobs, Esq., Daniel S. Barrett, and Robert J. Kheel

Negotiating Party: City of San Diego and the San Diego Chargers

Under Negotiation: Real Property Interests at the Qualcomm Stadium site pursuant to the recommendations of the Citizens Task Force on Chargers Issues, and pursuant to the terms of Paragraph 3 1 of the 1995 Agreement for the Partial Use and Occupancy of Qualcomm Stadium.

This matter involves negotiations authorized by the City Council in March of 2003 between the City of San Diego (City) and San Diego Chargers (Chargers) regarding the Qualcomm Stadium site, pursuant to both the recommendations of the Citizens' Task Force on Chargers Issues and the "Trigger Notice" sent to the City by the Chargers in March of 2003.

In closed session, the City's negotiating team will report to the City Council on the status of any additional discussions with the Chargers concerning a proposal made by certain private citizens to end the current litigation between the City and the Chargers, and modify the 1995 agreement for the use of Qualcomm Stadium by the Chargers. Please see the description on the closed session agenda under "pending litigation" - Chargers LLC v. City for a description of the proposal made by the private citizens.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:55 p.m. – 3:55 p.m.)

Mayor Murphy closed the Hearing.

* ITEM-100: Two actions related to Inviting Bids for the Construction of Sewer Group 718.

(See memorandum from Frank Belock, Jr. dated 3/2/2004. Ocean Beach Community Area. District-2.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2004-1080 Cor. Copy) ADOPTED AS RESOLTUION R-299087

Approving the plans and specifications for the construction of Sewer Group 718 (Project) on Work Order No. 175601;

Authorizing the City Manager, after advertising for bids in accordance with law, to establish contract funding phases and to award the Project contract to, and to execute a contract with the lowest responsible and reliable bidder for the Project, contingent upon: (a) City Council approval of the expenditure of any additional Project funding that may become necessary as a result of the bid opening for the Project; (b) the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer; and (c) the passage of the FY 2004 Capital Improvement Program and Appropriation Ordinance Budget;

Authorizing the expenditure of an amount not to exceed $3,112,588 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation – Sewer Main Replacement, solely and exclusively, for the purpose of providing funds for the Project and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K04699C)

Subitem-B: (R-2004-157) ADOPTED AS RESOLUTION R-299088

Certifying that Mitigated Negative Declaration LDR-42-0586, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State Guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the construction of Sewer Group 718;

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program, pursuant to California Public Resources Code Section 21081.6;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 3/17/2004, NR&C voted 4 to 0 to approve the project. (Councilmembers Zucchet, Lewis, Frye, and Madaffer voted yea. Councilmember Inzunza not present.)

SUPPORTING INFORMATION:

Sewer Group 718 is part of the City of San Diego's continuing Annual Sewer Main Replacement Program. The sewer mains being replaced by this project were constructed in the early 1900's and are approaching the end of their useful service. This project is located in the Ocean Beach Community and consists of replacing approximately 8,445 feet (1.6 miles) of 6-inch sewer main which includes 7,275 feet (1.38 miles) of concrete sewer pipe and 1,170 feet (0.22 miles) of vitrified clay sewer pipe. Also, this project includes the construction of forty-six (46) curb ramps and resurfacing of impacted streets.

The streets affected by construction operations within this project are: Long Branch Avenue, Brighton Avenue, Venice Street, and alleys between Muir Avenue and Brighton Avenue from Cable Street to Venice Street. A construction moratorium shall be observed on Abbott Street, Brighton Avenue (west of Abbott Street), Long Branch Avenue (west of Abbott Street), alley

between Brighton Avenue and Long Branch Avenue (west of Abbott Street), and Sunset Cliffs Blvd. No work shall take place from Memorial Day to Labor Day (inclusive).

A Coastal Development Permit has been obtained for the area west of Abbott Street which is in the California Coastal Commission jurisdiction. This project was presented to the Ocean Beach Land Use Committee on July 17, 2002, during the design phase by the Engineering & Capital Projects Department. An update letter was sent to the Ocean Beach Planning Board on March 5, 2004 to inform the community of the construction schedule. Residents will be notified by mail at least one (1) month before construction begins through hand distribution of notices by the contractor.

The contractor will be required to provide Traffic Control Plans for the entire project area to the City of San Diego's Traffic Signal Design & Traffic Control Section for approval, with the exception of Sunset Cliffs Boulevard between Brighton Avenue and Muir Avenue. Traffic Control Plans for Sunset Cliffs Boulevard have been developed and were approved by the City of San Diego's Traffic Signal Design and Traffic Control Section and have been provided to the contractor as part of the construction plans for Sewer Group 718.

FISCAL IMPACT:

The total estimated cost of this project is $3,112,588. Funds are available in Sewer Fund No. 41506, CIP-44-001.0, Annual Allocation - Sewer Main Replacement, which is scheduled to be phase funded over FY 2004 to FY 2005.

Loveland/Belock/HR

FILE LOCATION: CONT – KTA Construction, Inc.; W.O. 175601

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-101: Two actions related to Inviting Bids for the Construction of Water & Sewer Group 545.

(See memorandum from Frank Belock, Jr., dated 11/4/2003. Ocean Beach Community Area. District-2.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2004-1025) ADOPTED AS RESOLUTION R-299089

Approving the plans and specifications for the Construction of Water & Sewer Group 545 on Work Order No. 176721/185321;

Authorizing the City Manager, after advertising for bids in accordance with law, to establish contract funding phases and to award the Project contract to the lowest responsible and reliable bidder in an amount not to exceed $4,359,162, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed $2,014,192 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation Sewer Main Replacement, and an amount not to exceed $2,344,970 from Water Fund 41500, CIP-73-083.0, Annual Allocation Water Main Replacement, for the purpose of providing funds for the Project and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Approving the use of City Forces on the Project for the purpose of additional construction related to this project for a cost not to exceed $270,000 from Water Fund 41500, CIP-73-083.0, Annual Allocation – Water Main Replacement, and a cost not to exceed $5,000 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation – Sewer Main Replacement;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K041457C)

Subitem-B: (R-2004-1024) ADOPTED AS RESOLUTION R-299090

Certifying that Mitigated Negative Declaration LDR-42-0265, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of Sewer & Water Group 545;

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 11/19/2003, NR&C voted 4 to 0 to approve. (Councilmembers Zucchet, Lewis, Frye, and Madaffer voted yea. Councilmember Inzunza not present.)

SUPPORTING INFORMATION:

Water & Sewer Replacement Group 545 is part of the City's Annual sewer and water main replacement program. The sewer and water mains to be replaced in this project were constructed as early as 1911 and are in need of replacement. Replacement of these deteriorated sewer and water mains will continue to provide the community with a safe and reliable sewer and water infrastructure. This project is in the Ocean Beach community area and consists of approximately 5,664 linear feet of sewer mains and approximately 4,768 linear feet of water mains.

The following streets will be affected by the construction operations: West Point Loma Boulevard from Abbott Street to Muir Avenue, Muir Avenue from West Point Loma Boulevard to Abbott Street, Voltaire Street from West Point Loma Boulevard to Froude Street, Lotus Street from West Point Loma Boulevard to Abbott Street, Froude Street from Muir Avenue to Voltaire Street, Alley between Voltaire Street and Muir Avenue from West Point Loma Boulevard to Froude Street.

Group Job 545 was presented to the Ocean Beach Community Group's Land Use Community on October 16, 2002 and July 2, 2003 and to the Ocean Beach Community Development Corp. on July 25, 2003. At the presentations the design team was asked to forgo the Summer Moratorium with the exception of Independence Day.

Traffic Control Plans are part of the Construction Plans and the residents will be notified by mail at least one (1) month prior to construction by the City's Field Engineering Division and again ten (10) days prior to construction by the Contractor.

FISCAL IMPACT:

The total estimated cost of this project is $4,359,162. Funds of $2,014,192 are available in Sewer Fund 41506, CIP-44-001.0, Annual Allocation – Sewer Main Replacement, and $2,344,970 are available in Water Fund 41500, CIP-73-083.0, Annual Allocation – Water Main Replacement, for this purpose. This project is scheduled to be phase funded over FY 04 to FY 05.

Loveland/Belock/HR

FILE LOCATION: CONT – BRH–Garver, Inc.; W.O. 176721/185321

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-102: Appointments to the Local Enforcement Agency Hearing Panel.

(See memorandum from Mayor Murphy dated 3/22/2004, with resumes attached.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1005 Cor. Copy) ADOPTED AS RESOLUTION R-299091

Council confirmation of the following appointments by the Mayor to serve as members of the Local Enforcement Agency Hearing Panel, for terms ending January 1, 2006:

NAME	CATEGORY
Ken Calvert (Replacing Steven South, whose term has expired)	Technical Expert
John J. Lormon (Replacing Pennie McLaughlin Carlos, whose term has expired)	Legal

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-103: Construction of Golden Hill Recreation Center – Play Area Improvements.

(Mid City Community Area. District-3.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-968) ADOPTED AS RESOLUTION R-299092

Authorizing a $37,500 increase in Fiscal Year 2004 Capital Improvements Program Budget in CIP-29-584.0, Golden Hill Recreation Center – Play Area Improvements, in Fund No. 11640, Golden Hill Park Service District Fund;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed $37,500 from CIP-29-584.0, Golden Hill Recreation Center – Play Area Improvements, in Fund No. 11640, Golden Hill Park Service

District Fund, for the construction of the Golden Hill Recreation Center including a new play area which is fully compliant with current state safety regulations, as well as state and federal accessibility requirements, and additional park amenities (Project).

CITY MANAGER SUPPORTING INFORMATION:

The Golden Hill Recreation Center - Play Area Improvements project includes a new play area which is fully compliant with current state safety regulations as well as state and federal accessibility requirements. This action will add Golden Hill Park Service District Funds to the project for the purpose of adding additional community requested park amenities to the project. These include items such as placing the Golden Hill logo in the resilient play surfacing, adding benches and creating accent plantings.

FISCAL IMPACT:

Funding in the amount of $37,500 will be available from Fund No. 11640, Golden Hill Park Service District Fund, for the purpose of adding additional park amenities to Golden Hill Recreation Center - Play Area Improvements.

Herring/Oppenheim/AP

Aud. Cert. 2400893.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-104: North Park Community Park Transfer of Funds.

(Mid-City Community Area. District-3.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-969) ADOPTED AS RESOLUTION R-299093

Authorizing the City Auditor and Comptroller to add CIP-29-646.0, North Park Community Park – Security Lighting, to the Fiscal Year 2004 Capital Improvements Program;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed $150,000 from CIP-29-826.0, North Park Community Park Phase I – Requirements, to CIP-29-646.0, North Park Community Park – Security Lighting, within Fund No. 38208, 2000 Park Bond Per Capita Fund;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed $150,000 from CIP-29-646.0, North Park Community Park – Security Lighting, Fund No. 38208, 2000 Park Bond Per Capita Fund, for the purpose of adding security lighting at North Park Community Park;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed $656,735.02 from CIP-29-827.0, Jefferson Elementary School/Park Playground, to CIP-29-826.0, North Park Community Park Phase I – Requirements within Fund No. 39095, Park North/East-Park Development Fund;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed $656,735.02 from CIP-29-826.0, North Park Community Park Phase I – Requirements, Fund No. 39095, Park North/East-Park Development Fund, for the purpose of future park improvements.

CITY MANAGER SUPPORTING INFORMATION:

Per R-298036, $150,000 has been dedicated for security lighting at North Park Community Park as a part of the 2002 Park Bond Per Capita funding. This action will create an independent CIP project for adding security lighting in the park.

North Park Community Park currently has various unfunded needs which include: maintenance/recycling area upgrades, ball field lighting upgrades, renovation of the existing ball fields and upgrades to the existing multi-purpose area. This action will add North/East Park Development Funds to the project for the purpose of completing a portion of the unfunded needs.

FISCAL IMPACT:

This action involves transfers of funds only. Annual maintenance costs at the North Park Community Park due to added improvements will be determined as improvements occur.

Herring/Oppenheim/AP

Aud. Cert. 2400927.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-105: FY 2004 Urban Area Security Initiative Grant Program.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1026) ADOPTED AS RESOLUTION R-299094

Authorizing the City Manager, Director of Homeland Security, or the duly designated representative, to apply for the FY 04 Urban Area Security Initiative Grant;

Authorizing the City Manager, Director of Homeland Security, or the duly designated representative, to take all necessary steps to secure the grant funds from the FY 04 Urban Area Security Initiative Grant Program (Program);

Authorizing the City Manager, Director of Homeland Security, or the duly designated representative, to conduct all negotiations, execute and submit all documents, including but not limited to applications, agreements, amendments, and payment requests, which may be necessary to comply with FY 04 Urban Area Security Initiative Grant Program;

Authorizing the City Manager, Director of Homeland Security, or the duly designated representative, to accept, appropriate, expend, and administer the grant funds, if secured, in accordance with the terms and conditions set forth in the FY 04 Urban Area Security Initiative Grant Program;

Declaring that any allocation of funds awarded under this Program be mutually endorsed by the City's Director of Homeland Security and the County's Director of the Office of Emergency Services.

CITY MANAGER SUPPORTING INFORMATION:

The City of San Diego has been identified by the federal Department of Homeland Security (DHS) as the "core city" for the San Diego Urban Area's participation in the FY 04 urban Area Security Initiative Grant Program (UASI). The Urban Area has been defined as the eighteen incorporated cities in San Diego County, the county and the related special districts. As the core city, San Diego will be the grantee and administrator of a $10,418,116 homeland security grant to the San Diego Urban Area. The FY 04 UASI program provides financial assistance to address the unique equipment, training, planning and exercise needs of large, high-threat urban areas, and to assist them in building an enhanced and sustainable capacity to prevent, respond to and recover from threats or acts of terrorism. This program also provides funding to specific mass transit authorities to address security needs at these high risk critical infrastructure facilities and to promote comprehensive regional planning and coordination.

All funding must be allocated in support of the goals and objectives identified in the San Diego Urban Area Homeland Security Strategy that was recently developed under the FY 03 UASI grant program. A regional metropolitan area approach must be taken in the development and implementation of this program by involving core cities, core counties, contiguous jurisdictions and mutual aid partners. While the focus of this program is weapons of mass destruction (WMD) preparedness, the benefits will be seen in all of the emergency preparedness programs in the region. Any allocation of funds awarded via this program must be mutually endorsed by the City's Director of Homeland Security and the County's Director of the Office of Emergency Services.

Arellano/Lee/ DF

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-106: First Amendment to the Agreement with Sandler, Lasry, Laube, Byer & Valdez, LLP for Professional Services Related to the Mediation and Litigation Support on the Water Department Central Facility.

(Kearny Mesa Community Area. District-6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1043) ADOPTED AS RESOLUTION R-299095

Authorizing the City Attorney to execute a First Amendment to the Agreement with Sandler, Lasry, Laube, Byer & Valdez, LLP., in the amount of $450,000, for professional services related to the mediation and litigation support on the Water Department Central Facility;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed $313,673.12 from Water Fund 41500, CIP-73-261.3, Alvarado Water Treatment Plant Upgrade & Expansion - Phase 2, to Water Fund 41500, CIP-73-338.0, Water Department Central Facilities, for the funding of $288,673.13 for the First Amendment to the Agreement with Sandler, Lasry, Laube, Byer & Valdez. LLP., and $25,000 for in-house related expenditures;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to return excess funds, if any, to the appropriate reserves.

CITY MANAGER SUPPORTING INFORMATION:

In June 1997, the Zero Based Management Review recommended that the Water Department consolidate and relocate its office and maintenance facilities outside of downtown in order to reduce annual rent and operating costs by $3,052,931. After an initial selection and interview process, Conwell Shonkwiler & Associates (CSA) along with DMG Maximus (DMG) were hired to develop a building program, concept plan, and construction budget for the project. In

July 1999, the City contracted with CSA to design this facility based on the building program and construction budget established by CSA and DMG.

In March 2000, CSA submitted 30 percent design documents that were $14 to $18 million dollars over the project's budget, the City directed CSA to redesign the project back to within the approved budget. After redesigning the project, the final design drawings were submitted and the Council authorized the project's advertisement. At the time of this approval, the design of the facility was complete, but City staff identified errors in the design that needed to be corrected before the project advertised to a low bid contractor. City staff notified CSA of these errors and CSA promised to correct the errors within several weeks. Approximately 8 months later, CSA submitted their corrected design which still had errors previously identified by City staff.

On September 18, 2001, the Council authorized the termination of a CSA's design services. The Council additionally authorized the filing of an action against CSA, and any other responsible parties, for the City's damages arising out of the Project. The Council further authorized the retention of outside counsel if necessary. The City terminated CSA's design services for cause on October 2, 200l.

Since that time, the City filed an action against CSA and DMG for breach of written contract and professional negligence. CSA also filed an action against the City for, among other things, breach of contract.

In CSA's lawsuit against the City, the City brought a successful demurrer and eventually motion for summary judgment disposing of all of CSA's claims against the City. In addition, the City brought a Motion for Award of Attorney's Fees. The Court granted the City's motion and awarded $148,000 for the City Attorney's fees incurred in defending that action. CSA has filed an appeal and the briefing on the appeal is expected to be completed by the end of May 2004.

In the City's lawsuit against CSA, trial is set for July 30, 2004. In terms of damages, City will be making a claim for over $5,000,000.

At the time of this Council's authorization for the termination of the consultant agreement and initiation of a lawsuit, the Council authorized the expenditure of $500,000 in attorney's fees and costs. The City estimates that another $450,000 for attorney's fees and expert costs will be needed to complete the prosecution of this case.

FISCAL IMPACT:

Funding in an amount not to exceed $450,000 to cover professional services related to mediation and litigation support and $25,000 in related expenses is available in Water Fund 41500, CIP-73-338.0, Water Department Central Facility for this purpose.

Mendes/Gardner/MM

Aud. Cert. 2400980.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-107: Ratifying the Centre City Redevelopment Project Area Committee (PAC) and Centre City Advisory Committee (CCAC) Election Results.

(See Centre City Development Corporation Report CCDC-04-10. Centre City Redevelopment Project Community Area. District-2.)

CENTRE CITY DEVELOPMENT CORPORATION'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1016) ADOPTED AS RESOLUTION R-299096

Ratifying the election results of November 18 and 19, 2003 for the Centre City Redevelopment Project Area Committee (PAC) and Centre City Advisory Committee (CCAC) of the San Diego Redevelopment Agency of the City of San Diego.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-108: Two actions related to Linda Vista Public Facilities Financing Plan for FY 2004.

(See City Manager Report CMR-04-047 and Draft of the Linda Vista Public Facilities Financing Plan. Linda Vista Community Area. District-6.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2004-914) ADOPTED AS RESOLUTION R-299097

Approving the 2004 Linda Vista Public Facilities Financing Plan.

Subitem-B: (R-2004-915) ADOPTED AS RESOLUTION R-299098

Rescinding the existing Development Impact Fees (DIF) for the Linda Vista Community;

Declaring the DIF fee schedule contained in the Linda Vista Public Facilities Financing Plan, Fiscal Year 2004, to be an appropriate and applicable DIF fee schedule for all properties within the Linda Vista Community area;

Declaring that the Docket Supporting Information (City Manager Report CMR-04-047), including all exhibits and attachments thereto, and the text contained in the Linda Vista Public Facilities Financing Plan, Fiscal Year 2004, are incorporated by reference into this Resolution as support and justification for satisfaction of findings required pursuant to California Government Code Sections 66001(a) and 66001(b) for imposition of DIFs. Specifically, it is determined and found that this documentation:

1. Identifies the purpose of the DIF;
2. Identifies the use to which the DIF is to be put;
3. Demonstrates how there is a reasonable relationship between the DIF's use and the type of development project on which the DIF is imposed; and
4. Demonstrates how there is a reasonable relationship between the need for the public facility and the type of development project on which the DIF is imposed.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 3/10/2004, LU&H voted 3 to 0 to adopt the City Manager's recommendation. (Councilmembers Peters, Lewis, and Frye voted yea. Councilmembers Zucchet and Inzunza not present.)

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S400: City of San Diego Volunteer Month.

COUNCILMEMBER MAIENSCHEIN'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1069) ADOPTED AS RESOLUTION R-299099

Declaring April 2004 to be "City of San Diego Volunteer Month" to specifically honor City of San Diego volunteers and recognize their accomplishments.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:32 p.m. – 2:37 p.m.)

MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-401: Two actions related to the Agreement with T.B. Penick and Sons, Inc., for Design Build Services for the Martin Luther King Junior Community Park – George L. Stevens Senior Center.

(Southeastern Community Area. District-4.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

Subitem-A: (R-2004-1048) ADOPTED AS RESOLUTION R-299100

Authorizing the City Manager to enter into an Agreement with T.B. Penick and Sons, Inc., for Design Build Services for the Martin Luther King Junior Community Park – George L. Stevens Senior Center and providing for necessary funding.

Subitem-B: (R-2004-1049) ADOPTED AS RESOLUTION R-299101

Certifying that Mitigated Negative Declaration LDR No. 6380, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the design build services for the Martin Luther King Junior Community Park -George L. Stevens Senior Center;

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program, pursuant to California Public Resources Code Section 21081.76;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

CITY MANAGER SUPPORTING INFORMATION:

The Martin Luther King Junior Community Park is a thirty-five acre park located in the Southeastern San Diego community area at 6501 Skyline Drive. The existing community park includes amenities such as a recreation building, swimming pool facility, tennis courts, active and passive turf areas and parking. This project proposes the addition of the 11,300 square foot George L. Stevens Senior Center within 1.3 acres of the park. The procurement process for this project is design build. The functionality of the senior center was coordinated extensively with the community during the preparation of the bridging documents. The senior center would be a valuable addition to the community, disseminating information on nutrition and various services, as well as providing recreational, education and intergenerational activities.

In accordance with the process outlined in Article 2, Division 33 of the Municipal Code, T. B. Penick and Sons Inc., was selected as the successful design build team. The proposed agreement with the design build team would provide for the completion of the design and construction of the senior center.

FISCAL IMPACT:

This project is currently funded in the amount of $845,920 from the following sources: Fiscal Year 2002 State General Funds and 2000 Park Bond per Capita funding. Additional funding in the amount of $4,549,587 is available for this request from the sources detailed in the resolutions. This project will impact Park and Recreation Department's operating and maintenance budget. Funding for operating and maintenance will be requested as a new facility addition to the Fiscal Year 2006 budget.

Herring/Oppenheim/KR

Aud. Cert. 2401001.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S402: Settlement of Property Damage Claim of Mark J. Bergen.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1051) ADOPTED AS RESOLUTION R-299102

Authorizing the City Manager to pay the sum of $95,000 in the settlement of each and every claim against the City of San Diego and its agents and employees, in Superior Court Case No. GIC 806228, Mark Bergen v. City of San Diego, et al., arising from damages to Mr. Bergen's property as a result of a water leak;

Authorizing the City Auditor and Comptroller to issue a check in the sum of $95,000 made payable to Mark Bergen and attorney Timothy Sullivan in full settlement of the lawsuit and of all claims;

Certifying funds are to be payable from Fund No. 41500.

CITY MANAGER SUPPORTING INFORMATION:

This constitutes the complete and final settlement of the Property Damage Claim to Mark J. Bergen against the City of San Diego, its agents and employees, as a result of an incident which occurred on June 1, 1999.

Lexin/Lopez/JC

Aud. Cert. 2401002.

NOTE: The Auditor's Certificate was not requested prior to Closed Session. The vote taken in Open Session shall be the official vote.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:37 p.m. – 2:39 p.m.)

CONSENT MOTION BY MAIENSCHEIN TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S403: Information Report on the Progress of the Pension Reform Committee. (The presentation will be made by the Committee's Chair, April Boling.)

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:46 p.m. – 3:53 p.m.)

MOTION BY INZUNZA TO ACCEPT THE REPORT. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 4:02 p.m. in honor of the memory of:

Daniella Lopez as requested by Council Member Atkins;
Mrs. Ophelia Carter as requested by Council Member Lewis; and
Sue Jacobs as requested by Mayor Murphy.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:56 p.m. – 4:02 p.m.)