

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, JUNE 27, 2005
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 2:07 p.m. Mayor Murphy recessed the meeting at 3:51 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 4:01 p.m. with all Council Members present. Mayor Murphy recessed the meeting at 4:56 p.m. to convene the Budget Review Committee. Mayor Murphy reconvened the regular meeting at 6:22 p.m. with Deputy Mayor Zucchet, Council Member Maienschein, and Council Member Inzunza not present. Mayor Murphy recessed the meeting at 7:48 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 8:02 p.m. with Deputy Mayor Zucchet and Council Member Inzunza not present. Mayor Murphy recessed the meeting at 8:15 p.m. to reconvene the Budget Review Committee. Mayor Murphy reconvened the regular meeting at 9:21 p.m. with Deputy Mayor Zucchet, Council Member Frye, and Council Member Inzunza not present. The meeting was adjourned by Mayor Murphy at 9:24 p.m.

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 Young-present
 - (5) Council Member Maienschein-present
 - (6) Council Member Frye-present
 - (7) Council Member Madaffer-present
 - (8) Council Member Inzunza-present
- Clerk-Abdelnour/Lane (gs)

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-not present
- (3) Council Member Atkins-present
- (4) Council Member Young-not present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-not present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by City Clerk Chuck Abdelnour.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Frye.

FILE LOCATION: MINUTES

ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS: APPROVED

Approval of Council Minutes for the meetings of:

05/10/2005

05/24/2005-Special

05/30/2005-Adjourned

05/31/2005-Adjourned

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:09 p.m. – 2:09 p.m.)

MOTION BY MADAFFER TO APPROVE. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

CLOSED SESSION ITEMS:

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

CS-1 *Border Business Park v. City of San Diego*

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

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 28, 2005

ACA assigned: L. 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. The Border Business Park case has been referred to a mediation process in the appellate court. In closed session the City Attorney will report on the status of the mediation and request appropriate direction.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:04 p.m.)

Mayor Murphy closed the hearing.

Conference with Legal Counsel - anticipated litigation - initiation of litigation, pursuant to California Government Code section 54956.9(c):

CS-2 Number of Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 28, 2005

DCA assigned: D. McGrath

In closed session the City Attorney will advise Mayor and Council on the potential initiation of litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:04 p.m.)

Mayor Murphy closed the hearing.

Public employment, pursuant to California Government Code section 54957)b)(1):

CS-3 Title: City Clerk

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 28, 2005

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:04 p.m.)

Mayor Murphy closed the hearing.

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

CS-4 *De Anza Cove Homeowners Association, Inc. v. City of San Diego*
San Diego Superior Court Case No. GIC 821191

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 28, 2005

DCA assigned: Wierman

This matter concerns the litigation filed by the De Anza Cove Homeowners Association against the City of San Diego seeking damages related to expiration of the prior lease and transition of the property from use as a mobile home park to park and recreational use. In closed session, the City Attorney will report on the status of the litigation, and other matters affecting the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:04 p.m.)

Mayor Murphy closed the hearing.

* ITEM-50: The 2004 California Electrical Code and Associated San Diego Municipal Code Amendments.

(See City Manager Reports CMR-05-077 and CMR-05-133, this report was not available at Committee.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 6/13/2005, Item 50. (Council voted 9-0):

(O-2005-125) ADOPTED AS ORDINANCE O-19392 (New Series)

Amending Chapter 12, Article 9, Division 3, of the San Diego Municipal Code by amending Sections 129.0303 and 129.0307, by amending Chapter 14, Article 6, Division 1, by amending Sections 146.0103, 146.0104, 146.0105, and 146.0106, by amending Chapter 14, Article 6, Division 2, by amending Section 146.0202, and by renumbering Section 146.0210 to Section 146.0207, and adopting the 2004 California Electrical Code and Associated San Diego Municipal Code Amendments.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

CONSENT MOTION BY MADAFFER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-100: Hillcrest Streetscape Improvements University Avenue-Vermont Street to Herbert Street.

(Uptown Community Area. District 3.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1331) ADOPTED AS RESOLUTION R-300574

Amending Fund 79512, Uptown Developer Impact Fees (DIF), Hillcrest Streetscape Improvements Segment, by appropriating an amount of \$50,000 for Capital Improvement Project CIP-39-213.1 (Hillcrest Streetscape Improvements, Phase 3);

Amending the Fiscal Year 2005 CIP budget for CIP-39-213.1 (Hillcrest Streetscape Improvements, Phase 3), by increasing the budget amount by \$50,000;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$50,000 from Fund 79512, Uptown DIF, Hillcrest Streetscape Improvements Segment, in CIP-39-213.1 (Hillcrest Streetscape Improvements Segment, Phase 3), solely and exclusively for the purpose of constructing the University Avenue-Vermont Street to Herbert Street Improvements, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are available.

CITY MANAGER SUPPORTING INFORMATION:

The Hillcrest Streetscape Improvements - University Avenue - Vermont to Herbert Street, CIP-39-213.1 is the third phase of construction for improvements along University Avenue in the Uptown/Hillcrest area. Plans and specifications were completed and signed by the City Engineer in 2004. Bids were received on September 1, 2004. All bids were rejected because there was not enough funding available in the FY 2005 CIP-39-213.1 budget to award the project. The project plans and specifications have been revised to reduce the cost of construction.

This Request for Council Action to add \$50,000 in Developer Impact Fees (DIF) funding is needed to pay for the construction of pop outs, sidewalks, curbs, and gutters from Vermont Street to Herbert Street as part of the overall improvement project. The usage of these DIF funds qualifies under project T4 of the Uptown Public Facilities Financing Plan. This Request for Council Action would increase the FY 2005 CIP-39-213.1 budget for Hillcrest Streetscape Improvements: University Avenue - Vermont Street to Herbert Street, by \$50,000, from the Uptown Community DIF Fund 79512 and authorize the City Auditor and Comptroller to appropriate and expend \$50,000 in CIP-39-213.1 for the construction of the Hillcrest Streetscape Improvements: University Avenue - Vermont Street to Herbert Street. The total project cost is now \$1,594,129.

FISCAL IMPACT:

This action would increase the FY 2005 CIP Budget for CIP-39-213.1, Hillcrest Streetscape Improvements: University Avenue - Vermont Street to Herbert Street by \$50,000 and authorize appropriation and expenditure of \$50,000 from Fund 79512, Uptown Community DIF for CIP-39-213.1 for construction of the Hillcrest Streetscape Improvements: University Avenue - Vermont Street to Herbert Street.

Frazier/Cunningham/Kawar/AMH

Aud. Cert. 2501082.

Staff: Alicia M. Higgs – (619) 533-5166
Sharon Matthews – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-101: First Amendment to Agreement with SCS Engineers for Mission Bay Landfill Site Assessment.

(Mission Bay Park Community Area. District 6.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1334) ADOPTED AS RESOLUTION R-300575

Authorizing the City Manager to execute an amendment to the agreement with SCS Engineers, for professional services in connection with the Mission Bay Landfill Site Assessment, under the terms and conditions set forth in the First Amendment to the Agreement;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$50,000 within Fund 30244, from CIP-32-017.0, Annual Allocation-Groundwater Monitoring Network, to CIP-32-028.0, Mission Bay Landfill Site Assessment;

Authorizing the expenditure of an amount not to exceed \$150,000, solely and exclusively to provide funds for the above amendment, to be expended as follows: \$100,000 from Fund 30244, CIP-32-028.0, Mission Bay Landfill Site Assessment; and \$50,000 from Fund 30244, CIP-32-017.0, Annual Allocation-Groundwater Monitoring Network.

CITY MANAGER SUPPORTING INFORMATION:

This proposed First Amendment to the Agreement with SCS Engineers will provide for additional professional services on the Mission Bay Landfill Site Assessment project. Work that was not contemplated in the original scope includes longer and more frequent presentations to the City's Technical Advisory Committee (TAC), additional field investigation, and technical subcommittee meetings to evaluate field sampling results.

With this proposed first amendment, a more thorough and supportable site assessment of the Mission Bay landfill will be conducted.

On June 30, 2003, the City Council approved the original agreement (RR-298137) which provided for multiple funding phases. Phase 1 of this project was completed and developed a Preliminary Site Assessment Plan that described the field work, test methods, and safety measures to be taken. Phase 2 of this project is ongoing, and consists of exploratory field work, laboratory analysis, and a final report with risk assessment. The work of this proposed first amendment will be included in Phase 2.

FISCAL IMPACT:

This action is to request authority to increase the consultant's compensation by \$150,000 to a new total of \$650,000. Of this increase, \$100,000 will be from existing project funds, contingencies and in-house engineering, CIP-32-028.0, Mission Bay Landfill Site Assessment, in the Refuse Disposal Fund. An additional \$50,000 will be transferred from CIP-32-017.0, Annual Allocation-Groundwater Monitoring Network.

Mendes/Heap/RAP
Aud. Cert. 2501068.

Staff: Steven F. Fontana – (858) 492-5077
Grace C. Lowenberg – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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



ITEM-102: Second Amendment to Agreement with Kay and Stevens for Consulting Services Pertaining to the Meet and Confer Process with the City's Four Recognized Employee Organizations.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1187) ADOPTED AS RESOLUTION R-300576

Authorizing the City Manager to execute a Second Amendment to Agreement with Kay and Stevens, in an amount not to exceed \$250,000, for consulting services pertaining to the Meet and Confer process with the City's four recognized employee organizations, under the terms and conditions set forth in the Second Amendment to Agreement.

CITY MANAGER SUPPORTING INFORMATION:

On November 8, 2004, an agreement was entered into by the City of San Diego Human Resources Department and Kay & Stevens. The agreement was for Kay & Stevens to provide consulting services to the City pertaining to the "Meet and Confer" process with the City's four recognized employee organizations. A first amendment was entered into in March of 2005, bringing the total value of the agreement to \$200,000.

Due to the nature and complexity of the negotiations, additional funding is required. In order to fund the consultant's services through the complete negotiation process, this item authorizes a \$250,000 amendment, which will bring the total not-to-exceed value of the agreement to \$450,000.

Herring/Villa

Aud. Cert. 2500968.

Staff: Judy von Kalinowski – (619) 236-5599
Christopher S. Morris – Chief Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 8:03 p.m. – 8:14 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

- * ITEM-103: Lease Agreement with Pacific Carmel Mountain Holdings, L.P. and Pacific Carmel Mountain, L.L.C., Located at 2156 Carmel Mountain Road, for a Police Storefront in Carmel Mountain Ranch.

(Carmel Mountain Ranch Community Area. District 5.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1210) ADOPTED AS RESOLUTION R-300577

Authorizing the City Manager to execute a lease agreement with Pacific Carmel Mountain Holdings, L.P., a California Limited Partnership and Pacific Carmel Mountain, L.L.C., a California Limited Liability Company for a Police Department storefront at a rental of \$1,518 per month until March 31, 2006, on the terms and conditions set forth in the Standard Retail Lease;

Authorizing the City Auditor and Comptroller to expend an amount not to exceed \$13,662 for rent, contingent upon the adoption of the Fiscal Year 2006 General Fund Budget.

CITY MANAGER SUPPORTING INFORMATION:

The Police Department has operated a storefront in Carmel Mountain Ranch since 1998. The storefront office space at 10175 Rancho Carmel Drive had been occupied on a month-to-month basis, and the landlord terminated the tenancy in February 2005, to lease the space to another entity. Alternate space at another property owned and managed by the landlord was offered for use by the City at the same rental rate through March 2006. To ensure that the Police Department could maintain a presence in the area without a lapse in service, they are currently occupying the space under a City Manager executed short-term lease with existing funding through June 2005.

The current action will authorize funding for the site through March 2006. This lease will supercede the City Manager executed agreement and includes an early termination provision if a space at another location is identified prior to the March 2006 termination date. Due to the low vacancy rate in this area of the city, staff recommends entering into a lease through March 2006 and evaluating other potential long-term sites for this service during this period.

The terms of the proposed lease are as follows:

Location: 2156 Carmel Mountain Road, Suite 308.

Size: Approximately 1,800 square feet.

Rent: \$1,518 per month (\$0.84 per square foot).

Term: Term commences upon lease execution and expires on March 31, 2006.

Maintenance: Landlord is responsible for maintaining common areas, structural parts of the building including foundations, exterior walls, except for glass and doors, and the roof. Tenant is responsible for maintenance within the premises. Tenant's share of common area maintenance/charges is included in the \$1,518 per month rent.

Utilities: Tenant pays for all utilities except water.

Janitorial: Responsibility of tenant.

FISCAL IMPACT:

Estimated rent expenditures through March 31, 2006 are \$13,662.

Herring/Griffith/JPA

Staff: Craig W. Gibson – (619) 236-6727
Elisa A. Cusato – Deputy City Attorney

FILE LOCATION: LEAS - Pacific Carmel Mountain Holdings, L. P. & Pacific Carmel Mountain, L. L. C.

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

- * ITEM-104: Marketing Agreement with Sunroad Community Foundation and Accepting Funds from the Indian Gaming Local Community Benefit Committee (IGLCBC), for the Regional Fire and Rescue Helicopter Program.

(See City Manager Report CMR-05-146.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1347) ADOPTED AS RESOLUTION R-300578

Authorizing the City Manager to execute a Marketing Agreement with Sunroad Community Foundation, under the terms and conditions set forth in the Agreement;

Authorizing the City Manager to deposit the revenue from the Marketing Agreement with Sunroad Community Foundation into the Helicopter Program Special Revenue Fund;

Authorizing the City Auditor and Comptroller to accept and expend \$320,417 granted by the Indian Gaming Local Community Benefit Committee (IGLCBC) to the San Diego Fire-Rescue Department in July 2004 to help fund the Regional Fire and Rescue Helicopter Program;

Authorizing the City Auditor and Comptroller to accept and expend \$250,000 granted by the IGLCBC to the San Diego Fire-Rescue Department in June 2005 for the purchase of a fuel service vehicle for the Regional Fire and Rescue Helicopter;

Authorizing the City Manager, or his representative, to execute an agreement with the Service Authority for Freeway Emergencies (SAFE) to continue the Fire-Rescue Helicopter program to be operated, managed, and administered by the San Diego Fire-Rescue Department under the terms and conditions set forth in the Agreement;

Authorizing the City Auditor and Comptroller to accept and expend \$250,000 from SAFE per year for Fiscal Years 2006 through 2009 to help fund the Regional Fire and Rescue Helicopter Program.

Staff: Jenny Wolff – (619) 533-3484
Joseph Sanchez - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

ITEM-105: Agreement with ADS Corporation for Sewer Flow Monitoring and Event Notification.

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1324) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing the City Manager to approve and execute a phase funded agreement with ADS Environmental Services, Inc., for sewer flow monitoring and event notification, equipment, software, and services, under the terms and conditions set forth in the Agreement;

Authorizing the City Manager to execute up to two options to extend the thirty-month duration of the above agreement for up to an additional two years, provided that the City Auditor and Comptroller first furnishes one or more certificates showing that the funds necessary for additional expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$3,829,894 to provide funds for the above agreement, to be expended as follows:

\$440,000 for Phase 1 from Fiscal Year 2005 appropriations, consisting of \$215,000 from Fund 41506, \$20,000 from Fund 41508, and \$205,000 from Fund 41509;

\$1,024,098 for Phase 2 from Fiscal Year 2006 appropriations, consisting of \$506,397 from Fund 41506, \$44,034 from Fund 41508, and \$473,667 from Fund 41509, and contingent upon Council's approval of the Fiscal Year 2006 operating budget;

\$1,601,792 for Phase 3 from Fiscal Year 2007 appropriations, consisting of \$803,955 from Fund 41506, \$70,339 from Fund 41508, and \$727,498 from Fund 41509, and contingent upon Council's approval of the Fiscal Year 2007 operating budget; and

\$764,004 for Phase 4 from Fiscal Year 2008 appropriations, consisting of \$383,961 from Fund 41506, \$34,469 from Fund 41508, and \$345,574 from Fund 41509, and contingent upon Council's approval of the Fiscal Year 2008 operating budget;

Authorizing the City Auditor and Comptroller to transfer excess budgeted funds, if any, to the appropriate reserves upon advice of the administering department.

CITY MANAGER SUPPORTING INFORMATION:

The Metropolitan Wastewater Department (MWW) currently monitors sewage flows at 139 permanent meter sites. The information from these sites is used for Metro Sewerage System billing, sewer modeling to evaluate present and future sewer flows, and monitoring flow anomalies which can indicate wastewater back up or overflows to prevent sewer spills. The

current 24 month agreement with GEOTivity, Inc. for providing sewage flow monitoring equipment, maintenance and repair services, and an event notification system ends on August 4, 2005. In January 2005, MWWD issued a Request for Proposal for Sewer Flow Monitoring and Event Notification Services. Following receipt of the technical proposals and sealed price proposals, two firms were invited to an interview and demonstration of their equipment and software on May 3, 2005. Based upon the project's technical evaluation criteria and proposed prices, the panel, consisting of representatives from the Participating Agencies and City staff, recommended the selection of ADS Corporation to provide the referenced services.

ADS Corporation will provide sewer flow monitors, installation, repair and maintenance services for billing/modeling data and event notification alarming based on detection of anomalies in sewer flows which indicate potential sewer back-ups or overflows. ADS maintains a local office in San Diego for maintenance crews and support of the project. To provide for continuity of service the agreement will run for 30 months and allows for two 12 month extensions at the discretion of the City.

ADS Corporation d/b/a ADS Environmental Services is a wholly owned subsidiary of Axel Johnson, Inc., a privately held corporation. Karl D. Boone is the President and Chief Executive Officer of ADS Corporation.

FISCAL IMPACT:

Funds for Fiscal Year 2005 are available in the FY05 Operating Budget for MWWD. The cost for 30 months is \$3,829,894.

Mendes/Tulloch/MXS

Aud. Cert. 2501069.

Staff: Larry Sherry – (858) 654-4247
Thomas C. Zeleny – Deputy City Attorney



ITEM-106: Exclusive Negotiating Agreement (ENA) with Simplon Ballpark, LLC for a Proposed Land Exchange and Development of a New Fire Station.

(Downtown Community Area. District 2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1338) ADOPTED AS RESOLUTION R-300579

Authorizing the City Manager to execute an ENA with Simplon, for the proposed construction of a new fire station, under the terms and conditions set forth in the ENA;

Amending the fiscal year 2005 CIP budget to add CIP-33-510.0, Fire Station No. 4;

Authorizing the City Manager to accept from Simplon the sum of \$10,000 and deposit it into Fund No. 63022, Trust Fund for Development, to be used to offset a portion of the City's staff costs, consultant costs and other administrative costs incurred by the City in negotiating, preparing and processing the proposed purchase and sale agreement;

Authorizing the City Auditor and Comptroller to appropriate and expend \$10,000 from Fund No. 63022, Trust Fund for Development, into CIP-33-510.0, Fire Station No. 4, contingent on the funds being received from Simplon and provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

CITY MANAGER SUPPORTING INFORMATION:

The City of San Diego owns a functioning fire station (F.S. 4) which is located at the northwest corner of 8th Avenue and J Street, approximately one block north of Petco Park. Simplon Ballpark, LLC would like to acquire the site for inclusion into a mixed-use development of retail, office, and high-rise condominiums to be known as Cosmopolitan Square. The developer is offering to replace the existing fire station with a new, larger facility, one lot to the north of the existing fire station. The existing fire station is a two-story, 7,120 square foot cast-concrete structure built in 1937, situated on a 5,000 square foot lot. The proposed new fire station is contemplated to be an approximate 13,190 square foot two-story structure with underground parking.

The proposed development will provide the City with a state-of-the-art fire facility that will be able to meet the needs of the continued growth of the downtown area. Accordingly, staff recommends that the City enter into an ENA with Simplon Ballpark, LLC to further investigate the proposed development and, if appropriate, to draft pertinent agreement(s) for the City Council's future consideration. The ENA outlines the responsibilities of the City and Simplon Ballpark, LLC for negotiations required prior to bringing a formal proposal before the City Council.

FISCAL IMPACT:

None.

Herring/Griffith/BLM

Staff: Will Griffith – (619) 236-6144
Debra J. Bevier – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:01 p.m. – 4:02 p.m.)

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

* ITEM-107: Four actions related to Community Parking Districts (CPDs).

(See City Manager Reports CMR-05-100; and CMR-05-150 (this report not available at the Committee). Downtown/Centre City, Uptown, and Mid-City Community Areas. Districts 2, 3, 4, 7, and 8.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-1340) ADOPTED AS RESOLUTION R-300580

Approving the proposed Centre City Community Parking District annual implementation plan attached to Manager's Report as Attachment #2;

Authorizing the City Manager, or designee, to negotiate and execute an agreement with the Centre City Development Corporation (Agreement) to fulfill the Center City Community Parking District implementation plan; and

Authorizing the City Manager, or designee, to negotiate the expenditure of Community Parking District funds in the aforementioned Agreement, or authorizing the City Manager or designee, to authorize the expenditure of Community Parking District funds by way of the Centre City Development Corporation annual budget approval process, consistent with the provisions of the Policy;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$1,476,280 from Fund 70302 plus any carry over amounts not fully expended under previously approved budgets to implement the activities described in the Centre City Community Parking District annual implementation plan;

Declaring the Council shall review the status of the Centre City Community Parking District implementation plan on an annual basis to determine the progress in implementing the implementation plan and to determine what monies have been allocated and which have been spent;

Directing the City Manager, or designee, to administer the Community Parking District Program with strict financial oversight, and to include a contractual requirement for each Community Parking District to comply with the Brown Act and the Public Records Act.

Subitem-B: (R-2005-1341) ADOPTED AS RESOLUTION R-300581

Approving the proposed Uptown Community Parking District annual implementation plan attached to Manager's Report as Attachment #3;

Authorizing the City Manager, or designee, to negotiate and execute an agreement with the Uptown Partnership, Inc. (Agreement) to fulfill the Uptown Community Parking District implementation plan; and

Authorizing the City Manager, or designee, to negotiate the expenditure of Community Parking District funds in the aforementioned Agreement, consistent with the provisions of the Policy;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$2,365,487, less any contract expenditures occurring in Fiscal Year 2005, from Fund 70303 plus any carryover amounts not fully expended under previously approved budgets to implement the activities described in the Uptown Community Parking District annual implementation plan;

Declaring the Council shall review the status of the Uptown Community Parking District implementation plan on an annual basis to determine the progress in implementing the implementation plan and to determine what monies have been allocated and which have been spent;

Directing the City Manager, or designee, to administer the Community Parking District Program with strict financial oversight, and to include a contractual requirement for each Community Parking District to comply with the Brown Act and the Public Records Act.

Subitem-C: (R-2005-1342) ADOPTED AS RESOLUTION R-300582

Approving the proposed Mid-City Community Parking District annual implementation plans attached to Manager's Report as Attachments #4A, 4B, and 4C;

Authorizing the City Manager, or designee, to negotiate and execute agreements with certain non-profit corporations operating through the Mid-City Community Parking District Advisory Board the (Agreements) to fulfill the Mid-City Community Parking District implementation plans; and

Authorizing the City Manager, or designee, to negotiate the expenditure of Community Parking District funds in the aforementioned Agreements consistent with the provisions of the Policy;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$860,291, less any contract expenditures occurring in Fiscal Year 2005, from Fund 70304 plus any carry over amounts not fully expended under previously approved budgets to implement the activities described in the Mid-City Community Parking District annual implementation plans;

Declaring the Council shall review the status of the Mid-City Community Parking District implementation plans on an annual basis to determine the progress in implementing the implementation plans and to determine what monies have been allocated and which have been spent;

Directing the City Manager, or designee, to administer the Community Parking District Program with strict financial oversight, and to include a contractual requirement for each Community Parking District to comply with the Brown Act and the Public Records Act.

Subitem-D: (R-2005-1339) ADOPTED AS RESOLUTION R-300583

Authorizing the City Auditor and Comptroller to transfer parking meter revenues appropriated in Fiscal Year 2005 in an amount not to exceed \$2,276,892 from Fund 100, Citywide Department No. 601 to Community Parking District Funds as follows: \$113,844 to Fund No. 70301; \$1,476,280 to Fund No. 70302; \$595,487 to Fund No. 70303; and \$91,281 to Fund No. 70304;

Declaring the balance in Fund No. 70301 is increased by \$113,884;

Declaring the balance in Fund No. 70302 is increased by \$1,476,280;

Declaring the balance in Fund No. 70303 is increased by \$595,487;

Declaring the balance in Fund No. 70304 is increased by \$91,281;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$113,844 plus any carry over amounts from prior years from Fund 70301 to reimburse the General Fund's annual cost to administer the Community Parking District Program.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 4/20/2005, LU&H voted 4 to 0 to approve the City Manager's recommendation with direction to the City Manager that references to the suspension of parking meter revenue sharing with the existing parking districts for Fiscal Year 2006 in the fiscal impact section of the report be removed prior to this item being heard at City Council so that this report will be consistent with City Council direction on April 18, 2005. (Councilmembers Peters, Atkins, Young, and Frye voted yea. Councilmember Inzunza not present.)

Aud. Cert. 2501085.

Staff: Meredith Dibden-Brown – (619) 533-7530
Sharon Matthews – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-108: Three actions related to Request for the Formation of Pacific Beach, Old Town, and La Jolla Community Parking Districts.

(See City Manager Reports CMR-05-101, CMR-05-102, and CMR-05-103 Revised. Pacific Beach, Old Town, and La Jolla Community Areas. Districts 1 and 2.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-1278) ADOPTED AS RESOLUTION R-300584

Authorizing the creation of the Old Town Community Parking District in accordance with Council Policy 100-18; designating the Old Town Chamber of Commerce as the Advisory Board for the Old Town Community Parking District; and authorizing the City Manager to negotiate and execute an Agreement with Old Town Chamber of Commerce to fulfill its annual implementation plan.

Subitem-B: (R-2005-1306) ADOPTED AS RESOLUTION R-300585

Waiving Section A.1.b of Council Policy 100-18; authorizing the creation of the Pacific Beach Community Parking District in accordance with Council Policy 100-18; designating Discover Pacific Beach as the Advisory Board for the Pacific Beach Community Parking District; and authorizing the City Manager to negotiate and execute an Agreement with Discover Pacific Beach to fulfill its annual implementation plan.

Subitem-C: (R-2005-1307) ADOPTED AS RESOLUTION R-300586

Waiving Section A.1.b of Council Policy 100-18; authorizing the creation of the La Jolla Community Parking District in accordance with Council Policy 100-18; designating Promote La Jolla as the Advisory Board of the La Jolla Community Parking District; and authorizing the City Manager to negotiate and execute an Agreement with Promote La Jolla to fulfill its annual implementation plan.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 4/20/2005, LU&H voted 5 to 0 to approve the creation of Community Parking Districts ("CPDs") in Pacific Beach and Old Town as proposed by the City Manager; and pertaining to the creation of a CPD in La Jolla, approve the CPD as proposed with two amendments to Promote La Jolla's proposal: 1) on page six, remove the following language which provided for Promote La Jolla's approval of composition of the board, "The Advisory Board slate will be confirmed annually by the board of directors of Promote La Jolla. It is not the intention of Promote La Jolla, Inc., to intervene with the advisory board composition. Promote La Jolla shall not unreasonably withhold confirmation of any community group representative," and 2) on page five, pertaining to the make-up of the Advisory Board, add the following language pertaining to the three Promote La Jolla Appointees, "at least two must also be residents of La Jolla."
(Councilmembers Peters, Atkins, Young, Frye, and Inzunza voted yea.)

SUPPORTING INFORMATION:

Council Policy 100-18, adopted March 1997, established the "Parking Meter District Program" as a mechanism to fund and implement solutions to parking problems in areas where parking meters were located. On November 15, 2004, this Policy was amended by City Council action and renamed the "Community Parking District Policy" to provide a mechanism whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs. Pursuant to the amended Council Policy 100-18, a community planning group or a business improvement district may request the formation of a Community Parking District (CPD) when existing City mechanisms for implementing parking management solutions have been insufficient.

On April 20, 2005, the Land Use and Housing Committee unanimously supported the creation of the Pacific Beach and Old Town Community Parking Districts as recommended by the City Manager in Manager's Reports 05-101 and 05-102 respectively. The Land Use and Housing Committee further supported the creation of the La Jolla Community Parking District as recommended by the City Manager in Manager's Report 05-103 with two amendments to the "Proposal for the Formation of the La Jolla Community Parking District" submitted by Promote La Jolla. On May 19, 2005, Promote La Jolla submitted a revised "Proposal for the Formation of the La Jolla Community Parking District," dated May 12, 2005. This revised proposal incorporated the changes requested by the Land Use and Housing Committee. The Land Use and Housing Committee Manager's Reports and the revised La Jolla proposal are on file with the City Clerk.

The recommended action today would (1) create the Pacific Beach, Old Town and La Jolla Community Parking Districts, (2) designate Discover Pacific Beach as the advisory board for the newly created Pacific Beach Community Parking District; designate the Old Town San Diego Chamber of Commerce as the advisory board for the newly created Old Town Community Parking District, and; designate Promote La Jolla as the advisory board for the newly created La Jolla Community Parking District; and (3) authorize the City Manager to negotiate and execute agreements with the Community Parking District Advisory Boards to plan for and implement parking related activities/solutions within their respective communities.

FISCAL IMPACT:

There is no fiscal impact at this time. Financial support from the Business Improvement Districts in these communities will be provided to the new Community Parking Districts during the first year of operation. There are currently no parking meter revenues and/or other parking related revenues generated within the proposed boundaries of these districts. Should parking meters be

installed in the future, Council Policy 100-18 currently provides for the allocation of 45% of all parking meter revenue generated within the boundaries of the newly created Community Parking Districts to those respective Districts. In addition, according to Council Policy 100-18, the City would also consider on a case-by-case basis additional allocations of revenue generated by other parking management programs within these Community Parking Districts.

Oppenheim/Cunningham/Kawar/MS

Staff: Meredith Dibden-Brown – (619) 533-7530
Sharon Matthews – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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



* ITEM-109: Appointments to the Parking Advisory Board.

(See memorandums from Mayor Murphy dated 6/14/2005; Councilmember Peters dated 4/25/2005; Deputy Mayor Zucchet dated 3/4/2005; Councilmember Atkins dated 4/14/2005; Councilmember Maienschein dated 3/17/2005; and Councilmember Frye dated 5/2/2005, with resumes attached.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1345) ADOPTED AS RESOLUTION R-300587

Council confirmation of the following appointments by the Mayor of the City of San Diego to serve as members of the Parking Advisory Board be and the same are hereby confirmed:

<u>NAME</u>	<u>CATEGORY</u>	<u>TERM ENDING</u>
Frank Alessi (Cannel Valley, Dist. 1)	Downtown Community Parking District	December 31, 2006
David Breitweiser (Rancho Bernardo, Dist. 5)	District 5 Representative	December 31, 2005
Paul Chacon (Bonita)	District 2 Representative	December 31, 2006
Polly Gillette (Otay Mesa, Dist. 8)	Mid-City Community Parking District	December 31, 2005
Scott Kessler (Chair) (Golden Hill, Dist. 8)	Business Improvement District Council	December 31, 2006
Cindy Lehman (Point Lorna, Dist. 2)	Uptown Community Parking District	December 31, 2005
Martin Mosier (La Jolla, Dist. 1)	District 1 Representative	December 31, 2006
John Pilch (San Carlos, Dist. 7)	Community Planning Committee	December 31, 2005
Paul Robinson (Downtown, Dist. 2)	At Large Member	December 31, 2006
Steve Russell (North Park, Dist. 3)	District 3 Representative	December 31, 2006
Linda Stanley (Clairemont, Dist. 6)	District 6 Representative	December 31, 2006

Determining that pursuant to Council Policy 000-13, for purposes of deliberation and consideration of appointment, Paul Chacon is a resident of San Diego County, but not the City of San Diego, and has unique qualifications to serve as a member of the Board, therefore, a conscious exception to Council Policy 00-13 is hereby declared.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-110: San Pasqual Vision Plan Council Policy to Preserve the Water, Agricultural, Biological, and Cultural Resources within the San Pasqual Valley.

(See City Manager Report CMR-05-086. San Pasqual Community Area. District 5.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-1354) ADOPTED AS RESOLUTION R-300588

Establishing Council Policy No. 600-45 pertaining to the protection of water, agricultural, biological and cultural resources within the San Pasqual Valley as set forth in the Council Policy;

Instructing the City Clerk to add aforesaid to the Council Policy Manual.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

Informational item. No action taken.

SUPPORTING INFORMATION:

In order to protect the San Pasqual Valley's vital water resources, preserve its rural character, and encourage appropriate agricultural uses, in 2004 San Diego City Councilmember Brian Maienschein (District 5) drafted the San Pasqual Vision Plan. The Vision Plan contains ten directives that address various issues facing the San Pasqual Valley. The intent is to protect water resources, sustainable agricultural opportunities, rural character, cultural and historic resources,

and low-impact recreational opportunities in the Valley and to establish the responsibility of the City to manage these lands. For each directive, there are action items associated with implementing the goals for the Valley. On August 4, 2004, the Land Use and Housing Committee voted 4-0 to support the Manager's recommendation to direct that work begin on Directive #1 of the Vision Plan.

Directive #1 is to adopt a Council Policy, which encapsulates all of the goals set forth in the San Pasqual Vision Plan and establishes a series of implementation steps in order to achieve these goals. With the Council Policy being Directive #1, the remaining nine directives have been broken down into specific tasks and incorporated into eight implementation steps set forth in the draft Council Policy. It is anticipated that all eight steps, with the exception of the construction of an interpretive center, will be completed by December 2006.

In January 2005, Planning Department Staff distributed a first draft of the Council Policy to all of the involved-departments. Over the course of several months, staff from these various departments met numerous times to discuss and revise the draft policy. A second draft of the Council Policy was prepared in March 2005, and was distributed to the members of the San Pasqual/Lake Hodges Community Planning Group and the Rancho Bernardo Community Planning Board for review. Both groups have expressed strong support for the Council Policy.

On May 4, 2005, the Natural Resources and Culture Committee voted 4-0 to support the Manager's Recommendation that the City Council adopt the Draft Council Policy to preserve the water, agricultural, biological and cultural resources within the San Pasqual Valley. On May 5, 2005, the San Pasqual/Lake Hodges Community Planning Group voted 12-0 to approve the Draft Council Policy. On May 3, 2005, the Rancho Bernardo Regional Issues Committee voted 13-0 to recommend approval of the Draft Council Policy. By adopting this Council Policy, the City of San Diego is taking an active leadership role in establishing a healthy, sustainable environment in the San Pasqual Valley.

Mendes/Goldberg

Staff: Brian Schoenfisch – (619) 533-6457
William W. Witt – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-111: Kathleen Andrews Day.

DEPUTY MAYOR ZUCCHET'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-955) ADOPTED AS RESOLUTION R-300589

Recognizing the exceptional contributions that Kathleen Andrews has made to progress the business and social climate of the Pacific Beach community and the San Diego region;

Proclaiming March 11, 2005, to be "Kathleen Andrews Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-112: City Commissioner Julia "Jhigs" Legaspi Day.

COUNCILMEMBER ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2005-1350) ADOPTED AS RESOLUTION R-300590

Recognizing the hard work, dedication, and unparalleled community service of City Commissioner Julia “Jhigs” Legaspi, and commends her for 21 years of commitment to the gay, lesbian, bisexual, and transgender community both in San Diego and across the nation;

Proclaiming June 26, 2005, to be “City Commissioner Julia “Jhigs” Legaspi Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-113: Susan E. Henrichsen Day.

COUNCILMEMBER FRYE’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1327) ADOPTED AS RESOLUTION R-300591

Honoring, commending, and thanking Susan Henrichsen for all of her contributions to improving the quality of life for San Diegans;

Proclaiming June 17, 2005, to be “Susan E. Henrichsen Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-114: Spreckels Organ 90th Anniversary Year.

COUNCILMEMBER ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2005-1349) ADOPTED AS RESOLUTION R-300592

Commending the Spreckels Organ Society for its ongoing commitment to present internationally renown organists and organ music to the public at free concerts throughout the year, and congratulating them and the four Civic Organists for their outstanding efforts to preserve and promote the Spreckels Organ as it celebrates its 90th year of existence;

Proclaiming 2005 to be "Spreckels Organ 90th Anniversary Year" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-115: Inviting Bids for the General Requirements Contract 003 for Repairs and Emergency Work for Water Related Facilities.

(See City Manager Report CMR-05-083 and memorandum from Frank Belock, Jr. dated 1/19/2005.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-1011) ADOPTED AS RESOLUTION R-300593

Approving the General Requirements Contract 003 for repairs and emergency work for water related facilities in an amount not-less-than \$25,000 and not-to-exceed \$5,000,000, and a contract duration not to exceed two years as advertised by Contract Services, on Work Order No. 021003;

Authorizing the City Manager, after advertising for bids in accordance with law, to award the Project contract to the lowest responsible and reliable bidder in an amount not to exceed \$5,000,000 and to award tasks pursuant to such contract, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$5,000,000 from Water Fund 41500, solely and exclusively, for the purpose of providing funds for the General Requirements Contract 003 and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds 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.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 1/26/2005, NR&C voted 5-0 to: 1) Move the General Requirements Contract 003 forward to Council with direction to the City Manager to provide a simple breakdown of the jobs that were done as part of the 2003 General Requirements Contract and their costs; 2) Ask Local 127 to comment on their ability or inability to perform the work included in the General Requirements Contract; 3) Request an analysis from the previous contractor on the breakdown of minorities in their workforce; 4) Direct the Water Department to report back quarterly on the progress of the General Requirements Contract subject to Chair Maienschein's discretion. (Councilmembers Atkins, Young, Maienschein, Frye, and Madaffer voted yea.)

Aud. Cert. 2500682.

Staff: Vic Bienes – (619) 533-6600
John F. Kirk – Deputy City Attorney

FILE LOCATION: W. O. 021003

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

- * ITEM-116: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico.

(District 8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-1299) ADOPTED AS RESOLUTION R-300594

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION: GEN'L – State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

- * ITEM-117: Declaring a Continued Local Health Emergency Due to the Spread of the Hepatitis C Virus and the Human Immunodeficiency Virus (HIV).

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-1293) ADOPTED AS RESOLUTION R-300595

Declaring a Continued Local Health Emergency due to the spread of the Hepatitis C Virus and the Human Immunodeficiency Virus (HIV) for the purpose of implementing a one-year clean needle and syringe exchange program.

CITY MANAGER SUPPORTING INFORMATION:

California Health and Safety Code section 11364.7 (effective January 1, 2000) acknowledges the public health threat posed by the sharing of needles and syringes by injection drug users. The Code requires a local jurisdiction to declare a local emergency due to the existence of a critical local public health crisis in order to establish a clean needle and syringe exchange program. In order to permit development and implementation of a pilot clean needle and syringe exchange program, today's action continues the state of emergency first declared by the City Council on November 27, 2001.

FILE LOCATION: GEN'L – Local Health Emergency Due to the Spread of the Hepatitis C Virus and the Human Immunodeficiency Virus (HIV)

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-118: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-1240) ADOPTED AS RESOLUTION R-300596

Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego.

FILE LOCATION: GEN'L – State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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



ITEM-150: Continuation of Extended Commercial Refuse Collection Hours of Operation in Downtown.

(See City Manager Report CMR-05-070. Downtown San Diego Community Area. District 2.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-1191) ADOPTED AS RESOLUTION R-300597

Approving the continuation of extended commercial refuse collection hours of operation within downtown San Diego on a permanent basis, consistent with the guidelines and procedures established in the Waste Management Regulation issued pursuant to Resolution No. R-298318;

Authorizing the amendment of the Waste Management Regulation to make the pilot program permanent.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 4/13/2005, NR&C voted 3 to 0, to make the extended downtown commercial refuse collection hours of operation a permanent program. (Councilmembers Maienschein, Frye, and Madaffer voted yea. Councilmember Young not present.)

SUPPORTING INFORMATION:

On April 13, 2005, the Refuse Collection Task Force met with the NR&C Committee (reference Manager's Report 05-070) and recommended that the extended commercial refuse collection hours of operation within the downtown area, which had been implemented on a pilot basis, be continued permanently. The Task Force included residents, waste haulers, Business Improvement Districts, food and beverage businesses, and City staff. The permanent extended hours of refuse collection would be consistent with the pilot program guidelines set forth in the existing Waste Management Regulation. The recommendation was approved.

Consistent with the NR&C direction, this action will amend the Waste Management Regulation to permanently authorize extending the hours of refuse collection. Code enforcement staff will continue to perform random patrols to ensure compliance with established guidelines and procedures for refuse collection in the designated downtown areas.

Additionally, the extended hours of commercial refuse collection program is currently operating under a noise variance that has a maximum duration of 3 years. The current noise variance will terminate in 2007. Neighborhood Code Compliance staff are currently developing a proposal for a long term noise variance.

Mendes/Heap/SAM

Staff: Samuel Merrill – (858) 573-1253
Grace C. Lowenberg – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:49 p.m. – 2:50 p.m.)

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



ITEM-200: Nominations to the Centre City Development Corporation Board of Directors.

(See memorandums from Mayor Dick Murphy dated 4/14/2005, Deputy Mayor Michael Zucchet dated 5/24/2005, Councilmember Donna Frye dated 4/27/2005, and Councilmember Jim Madaffer dated 5/12/2005.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1104) ADOPTED AS RESOLUTION R-300598

Consider the following list of nominees and select three to fill vacancies on the Centre City Development Corporation Board of Directors, for terms ending May 1, 2008:

<u>NOMINEE</u>	<u>CATEGORY</u>	<u>NOMINATED BY</u>
Gina Champion-Cain (Downtown, Dist. 2)	Real Estate	Councilmember Madaffer
Fredric J. Maas (University City, Dist. 1)	Real Estate and Law	Mayor Dick Murphy
Robert McNeely (Point Loma, Dist. 2) (Reappointment)	Finance	Mayor Dick Murphy
Joyce Summer (Downtown, Dist. 2)	General Business	Deputy Mayor Zucchet
Howard Wayne (Clairemont, Dist. 6)	Law	Councilmember Frye

TODAY'S ACTION IS:

Adoption of a Resolution making three appointments.

NOTE: Council Policy 000-13, as amended on 12-3-84, provides for the following procedure:

1. Mayor calls on each candidate whose name appears on the docket as a nominee to make a presentation to the Council in support of his candidacy for appointment (maximum of 3 minutes presentation each).

2. The Mayor calls on members of the Council to ask brief questions of any of the candidates concerning either the presentation or matters contained in their application filed with the City.
3. The City Clerk provides ballots to the Council and each Councilmember votes for the candidates he/she feels to be most qualified for each vacancy and returns the ballots to the City Clerk. Each Councilmember has one vote per vacancy.
4. The candidates receiving the highest number of votes (minimum of five) shall be appointed to the vacancy.
5. If no candidates receive a minimum of five votes, balloting continues until there are sufficient candidates receiving a majority to fill those vacancies. In a tie among the top vote getters, those candidates run off for the vacancies. If an insufficient number of candidates receive a majority of votes to fill all vacancies, a run off will be held among the remaining candidates to fill the remaining vacancies.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:01 p.m. – 3:51 p.m.)

Assistant City Clerk Joyce Lane announced the results of the balloting of Round 1 as follows:

Total of 5 votes for nominee Gina Champion-Cain; a total of 7 votes for nominee Fredric J. Maas; a total of 9 votes for nominee Robert McNeely; a total of 5 votes for nominee Joyce Summer; and a total of 1 vote for nominee Howard Wayne.

Mayor Murphy announced that Fredric J. Maas and Robert McNeely have been appointed.

Mayor Murphy announced that the run-off would consist of the two nominees receiving 5 votes Gina Champion-Cain and Joyce Summer.

Assistant City Clerk Joyce Lane announced the results of Round 2 of the balloting as follows:

Total of 5 votes for nominee Gina Champion-Cain; and a total of 4 votes for nominee Joyce Summer.

Mayor Murphy announced that Gina Champion-Cain has been appointed.

MOTION BY COMMON CONSENT TO ADOPT THE RESOLUTION TO CONFIRM AND APPOINT FREDRIC J. MAAS, ROBERT MCNEELY, AND GINA CHAMPION-CAIN TO THE CENTRE CITY DEVELOPMENT CORPORATION BOARD OF DIRECTORS. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:01 p.m. – 3:51 p.m.)

ITEM-201: Fiscal Year 2006 Tax Appropriation Limit (Gann Limit).

(See City Manager Report No. 05-148.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Approving the establishment of Fiscal Year 2006 Tax Appropriation Limit (Gann Limit) in the amount of \$1,063,139,887;

Directing the City Attorney to prepare the applicable resolution.

Staff: Kelly Cunningham – (619) 533-6252



ITEM-202: Increase Authorized Funding for Lexis Nexis Applied Discovery, Inc. for On Line Data Review in Connection with the Audit of the City’s Fiscal Year 2003 Financial Statements.

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2006-372) ADOPTED AS RESOLUTION R-300599

Authorizing an increase of \$35,000 in expenditures for services provided by Lexis Nexis Applied Discovery, Inc. with respect to the ongoing audit of the City's FY 2003 financial statements; directing the City Attorney to prepare the applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

The City previously retained the law firm of Vinson & Elkins for the preparation of an internal report on the City's securities disclosure practices from 1996 through the present. Lexis Nexis Applied Discovery, Inc. provides online review of the City's financial information in support of Vinson & Elkins and has reached the \$250,000 threshold within which the City Manager may authorize expenditures. Further expenditures require Mayor and City Council approval. The additional authorization of \$35,000 will be sufficient to cover remaining charges through the end of Fiscal Year 2005.

Ewell/Irvine

Aud. Cert. 2501102.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:04 p.m. – 4:04 p.m.)

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

ITEM-203: Fifth Amendment to KPMG, LLP, Agreement to Audit the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorize a fifth amendment to the engagement letter between the City of San Diego and KPMG, LLP, in an amount not to exceed an additional \$200,000, for auditing services related to the audit of the City's FY 2003 basic financial statements, for a total contract amount not to exceed \$2,400,000;

Directing the City Attorney's Office to prepare a resolution supporting this requested action.

CITY MANAGER SUPPORTING INFORMATION:

On January 27, 2004, the City filed a voluntary financial disclosure concerning, in part, certain errors and correctible statements in the City's FY 2002 Comprehensive Annual Financial Report (CAFR). As a result, the FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG LLP to perform the audit of the City's FY 2003 basic financial statements, which are included in the CAFR, before the FY 2003 CAFR finalized and issued. Through the fourth amendment with KPMG, the City Council has authorized \$2.2 million.

The City has expended approximately \$2.2 million to date and currently has received additional invoices from KPMG for approximately \$106,122 for auditing services through May 31, 2005. Pursuant to accounting standards and practices, the City has retained Vinson & Elkins, Kroll, Inc. and Willkie & Gallagher to conduct an additional investigation beyond the scope of the first Vinson & Elkins Report. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned, and the additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the first Vinson & Elkins Report. The City has been working cooperatively with KPMG, Vinson & Elkins and the City's Audit Committee on the additional investigation.

Given the continued importance of a thorough review, the City Manager is requesting that the City Council authorize a fifth amendment with KPMG for an additional \$200,000 for Fiscal Year 2005 for a total contract amount not to exceed \$2,400,000. The \$200,000 will be used to pay \$106,122 of existing KPMG invoices as well as have funding authorized to pay anticipated June invoices.

Ewell/Irvine

Aud. Cert. 2501103.

ITEM-204: Sixth Amendment of KPMG, LLP Agreement to Audit the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing a sixth amendment to the engagement letter between the City of San Diego and KPMG, LLP, in an amount not to exceed an additional \$200,000, for auditing services related to the audit of the City's FY 2003 basic financial statements, for a total contract amount not to exceed \$2,600,000 contract award, contingent upon City Auditor and Comptroller certifying funds are available;

Directing the City Attorney's Office to prepare the resolution supporting this requested action.

CITY MANAGER SUPPORTING INFORMATION:

On January 27, 2004, the City filed a voluntary financial disclosure concerning, in part, certain errors and correctible statements in the City's FY 2002 Comprehensive Annual Financial Report ("CAFR"). As a result, the FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG, LLP to perform the audit of the City's FY 2003 basic financial statements, which are included in the CAFR, before the FY 2003 CAFR is finalized and issued. Through the fifth amendment with KPMG, the City Council has authorized \$2.4 million.

The City has expended approximately \$2.2 million to date and is projecting to spend \$2.4 million through the end of Fiscal Year 2005.

Pursuant to accounting standards and practices, the City has retained Vinson & Elkins, Kroll, Inc. and Willkie Farr & Gallagher to conduct an additional investigation beyond the scope of the first Vinson & Elkins Report. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned, and the additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the first Vinson & Elkins Report. The City has been working cooperatively with KPMG, Vinson & Elkins and the City's Audit Committee on the additional investigation.

Given the continued importance of a thorough review, the City Manager is requesting that the City Council authorize a sixth amendment with KPMG for an additional \$200,000 for Fiscal Year 2006 for a total contract amount not to exceed \$2,600,000. The \$200,000 will be used to pay for KPMG services provided during Fiscal Year 2006.

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ITEM-205: Second Amendment to Agreement with Kroll, Inc., for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and First Amendment to Agreement with Willkie, Farr & Gallagher, to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing a second amendment to the agreement with Kroll, Inc. in the amount of \$200,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution; and

Authorizing a first amendment to agreement with Willkie, Farr & Gallagher, LLP in the amount of \$550,000 for provision of independent legal counsel to the City Audit Committee and Kroll in connection with the above matters, and directing the City Attorney to prepare applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see agreement with Kroll). The original agreement was for a not-to-exceed amount of \$250,000. A subsequent amendment in May of 2005 increased the not-to-exceed amount to \$1,750,000.

The scope of Kroll's engagement, as memorialized in the original agreement, is two-phased, the first phase being to serve as an Independent Investigator for matters relating to the unfunded liability of the SDCERS and for errors discovered in the footnotes of the City's audited financial statements. This phase includes working with KPMG to understand their concerns and identify a satisfactory work program to assist them in obtaining the necessary evidence and documentation required by applicable accounting, auditing and professional services. This phase also includes review and evaluation of the investigation reports issued by V&E and the City Attorney.

The second phase includes consultation with City personnel to establish internal controls that, if implemented and properly operated by the City, could provide reasonable assurance that the transactions identified in the reports in Phase One are properly reported and disclosed in the City's financial statements. This work is to be coordinated with the City Auditor and Comptroller, the internal audit department manager, and the City's outside independent auditors as to the scope and nature of internal controls that the City would need to assess, document, implement, and test.

By this action, the agreement with Kroll will be increased by \$200,000, for a total not-to-exceed amount of \$1,950,000, to cover estimated additional Fiscal Year 2005 expenses.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP ("Willkie, Farr"). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation (see agreement with Willkie, Farr). Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of \$500,000 was approved by the Mayor and City Council in May of 2005. This first amendment to the agreement will bring the total not-to-exceed amount to \$1,050,000 and will be used to cover estimated additional Fiscal Year 2005 expenses.

Ewell/Irvine

Aud. Cert. 2501100 and 2501101.

ITEM-206: Third Amendment to Agreement with Kroll, Inc. for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and Second Amendment to Agreement with Willkie, Farr, Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing a third amendment to the agreement with Kroll Inc., in the amount of \$1,000,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution and contract award contingent upon certification of funds by City Auditor and Comptroller;

Authorizing a second amendment to agreement with Willkie, Farr, & Gallagher LLP, in the amount of \$800,000 for provision of independent legal counsel to the City Audit Committee in connection with the above matters, and directing the City Attorney to prepare applicable resolution and contract award contingent upon fund certification by the City Auditor and Comptroller.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego (City) entered into an agreement with Kroll, Inc. (Kroll) to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins (V&E) and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see agreement with Kroll). The original agreement was for a not-to-exceed amount of \$250,000. A subsequent amendment in May of 2005 increased the not-to-exceed amount to \$1,750,000, and another amendment is before the Mayor and City Council today requesting an additional amount of \$200,000 for the final part of Fiscal Year 2005, bringing the total not-to-exceed amount to \$1,950,000.

The scope of Kroll's engagement, as memorialized in the original agreement, is two-phased, the first phase being to serve as an Independent Investigator for matters relating to the unfunded liability of the SDCERS and for errors discovered in the footnotes of the City's audited financial statements.

This phase includes working with KPMG to understand their concerns and identify a satisfactory work program to assist them in obtaining the necessary evidence and documentation required by applicable accounting, auditing and professional services. This phase also includes review and evaluation of the investigation reports issued by V&E and the City Attorney.

The second phase includes consultation with City personnel to establish internal controls that, if implemented and properly operated by the City, could provide reasonable assurance that the transactions identified in the reports in Phase One are properly reported and disclosed in the City's financial statements. This work is to be coordinated with the City Auditor and Comptroller, the internal audit department manager, and the City's outside independent auditors as to the scope and nature of internal controls that the City would need to assess, document, implement, and test.

By this action, the agreement with Kroll will be increased by \$1,000,000, for a total not-to-exceed amount of \$2,950,000, to cover expenses for the first portion of Fiscal Year 2006.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP (Willkie, Farr). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation (see agreement with Willkie, Farr). Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of \$500,000 was approved by the Mayor and City Council in May of 2005. Another amendment is before the Mayor and City Council today requesting an additional 550,000 to cover estimated additional Fiscal Year 2005 expenses, bringing the total not-to-exceed amount to \$1,050,000. This second amendment for \$800,000 is to cover expenses for the first portion of Fiscal Year 2006 and would bring the total not-to-exceed amount to \$1,850,000.

Ewell/Irvine



ITEM-207: Retention of Outside Legal Services for Matters related to Government Code Section 1090 and the Political Reform Act in Connection with the Fiscal Year 2006 Salary Ordinance and Appropriation Ordinance.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing the City Manager to execute an Agreement with Luce Forward Hamilton & Scripps, LLP, in an amount up to \$45,000, for outside legal services associated with advising the City Council, as a whole, on matters related to Government Code Section 1090 and the Political Reform Act in connection with the Fiscal Year 2006 Salary Ordinance and Appropriation Ordinance, and directing the City Attorney to prepare the applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

On May 24, 2005, the City Council approved the retention of outside legal counsel, under Section 40 of the City Charter, to advise the Mayor and City Council, as a whole, on Government Code Section 1090 with respect to the Salary Ordinance, Appropriation Ordinance as well as on votes on pension related issues.

Due to the immediate need for legal counsel, the City Manager engaged Luce Forward Hamilton & Scripps, LLP, based on their expertise with relevant case law, to serve as legal adviser to the Mayor and City Council, as a whole.

Council authorization is required to execute a retainer agreement with the firm because of the cumulative level of activity the City has with the firm in the current fiscal year (over \$250,000).

Ewell/Plank



ITEM-208: Approving and Ratifying FY 2006 – FY 2008 Memoranda of Understanding for the San Diego Municipal Employees Association (SDMEA) and AFSCME Local 127 and the FY 2006 Memoranda of Understanding for the International Association of Fire Fighters Local 145 and the Deputy City Attorney's Association (DCAA).

MOTION BY PETERS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-nay, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-209: Fifteen actions related to Authorization for Attorney's Fees for the Mayor and City Council in Connection with Ongoing Financial Investigations.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions authorizing attorney's fees for the Mayor and City Council in connection with the ongoing financial investigations, as follows:

Subitem-A: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Mayor Murphy – Representation.

Subitem-B: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Mayor Murphy – Representation.

Subitem-C: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Councilmember Peters – Representation.

Subitem-D: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Councilmember Peters – Representation.

Subitem-E: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Councilmember Zucchet – Representation.

Subitem-F: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Councilmember Zucchet – Representation.

Subitem-G: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Councilmember Atkins – Representation.

Subitem-H: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Councilmember Atkins – Representation.

Subitem-I: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Councilmember Maienschein – Representation.

Subitem-J: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Councilmember Maienschein – Representation.

Subitem-K: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Councilmember Madaffer – Representation.

Subitem-L: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Councilmember Madaffer – Representation.

Subitem-M: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Councilmember Inzunza – Representation.

Subitem-N: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2006 Councilmember Inzunza – Representation.

Subitem-O: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

FY2005 Mayor and Council Office Staff – Representation.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2004, the Securities and Exchange Commission (SEC) and the U.S. Attorney's Office (USAO), and more recently the District Attorney's Office have informed the City that they were undertaking investigations into certain financial disclosure practices by the City. These

investigations are ongoing and certain elected City Officials and their staff have been asked to participate in interviews and proceedings, including compliance with subpoenas.

In a report to the Mayor and City Council dated January 31, 2005, the City Attorney states "in our view it is appropriate for the Mayor and City Council members to have separate counsel to advise them in anticipation of a civil proceeding by the SEC". The report goes on to say "it is our recommendation that the City Manager enter into one or more contracts in the aggregate up to his authority of \$250,000 for such services".

Under the City Manager's Authority, the City has engaged legal firms on behalf of the Mayor and City Council related to the SEC and US Attorney's Investigations. Due to the complexity of the issues and the large number of documents that must be reviewed, \$250,000 is not sufficient to provide for the aggregate attorneys' fees necessary to assist the City witnesses during their participation in the proceedings. Accordingly, the Manager requests authorization, not to exceed \$643,000 for Fiscal Year 2005 expenditures, and \$350,000 for Fiscal Year 2006, which will be apportioned based on actual and estimated invoices as follows:

	<u>Aud. Cert.</u>
A. FY2005 Mayor Murphy - \$160,000, Sheppard Mullin Richter & Hampton, LLP	2501124
B. FY2006 Mayor Murphy - \$50,000, Sheppard Mullin Richter & Hampton, LLP	
C. FY2005 Councilmember Peters - \$80,000, Sheppard Mullin Richter & Hampton, LLP	2501125
D. FY2006 Councilmember Peters - \$50,000, Sheppard Mullin Richter & Hampton, LLP	
E. FY2005 Councilmember Zucchet - \$3,000, Coughlan, Semmer & Lipman, LLP	2501126
F. FY2006 Councilmember Zucchet - \$50,000, Coughlan, Semmer & Lipman, LLP	
G. FY2005 Councilmember Atkins - \$108,000, Morrison & Foerster, LLP	2501127
H. FY2006 Councilmember Atkins - \$50,000, Morrison & Foerster, LLP	
I. FY2005 Councilmember Maienschein - \$100,000, Morrison & Foerster, LLP	2501128
J. FY2006 Councilmember Maienschein - \$50,000, Morrison & Foerster, LLP	
K. FY2005 Councilmember Madaffer - \$100,000, Akin Gump Strauss Hauer & Feld, LLP	2501129
L. FY2006 Councilmember Madaffer - \$50,000, Akin Gump Strauss Hauer & Feld, LLP	
M. FY2005 Councilmember Inzunza - \$10,000, Law Offices of Michael Pincer	2501130
N. FY2006 Councilmember Inzunza - \$50,000, Law Offices of Michael Pincer	

O. FY2005 Mayor and Council Office Staff - \$82,000, McAtter & McAtter, Morrison & Foerster, LLP 2500131

Ewell/Plank

ITEM-250: **Notice** of Pending Final Map Approval – Penn Station.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Penn Station” (T.M. No. 14067/PTS No. 647287), located southwesterly of Pennsylvania Avenue and Richmond Street in the Uptown Community Plan Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-251: **Notice of Pending Final Map Approval – Arroyos Del Mar.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Arroyos Del Mar” (T.M. No. 99-1343/PTS No. 30706), located at the northerly terminus of Del Vino Court, southeasterly of I-5 and SR-56 in the Del Mar Mesa Community Plan Area in Council District 1, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.



[ITEM-S400](#): Charles G. Abdelnour City Clerk Emeritus Day.

**MAYOR MURPHY’S, DEPUTY MAYOR ZUCCHET’S, AND
COUNCILMEMBER FRYE’S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-1373) ADOPTED AS RESOLUTION R-300601

Bestowing upon Charles G. Abdelnour emeritus status;

Proclaiming Monday, June 27, 2005, to be “Charles G. Abdelnour City Clerk Emeritus Day” in the City of San Diego, in honor of his myriad accomplishments.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:18 p.m. – 2:41 p.m.)

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



ITEM-S401: Aaron Price Fellows Day.

COUNCILMEMBER PETERS’ RECOMMENDATION:

Adopt the following resolution:

(R-2005-1364) ADOPTED AS RESOLUTION R-300573

Proclaiming the day of June 27, 2005, to be “Aaron Price Fellows Day” in the City of San Diego, in recognition of the positive impact the Aaron Price Fellows Program brings to the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:14 p.m. – 2:17 p.m.)

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S402: Alpha Kappa Alpha Sorority, Inc. Day.

COUNCILMEMBER YOUNG'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-937) ADOPTED AS RESOLUTION R-300602

Commending the Epsilon Xi Omega Chapter of Alpha Kappa Alpha Sorority, Inc., for its commitment to public service throughout the City of San Diego;

Proclaiming April 4, 2005, to be "Alpha Kappa Alpha Sorority, Inc. Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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



ITEM-S403: Lease Agreement with KenCal Ownership, LLC, for the Hyatt Regency Islandia Hotel and Marina, located in the Quivira Basin Area of Mission Bay Park.

(See City Manager Report CMR-05-151. Mission Bay Park Community Area. District 2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1387) CONTINUED TO TUESDAY, SEPTEMBER 27, 2005,
WITH DIRECTION

Authorizing the City Manager to execute a fifty-year lease agreement with KenCal Ownership, LLC, a California limited liability company, for the Hyatt Regency Islandia Hotel and Marina on 9.73 acres of land

and 9.119 acres of water of City-owned property in the Quivira Basin area of Mission Bay Park at an annual rental of \$1.9 million after a one-year construction period rental of \$1 million, under the terms and conditions set forth in that lease agreement.

Staff: Will Griffith – (619) 236-6144
Elisa A. Cusato – Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:50 p.m. – 3:00 p.m.)

MOTION BY ZUCCHET TO CONTINUE TO TUESDAY, SEPTEMBER 27, 2005, WITH DIRECTION TO STAFF TO ALLOW TIME TO GO THROUGH THE COMMUNITY PROCESS. THIS ITEM WAS REFERRED TO MISSION BAY PARK COMMITTEE, SAN DIEGO PARK AND RECREATION BOARD, AND NATURAL RESOURCES AND CULTURE COMMITTEE. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S404: Third Amendment to Retention Agreement with Vinson & Elkins to Provide Representation Before the Securities and Exchange Commission and to Perform Additional Investigation with Respect to the Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing a third amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional \$1,800,000, for legal services related to representing the City before the Securities

and Exchange Commission, and to perform additional investigation related to the audit by KPMG of the City's FY 2003 Financial Statements; and directing the City Attorney to prepare applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

The City previously retained the law firm of Vinson & Elkins to prepare an internal report on the City's securities disclosure practices from 1996 through the present, and to provide representation of the City before the federal Securities and Exchange Commission (SEC) with respect to an investigation by the SEC. The total contract amount authorized by the Mayor and City Council for those purposes was in an amount not to exceed \$2.0 million. Vinson & Elkins delivered its report to the City, and has been continuing to represent the City before the SEC, primarily at this time focused on responding to document requests and other requests for information.

The City's FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG, LLP to perform the audit of the City's FY 2003 basic financial statements. Pursuant to accounting standards and practices, the City needs to conduct additional investigation beyond the scope of the Vinson & Elkins Report on Investigation to address issues relating to the financial statements. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned. The additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the Vinson & Elkins Report.

V&E was retained to perform the additional investigation by the City Manager. The initial contract amount was not to exceed \$250,000, which was amended by the City Council in November 2004, for an additional \$350,000, and again in February 2005, for an additional \$1,200,000. The City continues to work cooperatively with KPMG on progress of the additional investigation. In addition, the City Attorney is also conducting an investigation of these allegations of wrongdoing. In order to complete the additional investigation, additional funding for V&E's services is required. An additional \$1,800,000 is needed to continue with the additional investigation. Additional sums may be necessary in the future depending on any additional scope and requirements as a result of the ongoing investigation.

Ewell

Aud. Cert. 25001112.



ITEM-S405: Three actions related to Condemnation of Property for the Carmel Valley Trunk Sewer Project.

(See City Manager Report CMR-05-113. Pacific Highlands Ranch Community Area. District 1.)

(Continued from the meeting of 6/21/2005, Item 332, at the request of Councilmember Peters, due to lack of time.)

NOTE: Hearing open. No testimony taken on June 21, 2005.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2005-1105 Cor. Copy) ADOPTED AS RESOLUTION R-300603

Determining that the public interest and necessity require the acquisition of certain land and directing the filing of eminent domain proceedings for the Carmel Valley Trunk Sewer Project (APNS 305-060-20, 305-040-20, 305-040-21, and 305-021-16).

Subitem-B: (R-2005-1106) ADOPTED AS RESOLUTION R-300604

Authorizing the City Auditor and Comptroller to expend an amount not to exceed \$370,750 from Developer's Trust Account No. 63020 for acquisition of property rights, condemnation, labor, title, escrow, and miscellaneous costs, upon the adoption.

Subitem-C: (R-2005-1352) NOTED AND FILED

Stating for the record that determining that the public interest and necessity require the acquisition of certain land and directing the filing of eminent domain proceedings for the Carmel Valley Trunk Sewer Project is a subsequent discretionary approval of the Project addressed in the Mitigated Negative Declaration No. 4411 and therefore not a separate project under CEQA Guideline Sections 15060(c)(3) and 15378(c);

Stating for the record that the information contained in the final the Mitigated Negative Declaration, including any comments received during the public review process, has been previously reviewed and considered by this Council and it is determined that this subsequent discretionary approval of determining that the public interest and necessity require the acquisition of certain land and directing the filing of eminent domain proceedings for the Carmel Valley Trunk Sewer Project does not involve change in circumstances, project changes, or new information of substantial importance which would warrant any additional environmental review.

Staff: Lane MacKenzie – (619) 236-6050
Leslie A. FitzGerald – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:12 p.m. – 4:55 p.m.)

Testimony in opposition by Michael Pallamary, Mark Farrington, and John Millar.

Testimony in favor by John Ponder.

MOTION BY PETERS TO ADOPT THE RESOLUTIONS IN SUBITEMS A AND B; AND NOTE AND FILE THE RESOLUTION IN SUBITEM C. Second by Atkins.
Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



ITEM-S406: In the Matter of: Appointing a City Council Budget Working Group to consider revenue enhancements.

HEARING HELD

Additional Information:

Councilmembers Young and Atkins have volunteered to serve on this working group. The City Council may appoint these two members and/or additional member(s) to this working group.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:04 p.m. – 4:11 p.m.)

MOTION BY MADAFFER TO APPOINT COUNCIL MEMBERS ATKINS, YOUNG, AND FRYE TO THE CITY COUNCIL BUDGET WORKING GROUP. Second by Young. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-nay, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S407: **Notice** of Settlement of Personal Injury Claim of Josie Clark.

(R-2005-1365)

Adopted as Resolution R-300553 on June 20, 2005.

A Resolution approved by the City Council in Closed Session on Monday, June 20, 2005, by the following vote: Peters-yea; Zucchet-not present; Atkins-yea; Young-yea; Maienschein-yea; Frye-yea; Madaffer-yea; Inzunza-not present; Mayor-not present.

Authorizing the City Manager to pay the sum of \$70,000 in the settlement of each and every claim against the City of San Diego, its agents and employees, in Superior Court Case No. GIC 834061, Clark v. City of San Diego, et al., resulting from a personal injury claim of Josie Clark;

Authorizing the City Auditor and Comptroller to issue one check in the amount of \$70,000, made payable to Josie Clark and her attorney of record Cathryn Chin, in full settlement of all claims.

NOTE: This item is placed on a Council docket, so that the official and public record will reflect the adoption of this Resolution. It does not require any further Council action.



[ITEM-S408](#): Mayor Dick Murphy's Staff Day.

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1381) ADOPTED AS RESOLUTION R-300605

Recognizing Mayor Murphy's wonderful staff for serving the City of San Diego with tireless dedication;

Proclaiming June 27, 2005, to be "Mayor Dick Murphy's Staff Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:10 p.m. – 2:14 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



[ITEM-S409](#): Wave House Belmont Park, LLC Consent to Additional Encumbrance of the Leasehold.

(See City Manager Report CMR-05-152. Mission Beach Community Area. District 2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1359) ADOPTED AS RESOLUTION R-300606

Authorizing the City Manager to approve the further encumbrance of the leasehold with Wave House Belmont Park, LLC, in an amount not to exceed \$1.4 million in addition to the previously approved \$9 million loan, on the terms as

substantially set forth in the City Manager's Report No. 05-152 and the attachments to that Report.

Staff: Will Griffith – (619) 236-6145
Elisa A. Cusato – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:03 p.m.)

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

* ITEM-S410: Cooperative Agreement with the State of California for the Construction of Phase I of Clairemont Mesa Boulevard/State Route 163 Improvement Project.

(Kearny Mesa Community Area. District 6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1383) ADOPTED AS RESOLUTION R-300607

Authorizing the City Manager to execute, for and on behalf of the City of San Diego, a Reimbursement Agreement with LNR Kearny Mesa, Inc. (LNR) (Agreement), in furtherance of LNR's obligations under the Development Agreement, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement;

Authorizing the City Manager to enter into the cooperative agreement with the State of California for construction Phase I of the Interchange, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

CITY MANAGER SUPPORTING INFORMATION:

On December 2, 1997, the City entered into a Development Agreement with General Dynamics, Inc. with an amendment to the Agreement approved on October 16, 2000, both on file in the City Clerk's Office. Subsequently, LNR, as the successor to General Dynamics, has assumed all the responsibility of the terms of the Development Agreement. Various provisions of the Development Agreement, obligates LNR to fund, design and/or construct all or a portion of various infrastructure improvements. One of the infrastructure improvements includes the Clairemont Mesa Boulevard/SR-163 Improvement project, which is to be constructed in two phases. Phase I consist of bridge widening and ramp realignment on the eastern side of the Interchange. Phase II consists of ramp realignment on the western side. In accordance with the development agreement, LNR's obligations are limited to Phase I only. On August 10, 2004, the City of San Diego entered into an agreement with LNR to facilitate the design and provide funding (Letter of Credit) for construction of Phase I improvements.

The State of California and the City of San Diego are authorized under the Streets and Highways Code Section 130 to enter into an agreement under which the State of California will advertise, award, and administer the construction contract. This action will execute the Cooperative Agreement, which outlines the City of San Diego and the State of California responsibilities for the construction of Phase I improvements.

FISCAL IMPACT:

The amount of \$5,240,700 of Federal RSTP grant funding is available for the construction of the project. The agreement would allow the State of California to obligate and expend the funds for purpose of construction. The remaining \$4,759,300 would be provided by LNR, per the agreement previously authorized by Resolution R-299586 on August 10, 2004 (Letter of Credit #3071584) and the Reimbursement Agreement. These funds are sufficient to cover the estimated costs of \$10,000,000 to enter into the Cooperative Agreement with the State of California.

Mendes/Boekamp/DZ

Staff: Dave Zoumaras – (619) 533-3138
Susan Y. Cola – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

* ITEM-S411: Via Capri Emergency Storm Drain Repair.

(La Jolla Community Area. District 1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1382) ADOPTED AS RESOLUTION R-300608

Determining and declaring that pursuant to San Diego City Charter Section 94, that the damaged corrugated metal storm drain pipe (CMP) at 7806 Via Capri in La Jolla is an emergency and that its repair is in the public interest or a necessity;

Authorizing the City Manager to award a sole source contract to Orion Construction Corporation for the repair of the CMP at 7806 Via Capri, in an amount not to exceed \$190,000, contingent upon the City Auditor and Comptroller certifying that said funds are available;

Authorizing the City Manager to increase by \$120,000 the Fiscal Year 2005 Capital Improvements Program Budget in CIP-13-005.0, Emergency Drainage Projects, Via Capri Storm Drain Repair, Fund 30300, TransNet;

Authorizing the City Auditor and Comptroller to transfer \$40,704 from CIP-58-007.0, Other City Costs for Street Projects to CIP-13-005.0, Emergency Drainage Projects, Via Capri Storm Drain Repair, within Fund 30300, TransNet;

Authorizing the City Auditor and Comptroller to appropriate and expend \$120,000 from CIP-13-005.0, Emergency Drainage Projects, Via Capri Storm Drain Repair, Fund 30300, TransNet, for the purpose of emergency storm drain repair at Via Capri, contingent upon the City Auditor and Comptroller certifying that said funds are available;

Authorizing the City Manager to increase by \$350,000 the Fiscal Year 2006 Capital Improvements Program Budget in CIP-13-005.0, Emergency Drainage Projects, Via Capri Storm Drain Repair, Street Division Capital Improvement Fund 104402, contingent upon the adoption of the Fiscal Year 2006 Annual Capital Improvements Program Budget and Annual Appropriation Ordinance;

Authorizing the City Auditor and Comptroller to transfer \$350,000 from General Services, Streets Division, Department 940, Street Division Operating Fund 10440 to CIP-13-005.0, Emergency Drainage Projects, Via Capri Storm Drain Repair, Street Division Capital Improvement Fund 104402;

Authorizing the City Auditor and Comptroller to appropriate and expend \$350,000 from CIP-13-005.0, Emergency Drainage Projects, Via Capri Storm Drain Repair, Street Division Capital Improvement Fund 104402, for the purpose of storm drain repair at Via Capri, contingent upon the City Auditor and Comptroller certifying that said funds are available;

Authorizing the City Auditor and Comptroller, upon advice from the administering departments, to transfer excess funds to the appropriate reserves.

CITY MANAGER SUPPORTING INFORMATION:

A 36" corrugated metal storm drain pipe (CMP) is located within a 10 feet wide drainage easement between the homes at 7806 and 7790 Via Capri in the La Jolla community of San Diego. The 36" storm drain is approximately 200 feet long and was constructed in 1969. The pipe varies in depth with respect to the adjacent ground elevation. It is 4 feet deep at the upstream end, has a grade of 5.7% for the first 100 feet, and continues an additional 100 feet at a much steeper grade of 53% towards the downstream end.

The 36" CMP storm drain failed in early March 2005, as a result of the heavy storms that the City experienced this year. The CMP that failed is a continuation of a 36" CMP that collects surface flow from the Soledad Preserve and surrounding streets up hill from the point of failure. That pipe travels in an easement down the steep slope on the north side of the Preserve, across

Via Capri, and along the south side of 7806 Via Capri. The pipe then takes a 90° turn and proceeds approximately 200 feet as described above in a northerly direction along the property line where it connects to an existing storm drain manhole at the rear of the property. It was just above this point that the CMP failed.

The Engineering and Capital Projects Department initiated an emergency contract and hired Orion Construction Corporation. The contractor was able to immediately secure the site from any further damage by installing a temporary drainage pipe. The City's long term solution calls for the full removal of the failed CMP pipe and for its replacement with a Solid Wall High Density Polyethylene Pipe (HDPE). In addition, the site will be restored in kind, including backfilling and revegetation the washed out area. Examination of the CMP pipe upstream of the failed portion also showed that it was badly deteriorated all the way upstream to the Soledad Preserve. Therefore, future construction will also involve installing a liner to rehabilitate that pipe. Approximately 400 feet of 36" CMP will be lined. The Engineering and Capital Projects Department is requesting that Council approve the funding transfers and authorize the expenditures, which will be required to fund the award of an additional contract needed to complete the remaining work relating to the corrugated metal storm drainpipes.

FISCAL IMPACT:

Via Capri Storm Drain Repair was previously appropriated \$80,000. This action will increase the Emergency Drainage allocation by \$120,000, of which \$40,704 is from TransNet, Fund 30300, CIP-58-007.0, Other City Costs for Street Projects, and \$79,296 is from TransNet, Fund 30300. \$350,000 from Street Division's Capital Improvement Fund 104402 is contingent upon the adoption of the Fiscal Year 2006 Annual Budget. Total estimated project cost is \$550,000.

Mendes/Boekamp/DZ

Aud. Cert. 2501095.

Staff: Dave Zoumaras – (619) 533-3138
Jeremy A. Jung – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

ITEM-S412: Authorization of Funding for Kroll, Inc. for Services Related to Research of Pension Board Nominees.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing the expenditure of \$108,825.45, for research of Pension Board nominees on behalf of the City of San Diego from March 1 through March 15, 2005, and directing the City Attorney to prepare the applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review, and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports.

In addition to this work, a special request was placed with Kroll to conduct research on Pension Board nominees on the City's behalf. The expenses incurred for this activity totaled \$108,825.45.

Ewell/Irvine

Aud. Cert. 25001117.



ITEM-S413: Public Hearing: Various Underground Utility Districts with Mitigation Monitoring and Reporting Program.

(Various Community Plan Areas. Districts 2, 3, 6, 7, and 8.)

(Continued from the meetings of April 18, 2005, Item S403, May 24, 2005, Item 330, and June 21, 2005, Item 337; last continued at Councilmember Atkins' request, to address docketing issues.)

NOTE: Hearing open. Testimony taken on 6/21/2005.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2005-1040) ADOPTED AS RESOLUTION R-300609

A Resolution establishing Underground Utility Districts financed through the San Diego Gas & Electric Undergrounding Surcharge Fund.

Subitem-B: (R-2005-1041 Cor. Copy) ADOPTED AS RESOLUTION R-300610

A Resolution certifying that Mitigated Negative Declaration Project No. 63220, on file in the office of the City Clerk, 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 following underground utility districts:

- District 2 Block 2-J, as described in Exhibit A, to this resolution and more particularly shown on Drawing No. 33492-1-D, and;
- District 3 Block 3-EE, as described in Exhibit B, to this resolution and more particularly shown on Drawing No. 33493-1-D and;
- District 7 Block 7-CC, as described in Exhibit C, to this resolution and more particularly shown on Drawing No. 33496-1-D, and;
- District 8 Block 8-G, as described in Exhibit D, to this resolution and more particularly shown on Drawing 33497-1-D and;
- Hotel Circle North from Circle South to Hotel Circle Place, as described in Exhibit E, to this resolution and more particularly shown on Drawing No. 33555-1-D.

That pursuant to California Public Resource Code Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment.

That the City Clerk is directed to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding this project.

CITY MANAGER SUPPORTING INFORMATION:

The proposed districts are identified in CIP-37-028.0, “Annual Allocation – Underground of City Utilities,” and will underground the overhead utility facilities within the designated districts.

The formation of these districts will require the removal and/or underground conversion of certain overhead power and communications wires with poles within the established boundary. The expense of the underground installation and removal of overhead electric facilities within the right-of-way will be financed through City of San Diego Undergrounding Surcharge Fund 30100, contingent upon receipt of funds from San Diego Gas & Electric. The expense of the underground installation and removal of overhead facilities within the right-of-way for all other utilities will be the responsibility of the utility companies in accordance with California Public Utilities Commission Rules.

It is the responsibility of the individual property owner(s), for the trenching and other related work to convert their property to receive electrical, telecommunication and cable television from an underground service. However, San Diego Gas & Electric will offer to property owner(s), within the Underground Utility District, to perform all the work necessary to convert private property, including necessary conduits for telephone and cable facilities, at no cost to the property owner(s). In order to take advantage of San Diego Gas & Electric’s offer to perform this work, property owners are required to sign a Permit to Enter Form (PTE). The City will also provide and plant a new tree for any property owner(s) who are willing to take responsibility for the watering and caring of the tree until it becomes established.

FISCAL IMPACT:

The construction cost and other indirect costs such as administration, archaeological monitoring, street light replacement, street improvement, minor City forces, and other related work, is estimated at \$16,181,792. Funds will be available in Fund 30100, Undergrounding Surcharge Fund, contingent upon receipt of funds from San Diego Gas & Electric.

Mendes/Boekamp/AO

Staff: Nathan Bruner – (619) 533-3777.

FILE LOCATION: STRT-K-309 (38)

COUNCIL ACTION: (Time duration: 4:12 p.m. – 4:12 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S414: Filipino American Educators Association of San Diego County Day.

**COUNCILMEMBER YOUNG’S AND COUNCILMEMBER FRYE’S
RECOMMENDATION:**

Adopt the following resolution:

(R-2005-1384) ADOPTED AS RESOLUTION R-300611

Honoring, commending, and thanking the Filipino American Educators Association of San Diego for their commitment to improving the quality of life for all Filipino Americans;

Proclaiming June 25, 2005, to be “Filipino American Educators Association of San Diego County Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:48 p.m.)

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

ITEM-S415: First Amendment to Agreement with Luce, Forward, Hamilton & Scripps to Provide Support to Vinson & Elkins with Respect to the Ongoing Financial Investigation and Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1386) TRAILED TO TUESDAY, JUNE 28, 2005

Authorizing the expenditure of an amount not to exceed \$150,000 for Luce Forward's legal support to Vinson & Elkins, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

CITY MANAGER SUPPORTING INFORMATION:

The City previously retained the law firm of Luce, Forward, Hamilton & Scripps, LLP (Luce Forward) to provide support to Vinson & Elkins in the preparation of an internal report on the City's securities disclosure practices from 1996 through the present.

Pursuant to accounting standards and practices, the City needed to conduct additional investigation beyond the scope of the Vinson & Elkins Report on Investigation to address issues relating to the financial statements. The additional investigation was necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned.

V&E was retained to perform the additional investigation by the City Manager. Luce Forward prepared a report, and continues to provide needed support to V&E.

Irvine

Aud. Cert. 2500904.

Staff: Lisa Irvine – (619) 236-6070
Maria Severson – Deputy City Attorney

ITEM-S416: Report Regarding Status of Outside Counsel Representation of Individual City Employees and Officials Regarding the Financial Disclosures and Pension Investigation.

(See City Attorney Report dated 6/27/2005.)

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-1363) TRAILED TO TUESDAY, JUNE 28, 2005

Accepting the City's Report regarding outside counsel representation of individual City employees and officials regarding the financial disclosures and pension investigation.

ITEM-S417: Requesting the Consolidation of a Municipal Special Run-Off Election to be Held in The City of San Diego on November 8, 2005, with California State Special Election to be Held on the Same Date.

TODAY'S ACTIONS ARE:

Introduce and adopt the ordinance in Subitem-A; and adopt the resolution in Subitem B, as follows:

Subitem-A: (O-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

Introduction and adoption of the Ordinance calling a Municipal Special Run-Off Election in the City of San Diego on Tuesday, November 8, 2005; and consolidating the Municipal Special Run-Off Election with the California State Special Election to be held on the same date.

Subitem-B: (R-2005-) TRAILED TO TUESDAY, JUNE 28, 2005

In the matter of directing the City Attorney to prepare a Resolution requesting the Consolidation of a Municipal Special Run-Off Election to be held in The City of San Diego on November 8, 2005, with California State Special Election to be held on the same date.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 9:24 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 9:24 p.m.)