

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, JUNE 28, 2005  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

**Table of Contents**

CHRONOLOGY OF THE MEETING.....	4
ATTENDANCE DURING THE MEETING .....	4
ITEM-300: ROLL CALL.....	5
NON-AGENDA COMMENT .....	5
COUNCIL COMMENT .....	11
CITY MANAGER COMMENT.....	11
CITY ATTORNEY COMMENT .....	12
ITEM-105: Agreement with ADS Corporation for Sewer Flow Monitoring and Event Notification .....	12
ITEM-201: Fiscal Year 2006 Tax Appropriation Limit (Gann Limit) .....	14
ITEM-203: Fifth Amendment to KPMG, LLP, Agreement to Audit the City’s FY 2003 Financial Statements .....	15
ITEM-204: Sixth Amendment of KPMG, LLP Agreement to Audit the City’s FY 2003 Financial Statements .....	16
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	18
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 .....	20

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.....	22
ITEM-209:	Fifteen actions related to Authorization for Attorney’s Fees for the Mayor and City Council in Connection with Ongoing Financial Investigations .....	23
ITEM-330:	Petco Headquarters .....	28
ITEM-331:	Francis Parker School .....	31
ITEM-332:	Two actions related to Carmel Valley Public Facilities Financing Plan and Facilities Benefit Assessment, FY 2006 .....	35
ITEM-333:	City Heights Square .....	36
ITEM-334:	Edison, Ibarra, and Cherokee Point Elementary Schools – ROW Vacations .....	40
ITEM-335:	Two actions related to Auburn Park Affordable Housing Project Disposition and Development Agreement .....	42
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 .....	43
ITEM-S412:	Authorization of Funding for Kroll, Inc. for Services Related to Research of Pension Board Nominees .....	44
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 .....	45
ITEM-S416:	Report Regarding Status of Outside Counsel Representation of Individual City Employees and Officials Regarding the Financial Disclosures and Pension Investigation.....	47
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 .....	47

ITEM-S500: In the Matter of Attorney’s Fees for City of San Diego Employees Relating to the  
Financial Disclosures and Pension Investigation..... 48

NON-DOCKET ITEMS ..... 49

ADJOURNMENT..... 49

**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Mayor Murphy at 10:08 a.m. Mayor Murphy recessed the meeting at 11:18 a.m. for the purpose of a break. The meeting was reconvened by Mayor Murphy at 11:30 p.m. with Deputy Mayor Zucchet and Council Member Inzunza not present. Mayor Murphy recessed the meeting at 11:49 a.m. to convene the Redevelopment Agency. The regular meeting was reconvened by Mayor Murphy at 11:54 a.m. with Deputy Mayor Zucchet and Council Member Inzunza not present. The meeting was recessed by Mayor Murphy at 11:56 a.m. to convene the Housing Authority. Mayor Murphy reconvened the meeting at 12:00 p.m. with Deputy Mayor Zucchet and Council Member Inzunza not present and then recessed the meeting at 12:02 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:10 p.m. with Deputy Mayor Zucchet not present. Mayor Murphy recessed the meeting at 2:11 p.m. to convene the Budget Review Committee. Mayor Murphy reconvened the regular meeting at 2:42 p.m. with Deputy Mayor Zucchet and Council Member Madaffer not present. Mayor Murphy recessed the meeting at 3:36 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 3:44 p.m. with all Council Members present. Mayor Murphy adjourned the meeting at 5:43 p.m. into Closed Session in the twelfth floor Committee Room to discuss existing and pending litigation matters.

**ATTENDANCE DURING THE MEETING:**

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present

(7) Council Member Madaffer-present

(8) Council Member Inzunza-present

Clerk-Maland (mc/ek)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Maland 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-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-not present
- (8) Council Member Inzunza-not present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Comment by George Metrovich expressing his profound appreciation for Mayor Murphy and the work he has accomplished.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:08 a.m. – 10:11 a.m.)

**PUBLIC COMMENT-2:**

Comment by Don Stillwell regarding the Grantville Trolley Station and his concern that it has caused an increase in time to the bus schedules.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:12 a.m. – 10:15 a.m.)

**PUBLIC COMMENT-3:**

Comment by Bill Neill regarding his suggestions for improving the City's finances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:17 a.m.)

**PUBLIC COMMENT-4:**

Comment by Hud Collins regarding the Mayoral debate held last week.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:17 a.m. – 10:20 a.m.)

**PUBLIC COMMENT-5:**

Comment by Linda Smith wishing Mayor Murphy happiness in his new life and also commented on the 15<sup>th</sup> ADA Anniversary.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:24 a.m.)

**PUBLIC COMMENT-6:**

Comment by Susan Gloudeman thanking City employees for the great work that they do and her displeasure with the Police Department.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:24 a.m. – 10:24 a.m.)

**PUBLIC COMMENT-7:**

Comment by Milly Ann Stroctman thanking the Mayor for the work he has done with the City and presented him with a painting.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. – 10:32 a.m.)

**PUBLIC COMMENT-8:**

Comment by Wes Johnson regarding the need for accessible beaches and that he is still waiting on a response from the City Manager.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:32 a.m. – 10:33 a.m.)

**PUBLIC COMMENT-9:**

Comment by Steve McWilliams regarding the Attorney General's Report.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:33 a.m. – 10:37 a.m.)

**PUBLIC COMMENT-10:**

Comment by Ron Boshun regarding his concerns with how Proposition C was presented to the public.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:37 a.m. – 10:40 a.m.)

**PUBLIC COMMENT-11:**

Comment by Kevin McClure regarding marijuana dispensaries and his concern that it will increase criminal activity.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:40 a.m. – 10:44 a.m.)

**PUBLIC COMMENT-12:**

Comment by Sandy Summers stating that he will miss his sparring with the Mayor.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:44 a.m. – 10:44 a.m.)

**PUBLIC COMMENT-13:**

Comment by Jose Lopez regarding the City Council Budget Working Group.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:44 a.m. – 10:45 a.m.)

**PUBLIC COMMENT-14:**

Comment by Jarvis Ross regarding City Clerk Chuck Abdelnour's Retirement and the upcoming departure of Rules Committee Consultant, Bill Baber.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:45 a.m. – 10:48 a.m.)

**PUBLIC COMMENT-15:**

Comment by Mel Shapiro regarding the pension problem and budget cuts.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:48 a.m. – 10:51 a.m.)

**PUBLIC COMMENT-16:**

Comment by Rabbi Laurie Coskey regarding suburban janitors that are striking because they are working without family health care coverage.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:51 a.m. – 10:54 a.m.)

**PUBLIC COMMENT-17:**

Comment by Daniel Beeman regarding public duty and conflict of interest.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:54 a.m. – 10:58 a.m.)

**PUBLIC COMMENT-18:**

Comment by Joyceline Tarr regarding bidding the Mayor farewell and encouraging Council to do their jobs.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:58 a.m. – 11:00 a.m.)

**PUBLIC COMMENT-19:**

Comment by Richard Agee regarding five downtown redevelopment projects that received \$50 million in diverted property taxes.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:00 a.m. – 11:03 a.m.)

**PUBLIC COMMENT-20:**

Comment by Mike Turk, Chair of Sustainable Energy Board, and Gary Halpert presenting City employee, Isam Hasenin, Building Official, with a special commendation for his commitment to the City of San Diego's goal to acquire 50 megawatts of sustainable energy within the next ten years. Mayor Murphy congratulated him on a job well-done.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:03 a.m. – 11:06 a.m.)

**PUBLIC COMMENT-21:**

Comment by Muhammed Abdullah regarding the September 11 terrorist attack on America and requested that Council adopt a resolution against the war.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:06 a.m. – 11:09 a.m.)

**PUBLIC COMMENT-22:**

Comment by Bert Decker regarding his 9,000 mile tour of the United States and the number of crosses that he saw along the highways representing fatalities.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:09 a.m. – 11:13 a.m.)

**PUBLIC COMMENT-23:**

Comment by Lillian Zhery regarding the torture of Falun Gong practitioners in Yanti, China.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:13 a.m. – 11:16 a.m.)

**PUBLIC COMMENT-24:**

Comment by Erik Judson, who works for the Padres baseball team, thanking the Mayor for his efforts of completing Goal Number 6 to build the Ballpark Downtown.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:16 a.m. – 11:18 a.m.)

**COUNCIL COMMENT:**

NONE.

**CITY MANAGER COMMENT:**

NONE.

CITY ATTORNEY COMMENT:

NONE.



\* [ITEM-105](#): Agreement with ADS Corporation for Sewer Flow Monitoring and Event Notification.

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-1324) ADOPTED AS RESOLUTION R-300612

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 (MWWD) 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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:54 a.m. – 11:56 a.m.)

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



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-2005-1290) ADOPTED AS RESOLUTION R-300626

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:42 p.m. – 2:42 p.m.)

MOTION BY PETERS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, 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- ) ADOPTED AS RESOLUTION R-300627

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.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:42 p.m. – 3:36 p.m.)

MOTION BY PETERS TO ADOPT. Second by Mayor Murphy. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-nay, Maienschein-yea, Frye-nay (authorize only \$106,122 through May 31, 2005), Madaffer-yea, Inzunza-nay, Mayor Murphy-yea.

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-2006-303) ADOPTED AS AMENDED AS RESOLUTION R-300628,  
WITH DIRECTION

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.

Ewell/Irvine

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:42 p.m. – 3:36 p.m.)

MOTION BY PETERS TO ADOPT AS AMENDED TO AUTHORIZE THE ADDITIONAL AMOUNT OF \$100,000, NOT \$200,000, FOR FISCAL YEAR 2006. ACCEPT MAYOR MURPHY'S RECOMMENDATION TO DIRECT THE CITY MANAGER AND DEPUTY MAYOR ZUCCHET TO SCHEDULE A PUBLIC HEARING BETWEEN JULY 18, 2005 AND AUGUST 9, 2005, WITH THE AUDIT COMMITTEE, KPMG, AND VINSON & ELKINS, IN ORDER TO REVIEW THE STATUS OF THE AUDIT, WHAT WORK REMAINS TO BE COMPLETED, AND ANY BILLING ISSUES THAT NEED TO BE RESOLVED.

Second by Mayor Murphy. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-nay, Maienschein-nay, Frye-nay, Madaffer-yea, Inzunza-nay, Mayor Murphy-yea.

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-2006-365) ADOPTED AS RESOLUTION R-300629

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.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:45 p.m. – 4:44 p.m.)

MOTION BY PETERS 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-not present, Mayor Murphy-yea.

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-2006-371) ADOPTED AS AMENDED AS RESOLUTION R-300630

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:45 p.m. – 4:44 p.m.)

MOTION BY PETERS TO ADOPT AS AMENDED THAT THE AMOUNT APPROVED BE FOR A TOTAL OF \$800,000 FOR BOTH FIRMS RATHER THAN DESIGNATE A SEPARATE AMOUNT FOR KROLL, INC. AND A SEPARATE AMOUNT FOR WILLKIE, FARR & GALLAGHER. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



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- ) ADOPTED AS RESOLUTION R-300631

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:45 p.m. – 4:45 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Maienschein. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, 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-2005-1411) ADOPTED AS RESOLUTION R-300632

FY2005 Mayor Murphy – Representation.

Subitem-B: (R-2005-1412) ADOPTED AS RESOLUTION R-300633

FY2006 Mayor Murphy – Representation.

Subitem-C: (R-2005-1413) ADOPTED AS RESOLUTION R-300634

FY2005 Councilmember Peters – Representation.

Subitem-D: (R-2005-1414) ADOPTED AS RESOLUTION R-300635

FY2006 Councilmember Peters – Representation.

Subitem-E: (R-2005-1415) ADOPTED AS RESOLUTION R-300636

FY2005 Councilmember Zucchet – Representation.

Subitem-F: (R-2005-1416) ADOPTED AS RESOLUTION R-300637

FY2006 Councilmember Zucchet – Representation.

Subitem-G: (R-2005-1417) ADOPTED AS RESOLUTION R-300638

FY2005 Councilmember Atkins – Representation.

Subitem-H: (R-2005-1418) ADOPTED AS RESOLUTION R-300639

FY2006 Councilmember Atkins – Representation.

Subitem-I: (R-2005-1419) ADOPTED AS RESOLUTION R-300640

FY2005 Councilmember Maienschein – Representation.

Subitem-J: (R-2005-1420) ADOPTED AS RESOLUTION R-300641

FY2006 Councilmember Maienschein – Representation.

Subitem-K: (R-2005-1421) ADOPTED AS RESOLUTION R-300642

FY2005 Councilmember Madaffer – Representation.

Subitem-L: (R-2005-1422) ADOPTED AS RESOLUTION R-300643

FY2006 Councilmember Madaffer – Representation.

Subitem-M: (R-2005- ) RETURNED TO THE CITY MANAGER

FY2005 Councilmember Inzunza – Representation.

Subitem-N: (R-2005- ) RETURNED TO THE CITY MANAGER

FY2006 Councilmember Inzunza – Representation.

Subitem-O: (R-2005-1425) ADOPTED AS RESOLUTION R-300644

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:

	<b><u>Aud. Cert.</u></b>
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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:46 p.m. – 5:13 p.m.)

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

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

MOTION BY ZUCCHET TO ADOPT THE RESOLUTION IN SUBITEM C. Second by Young. Passed by the following vote: Peters-ineligible, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

MOTION BY ZUCCHET TO ADOPT THE RESOLUTION IN SUBITEM D. Second by Young. Passed by the following vote: Peters-ineligible, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

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

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

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

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

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

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

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

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

MOTION BY COMMON CONSENT TO RETURN SUBITEM M TO THE CITY MANAGER DUE TO THE ABSENCE OF COUNCIL MEMBER INZUNZA. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

MOTION BY COMMON CONSENT TO RETURN SUBITEM N TO THE CITY MANAGER DUE TO THE ABSENCE OF COUNCIL MEMBER INZUNZA. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

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

THE RESOLUTIONS WERE ADOPTED WITH THE EXCEPTION OF COUNCIL MEMBER INZUNZA'S PAYMENT OF ATTORNEY'S FEES (SUBITEMS M AND N) DUE TO HIS ABSENCE. COUNCIL MEMBER PETERS NOTED FOR THE RECORD THAT THIS ACTION TAKEN BY COUNCIL RESULTED FROM THEIR RELIANCE ON THE CITY ATTORNEY REPORT TO THE MAYOR AND COUNCIL DATED JUNE 27, 2005 (FILED WITH ITEM S416 OF JUNE 28, 2005), WHICH INCLUDES: 1) GIVING ADVICE AS TO PROCEDURES AND 1090 ISSUES; AND 2) DISCLOSES FOR PURPOSES OF FUTURE VOTES THE AMOUNT OF OUTSIDE COUNSEL SPENT TO DATE, THAT BEING EMBODIED IN THE DISCLOSURES THAT THE COUNCIL MADE, THE COUNCIL AND STAFF TO DATE HAVE INCURRED \$353,000 IN BILLING; AND 3) THE 22 CURRENT AND FORMER EMPLOYEES AND ONE ELECTED OFFICIAL HAVE INCURRED \$794,000 IN BILLING. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



ITEM-330: Petco Headquarters.

Matter of approving, conditionally approving, modifying or denying an application for an Easement Vacation and Site Development Permit to abandon an existing easement and to construct a 394,670 square-foot four level parking garage and 189,700 square-foot office building for Petco Headquarters on an approximate 12.197 acre site located at 8925 Recho Road north of Carroll Road and east of Carroll Park Drive in the IL-2-1 Zone and the Airport Environs Overlay Zone within the Mira Mesa Community Plan Area.

(Mira Mesa Community Plan Area. District 5.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2005-1297) ADOPTED AS RESOLUTION R-300613

Adoption of a Resolution granting or denying that the water utility easement located within Petco Headquarters property, in the Mira Mesa Community Area, in connection with the site development permit, as more particularly described in the legal description marked as Exhibit "A," and shown on Drawing No. 20358-B, marked as Exhibit "B," and on file in the office of the City Clerk, which are by this reference incorporated herein and made a part hereof, is ordered vacated;

That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

Subitem-B: (R-2005-1296) ADOPTED AS RESOLUTION R-300614

Adoption of a Resolution certifying that Mitigated Negative Declaration No. 47630, 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 an easement abandonment and site development permit for the Petco Headquarters Project.

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources 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, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

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 the above project.

Subitem-C: (R-2006-20) ADOPTED AS RESOLUTION R-300615

Resolution granting or denying a Site Development Permit for development within Environmentally Sensitive Lands, with appropriate findings to support Council action.

**OTHER RECOMMENDATIONS:**

Planning Commission on May 26, 2005, voted 7-0 to approve; no opposition.

Ayes: Chase, Garcia, Ontai, Griswold, Otsuji, Schultz, and Steele.

The Mira Mesa Community Planning Group has recommended approval of this project.

**CITY MANAGER SUPPORTING INFORMATION:**

Petco Animal Supplies Incorporated, proposes to abandon an existing waterline easement and to construct a 394,670 square-foot four level parking garage and 189,700 square-foot six story office building for Petco Headquarters on a 12.197 acre site located at 8925 and 8945 Rehco Road in the IL-2-1 zone and the Airport Environs Overlay Zone (AEOZ) within the Mira Mesa Community Plan. The site is currently developed with two 2-story office buildings combining for a total of 91,692 square-feet. The proposed four level parking garage would provide parking along with surface lots for a total of 1,263 spaces. The office building would be six stories and would have a limestone veneer, reflective glass, beige stone, and tinted glass exterior. The project as proposed requires an Easement Vacation and a Site Development Permit for development within Environmentally Sensitive Lands.

Planning Commission Recommendation: The Planning Commission considered this project on May 26, 2005, and voted 7-0 to recommend that the City Council adopt City Staff recommendations to approve the project as presented in the Planning Commission Report No. PC-05-153.

Community Planning Group Recommendation: On March 21, 2005, the Mira Mesa Community Planning Group voted unanimously to recommend approval of the project without conditions.

Water Quality Impact Statement: During construction, this project will comply with Best Management Practices (BMPs) through the preparation of a Storm Water Pollution Prevention Plan (SWPPP) in conjunction with the grading plans. The SWPPP will identify all BMPs to be implemented during the construction phase to reduce/eliminate discharges of pollutants into the adjacent natural areas. The post-construction BMPs detailed in the Water Quality Technical Report have been evaluated and accepted by the City Engineer. The property owners will be responsible for the long-term maintenance of all private drainage facilities.

**FISCAL IMPACT:**

All cost associated with the project are recovered from a deposit account provided by the applicant.

Ewell/Halbert/MV

**LEGAL DESCRIPTION:**

The site is located at 8945 Recho Road in the IL-2-1 zone, Airport Environs Overlay Zone within the Mira Mesa Community Plan, Council District 5 (APN 343-240-3400, Parcel 1 of PM No 15845 and Parcel 2 of PM No. 13275, in the City of San Diego, County of San Diego, State of California).

Staff: Michael VanBuskirk - (619) 446-5371

**FILE LOCATION:** Subitems A-C: LUP – Petco Headquarters, 6/28/05 (65)

**COUNCIL ACTION:** (Time duration: 11:30 a.m. – 11:32 a.m.)

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



**ITEM-331:** Francis Parker School.

Matter of approving, conditionally approving, modifying or denying an application for a Conditional Use Permit amending conditional Use Permit No. 94-0207, a Planned Development Permit, a Site Development Permit (Environmentally Sensitive Lands), and a Sewer Easement Abandonment to

accommodate an increase the number of students from 700 to 800, and phased modifications on the campus to include-demolition of approximately 35,000 sq. ft.; renovation of approximately 13,000 sq. ft.; and the addition of approximately 92,000 sq. ft. of new school facilities to include an increase in the maximum building height from 30-feet to 35-feet, on a 23-acre site addressed as 6501 Linda Vista Road, located easterly of Via Las Cumbers and westerly of North Rim Court, within the RM-1-1 (Residential-Multi Family) Zone. The property is legally described as Parcels 1 and 2 of Parcel Map No. 5465.

(Linda Vista Community Plan Area. District 6.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2005-1226) ADOPTED AS RESOLUTION R-300616

Adoption of a Resolution certifying that Mitigated Negative Declaration LDR No. 31079, 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;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources 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, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

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

Subitem-B: (R-2005-1225) ADOPTED AS RESOLUTION R-300617

Adoption of a Resolution vacating that portion of Easement Abandonment No. 215168 located within the Linda Vista Community Plan area in connection with Conditional Use Permit No. 84874, Planned Development Permit No. 84875, and Site Development Permit No. 215276, as more particularly described in the legal description marked as Exhibit "A," and shown on Drawing No. 20359-B, marked as Exhibit "B," and on file in the Office of the City Clerk;

That the City of San Diego hereby reserves and excepts the right, from vacation and abandonment, easements, and rights of any public utility pursuant to any existing franchise or renewals thereof, at any time, or from time to time, to construct, maintain, operate, replace, remove, renew, and enlarge overhead or underground lines of pipe, conduits, cables, wires, poles, and other structures, equipment, and fixtures for the transportation and distribution of electrical or electronic energy and natural gas, and for incidental purposes including access to protect the property from all hazards in, upon, over and across the above described portions of streets to be vacated and abandoned;

That said easement abandonment is conditioned upon approval and issuance of Conditional Use Permit No. 84874, Planned Development Permit No. 84875, and Site Development Permit No. 125276. In the event this condition is not completed within two years following the adoption of this resolution, then this resolution shall become void and be of no further force or effect;

That the City Engineer shall advise the City Clerk of the completion of the aforementioned condition and the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder;

That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested under seal, to be recorded in the office of the County Recorder.

Subitem-C: (R-2006-28 Cor. Copy) ADOPTED AS AMENDED AS RESOLUTION R-300618

Adoption of a Resolution approving Application for a CUP amending CUP 94-0207; Planned Development Permit and Site Development Permit (Environmentally Sensitive Lands).

**OTHER RECOMMENDATIONS:**

Planning Commission on May 12, 2005, voted 6-0 to approve; no opposition.

Ayes: Garcia, Griswald, Otsuji, Chase, Ontai, Schultz  
Not present: Steele

On January 24, 2005, the Linda Vista Community Planning Group voted 12-0-0 to recommend approval of the project subject to compliance with all City regulations.

**CITY MANAGER SUPPORTING INFORMATION:**

This is a request for: a Conditional Use Permit No. 84874, Amending and Superseding Conditional Use Permit No. 94-0207; Planned Development Permit No. 84875; Site Development Permit No. 215276; and Sewer Easement Abandonment No. 125168, to allow an increase in the number of students from 700 to 800; demolition and renovation of existing buildings and construction of an additional approximately 92,000 sq. ft. of new school facilities for a total of approximately 160,000 sq. ft.; height deviations to accommodate buildings and field lighting poles; setback deviations to accommodate surface parking spaces; development on a premises containing Environmentally Sensitive Lands (ESL) including steep slopes and sensitive biological resources; and the abandonment of an existing 10-foot wide sewer easement, on a 23-acre site addressed as 6501 Linda Vista Road, located east of Via Las Cumbres and west of North Rim Court. The site is zoned RM-1-1 (Residential, Mutli-Family) and designated for 'School' use within the Linda Vista Community Plan Area.

**FISCAL IMPACT:**

All staff costs associated with processing of this project is recovered from a separate deposit provided and maintained by the Applicant.

Oppenheim/Halbert/WCT

**LEGAL DESCRIPTION:**

The site is located at 6501 Linda Vista Road, within the RM-1-1, Linda Vista Community Plan Area, and Council District 6, and is more particularly described as Parcel 1 of Parcel Map 5465.

Staff: Bill Tripp - (619) 446-5273

FILE LOCATION: Subitems A-C: LUP – Francis Parker School, 6/28/05 (65)

COUNCIL ACTION: (Time duration: 11:32 a.m. – 11:34 a.m.)

MOTION BY FRYE TO ADOPT THE RESOLUTIONS FOR SUBITEMS A AND B, APPROVING THE CITY MANAGER’S RECOMMENDATIONS, AND ADOPT THE RESOLUTION FOR SUBITEM C, GRANTING THE PERMIT, AS AMENDED TO INCLUDE THE CONDITIONS OF AGREEMENTS DATED JUNE 12 BETWEEN FRANCIS PARKER AND THE NEIGHBORING RESIDENCE WHICH WERE READ INTO THE RECORD BY STAFF AS FOLLOWS:

BASED ON THE AGREEMENT WE ARE REQUESTING: 1) THAT REVISED PLANS BE SUBMITTED PRIOR TO ISSUANCE OF PERMITS THAT ARE CONSISTENT WITH THE AGREEMENT; 2) WITH REGARD TO LANDSCAPING IN PHASES 1 AND 2 ONLY, ALL NEW PLANT MATERIAL LOCATED ON THE MESA WITHIN PHASES 1 AND 2, CONSTRUCTION ASSOCIATED WITH THE CUP SHALL ATTAIN A MAXIMUM HEIGHT OF 30 FEET AT MATURITY THAT IS A COMPONENT CONSISTENT WITH THE AGREEMENT; AND 3) BASED ON A LAST MINUTE REVISION IN THE PROJECT BIOLOGY REPORT, IMPACTS TO DIEGAN COASTAL SAGE SCRUB WILL BE INCREASED FROM 0.36 ACRES TO 0.39 ACRES AND MITIGATION WOULD BE ADJUSTED ACCORDINGLY TO REDUCE IMPACTS TO A LEVEL BELOW SIGNIFICANCE. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



ITEM-332: Two actions related to Carmel Valley Public Facilities Financing Plan and Facilities Benefit Assessment, FY 2006.

(See City Manager Report CMR-05-116; Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2006 Draft. Carmel Valley Community Area. District 1.)

**TODAY'S ACTIONS ARE:**

Adopt the following resolutions:

Subitem-A: (R-2005-1232) ADOPTED AS RESOLUTION R-300619

Designating two areas of benefit in Carmel Valley and the boundaries thereof, confirming the description of Public Facilities Projects, the Community Financing Plan and Capital Improvement Program with respect to Public Facilities Projects, the method for apportioning the costs of the Public Facilities Projects among the parcels within the two areas of benefit and the amount of the Facilities Benefit Assessments charged to each such parcel, the basis and methodology for assessing and levying discretionary automatic annual increases in Facilities Benefit Assessments, and proceeding thereto, and ordering of proposed Public Facilities Projects in the matter of Carmel Valley Public Facilities Benefit Assessment Area.

Subitem-B: (R-2005-1233) ADOPTED AS RESOLUTION R-300620

Approving the Development Impact Fee (DIF) schedule for properties within Carmel Valley.

**LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:**

On 05/25/2005, LU&H voted 3-0 to approve the City Manager's recommendation. (Councilmembers Peters, Atkins, and Frye voted yea. Councilmembers Young and Inzunza not present.)

Staff: Gary Hess – (619) 533-3678

FILE LOCATION: Subitems A-B: STRT-FB-8 (33)

COUNCIL ACTION: (Time duration: 11:34 a.m. – 11:34 a.m.)

MOTION BY PETERS 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-not present, Mayor Murphy-yea.



ITEM-333: City Heights Square.

Matter of approving, conditionally approving, modifying, or denying an application for a PDP/NUP/CUP/SDP/EA for the demolition of existing structures, followed by the construction of a 204,967-square-foot mixed use development with deviations, consisting of 151 senior residential units, a medical clinic, parking, retail and office space in 3 buildings and a 5,432-square-foot

recreational area, on a 2,857-acre site located in the 4300 block of University Avenue in the CT-2-3 and CU-2-3 Zones of the Central Urbanized Planned District, within the City Heights neighborhood of the Mid-City Communities Plan and the City Heights Redevelopment Project Area. The project site is bounded by 43<sup>rd</sup> Street, University Avenue, Polk Avenue and Fairmount Avenue.

(MND/MMRP/PDP No. 116927/NUP No. 116928/CUP No. 116929/SDP No. 228858/EA No. 116930/Project No. 40960. City Heights Neighborhood of the Mid-City Communities Plan Area. District 3.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions in Subitems A and C; and adopt the resolution in Subitem B to grant the permits:

Subitem-A: (R-2005-1353) ADOPTED AS RESOLUTION R-300621

Adoption of a Resolution certifying that Mitigated Negative Declaration Project No. 40960 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 a planned development permit, neighborhood use permit, conditional use permit, site development permit, and easement vacation for the City Heights Square project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration is approved;

That pursuant to California Public Resources 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, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

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 the above project.

Subitem-B: (R-2006-73) GRANTED PERMIT, ADOPTED AS  
RESOLUTION R-300622

Adoption of a Resolution granting or denying Planned Development Permit No. 116927, Neighborhood Use Permit No. 116928, Conditional Use Permit No. 116929, and Site Development Permit No. 228858, with appropriate findings to support Council action.

Subitem-C: (R-2005-1351) ADOPTED AS RESOLUTION R-300623

Adoption of a Resolution vacating the sewer easement more particularly described in legal description "A1" and as shown on Drawing No. 20304-B attached hereto as Exhibit "B1"; the general utility easement more particularly described in legal description "A2" and as shown on Drawing No. 20305-B attached hereto as Exhibit "B2"; and the sewer and water easement more particularly described in legal description "A3" and as shown on Drawing No. 20306-1-B and 20306-2-B attached hereto as Exhibit "B3";

That the City Clerk shall then cause a certified copy of this resolution, with the legal descriptions "A1," "A2," and "A3" and Exhibits "B1," "B2," and "B3," attested by him under seal, to be recorded in the Office of the County Recorder.

**OTHER RECOMMENDATIONS:**

Planning Commission will hear this item on June 23, 2005. The vote was not available when preparing this docket entry. The vote will be presented at the City Council hearing of this item.

The City Heights Area Planning Committee on 10/4/04 and 2/7/05, voted 10-3-1 and 7-2-0, respectively, to recommend approval of the project with conditions as presented in PC Report No. PC-05-201.

**CITY MANAGER SUPPORTING INFORMATION:**

The City Heights Square project proposes a Planned Development Permit, Neighborhood Use Permit, Conditional Use Permit, Site Development Permit and Easement Vacation to allow the

demolition of existing structures and the construction of a mixed-use development consisting of 151 senior residential units, a medical clinic, retail, and office space in 3 buildings, parking, and a recreational area. The proposal would require deviations from some development regulations. Also proposed is the vacation of existing sewer, water and general utility easements. The site is within the City Heights Redevelopment Project Area. The City Heights neighborhood of the Mid-City Communities Plan and CHRP Master Project Plan specify this site for mixed use. Disposition and Development Agreements were approved by the City Council and Redevelopment Agency for this project on May 3, 2005. Mitigation, Monitoring and Reporting Program (MMRP) for this project were adopted by the City Council acting as the Redevelopment Agency on May 3, 2005. The MMRP was also adopted by the City Council. Orders of Possession were issued on June 8, 2005.

The City Heights Area Redevelopment Project Area Committee on 4/27/05, recommended approval of the project with no conditions as presented in PC Report No. PC-05-201.

**WATER QUALITY IMPACT STATEMENT:**

During construction, this project will comply with Best Management Practices (BMPs) via preparation of a Storm Water Pollution Prevention Plan (SWPPP) with grading plans. The SWPPP will identify all BMPs required during construction to reduce/eliminate discharges of pollutants. The post-construction BMPs detailed in the Water Quality Technical Report have been evaluated and accepted by the City Engineer. The property owners will be responsible for the long-term maintenance of all private drainage facilities.

Oppenheim/Halbert/MAS

**LEGAL DESCRIPTION:**

The project site is located at 4300 University Avenue in the City Heights Community and is more particularly described as Lots 1 through 8, inclusive, and 25 through 28, inclusive in Block 46 of City Heights per Map thereof No. 1007, Lot 1 of Fairmount Commercial Tract, per Map No. 6740, Parcel 1 of Parcel Map No. 15205, together with the easterly 10 feet of the vacated unnamed alley adjacent to said lots 25 through 28.

Staff: Michelle Sokolowski – (619) 446-5278.

FILE LOCATION: Subitems A-C: LUP – City Heights Square, 6/28/05 (65)

COUNCIL ACTION: (Time duration: 11:34 a.m. 11:40 a.m.)

Testimony in favor by Daniel Beeman.

MOTION BY ATKINS TO ADOPT THE RESOLUTIONS FOR SUBITEMS A AND C, APPROVING THE CITY MANAGER'S RECOMMENDATION, AND TO ADOPT THE RESOLUTION FOR SUBITEM B, GRANTING THE PERMIT. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



[ITEM-334:](#) Edison, Ibarra, and Cherokee Point Elementary Schools – ROW Vacations.

(Mid-Cities Community Planning Areas. Districts 3 and 7.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-1268) CONTINUED TO TUESDAY, AUGUST 2, 2005

Vacating a portion of Polk Avenue between Wilson Avenue and 35<sup>th</sup> Street and a portion of the alley north of Polk Avenue; the portion of 49<sup>th</sup> Street between Orange and Polk Avenues and the alleys east and west of 49<sup>th</sup> Street; the alley between 38<sup>th</sup> and 39<sup>th</sup> Streets, portions of 38<sup>th</sup> and 39<sup>th</sup> Streets between Wightman and Landis Streets, and a portion of Landis Street east of 38<sup>th</sup> Street.

**CITY MANAGER SUPPORTING INFORMATION:**

Edison Elementary (Polk Avenue and alley north of Polk)

Edison Elementary School is currently located north of University Avenue, south of Polk Avenue, east of 35<sup>th</sup> Street and west of Wilson Avenue. The Rights-of-Way to be vacated consist of a portion of Polk Avenue and an alley north of Polk Avenue between 35<sup>th</sup> Street and Wilson Avenue to allow for the expansion of the school as part of the Prop MM Program. The City has determined that these public Rights-of-Way are no longer needed. Through alley access would be provided via an extension of the alley to 35<sup>th</sup> Street.

Ibarra Elementary (49<sup>th</sup> Street and alleys east and west of 49<sup>th</sup> Street)

Ibarra Elementary School is a new school to be located north of Polk Avenue and south of Orange Avenue, east of Estrella Avenue and west of Winona Avenue. The Rights-of-Way to be vacated consist of a portion of 49<sup>th</sup> Street between Orange and Polk Avenues, and the alleys east

and west of 49<sup>th</sup> Street to allow for construction of the school as part of the Prop MM Program. The City has determined that these Rights-of-Way are no longer needed.

Cherokee Point Elementary (38<sup>th</sup> and 39<sup>th</sup> Streets, alley between 38<sup>th</sup> and 39<sup>th</sup> Streets and Landis, east of 38<sup>th</sup> Street)

Cherokee Elementary School is a new school to be located north of Landis Street and south of Wightman Street, east of 38<sup>th</sup> Street and west of the alley between 40<sup>th</sup> and 39<sup>th</sup> Streets. The Rights-of-Way to be vacated consist of a portion of 38<sup>th</sup> and 39<sup>th</sup> Streets between Wightman and Landis Streets, the alley between 38<sup>th</sup> and 39<sup>th</sup> Streets and a portion of Landis Street east of 38<sup>th</sup> Street to allow for the construction of the school as part of Prop MM Program. The City has determined that these Rights-of-Way are no longer needed.

**FISCAL IMPACT:**

No cost to the City. A deposit has been collected from the applicant to cover the costs associated with processing the proposed projects.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Oppenheim/Halbert/MED

Staff: Morris Dye – (619) 446-5201.

**FILE LOCATION:** STRT-J-2974 (39)

**COUNCIL ACTION:** (Time duration: 11:40 a.m. – 11:44 a.m.)

MOTION BY MADAFFER TO CONTINUE THIS ITEM FOR 30 DAYS TO AUGUST 2, 2005, BECAUSE IT HAS COME TO HIS ATTENTION THAT THE NEW SCHOOLS UNDER CONSTRUCTION AT CITY HEIGHTS ARE NOT BEING BUILT TO THE SAME SIDEWALK AND INTERSECTION STANDARDS UNDER THE SAFE-ROUTE-TO-SCHOOL PROGRAM. THE 30 DAY CONTINUANCE WILL ALLOW STAFF TO GET SOME QUESTIONS ANSWERED AND TO WORK WITH THE SCHOOL DISTRICT TO RESOLVE THESE ISSUES. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



ITEM-335: Two actions related to Auburn Park Affordable Housing Project Disposition and Development Agreement.

(See Redevelopment Agency Report RA-05-25/CMR-05-1436. City Heights Community Area. District 7.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2005-1343) ADOPTED AS RESOLUTION R-300624

Approving the Disposition and Development Agreement with Auburn Park Family Housing, L.L.C., for development of an affordable housing development in the City Heights Redevelopment Project Area, amending the City budget to accept the Agency transfer of \$150,000, for the sale of land and allocating the funds to the Capital Outlay Gas Tax Fund, authorizing the City Manager, or designee, to convey the land to the Redevelopment Agency for the Auburn Park Project, consenting to the Redevelopment Agency acquiring land and conveying land for the Project, and making certain findings relating thereto.

Subitem-B: (R-2005-1344) ADOPTED AS RESOLUTION R-300625

Certifying the information contained in Mitigated Negative Declaration No. 43239 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines and that said report reflects the independent judgment of the City of San Diego as Lead Agency;

Stating for the record that the Mitigated Negative Declaration has been reviewed and considered prior to approving the project and Disposition and Development Agreement;

Adopting the Mitigation, Monitoring and Reporting Program.

**NOTE:** See the Redevelopment Agency Agenda of 6/28/2005 for a companion item.

Staff: Bob Kennedy – (619) 533-4276  
Rachel H. Witt – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:44 a.m. – 11:49 a.m.)

Testimony in opposition by Dan Beeman.

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-not present, 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-2006-368) ADOPTED AS RESOLUTION R-300645

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.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:45 p.m. – 4:45 p.m.)

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-not present, 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- ) REFERRED TO THE CITY ATTORNEY AND  
THE CITY MANAGER, WITH DIRECTION

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.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:13 p.m. – 5:22 p.m.)

MOTION BY PETERS TO REFER THIS ITEM TO THE CITY ATTORNEY AND THE CITY MANAGER FOR REVIEW AND REPORT BACK TO THE CITY COUNCIL WITHIN THE NEXT SIX WEEKS. Second by Mayor Murphy. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, 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) ADOPTED AS RESOLUTION R-300646

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:23 p.m. – 5:23 p.m.)

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

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) NOTED AND FILED

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:06 p.m. – 5:06 p.m.)

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-2005-149) INTRODUCED AND ADOPTED AS  
ORDINANCE O-19393 (New Series)

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-2005-1389) ADOPTED AS RESOLUTION R-300648

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.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:26 p.m. – 5:31 p.m.)

MOTION BY MADAFFER TO INTRODUCE, DISPENSE WITH THE READING AND ADOPT THE ORDINANCE IN SUBITEM A. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

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



ITEM-S500: In the Matter of Attorney's Fees for City of San Diego Employees Relating to the Financial Disclosures and Pension Investigation.

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-1362) ADOPTED AS RESOLUTION R-300649

Authorizing the additional expenditure of an amount not to exceed \$350,000 for the purpose of paying attorney's fees incurred in Fiscal Year 2005 for the representation of any past and present City employee related to the investigations described above, 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;

Declaring the authorization for the above attorney's fees is to be suspended if criminal charges are brought against any such past or present City employee, and

that the City shall reserve its right to immediately terminate the payment of fees and seek reimbursement of fees paid in the event that criminal charges are brought against any official or employee, or if a conviction is obtained.

**SUPPORTING INFORMATION:**

On June 27, 2005, a report will be submitted to the Mayor and Council regarding the status of outside counsel representation of individual employees and officials regarding the financial disclosures and pension investigation. The action will be to obtain direction as to what amount, if any, is authorized for the payment of attorney's fees for representation of City employees regarding the investigations. To make payment to outstanding invoices submitted by outside counsel for various individuals, it is recommended that \$350,000 be appropriated from Fiscal Year 2005 funds, with an amount to be determined from Fiscal Year 2006 funds.

Irvine/Kane

Aud. Cert. 2501122.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:24 p.m. – 5:25 p.m.)

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

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 5:43 p.m. in honor of the memory of:

Milton "Micky" Fredman as requested by Council Member Peters;  
Nole Jones as requested by Council Member Young;  
Horace Kemp, Jr., as requested by Council Member Young;  
James Pagni as requested by Council Member Madaffer; and  
Lesli Halik as requested by Mayor Murphy

FILE LOCATION:

AGENDA

COUNCIL ACTION:

(Time duration: 5:34 p.m. – 5:43 p.m.)