

THE CITY OF SAN DIEGO, CALIFORNIA
 MINUTES FOR REGULAR COUNCIL MEETING
 OF
 TUESDAY, JANUARY 16, 2007
 AT 10:00 A.M.
 IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 10:04 a.m. The meeting was recessed by Council President Peters at 11:59 a.m. for the purpose of the noon break.

The meeting was reconvened by Council President Peters at 2:02 p.m. with Council Member Madaffer and Council Member Hueso not present. Council President Peters recessed the meeting at 2:53 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:00 p.m. with all Council Members present. Council President Peters recessed the meeting at 5:47 p.m. to convene the Housing Authority. Council President Peters reconvened the regular meeting at 5:49 p.m. with all Council Members present and thereafter recessed the regular meeting for the purpose of a break. Council President Pro Tem Young reconvened the regular meeting at 5:55 p.m. with Council President Peters and Council Member Maienschein not present. Council President Pro Tem Young recessed the regular meeting at 7:08 p.m. for the purpose of a break. Council President Peters reconvened the regular meeting at 7:14 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 8:46 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Peters-present
 - (2) Council Member Faulconer-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 Hueso-present
- Clerk-Maland (dlc/gs)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-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 Hueso-present

ITEM-10: INVOCATION

Invocation was given by Pastor Wilbert Miller of First Lutheran Church.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Atkins.

FILE LOCATION: MINUTES

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Ron Boshun commented on the actions of Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:19 a.m.)

PUBLIC COMMENT-2:

Keith Pratt commented on curbside recycling.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

PUBLIC COMMENT-3:

Phil Hart commented on Government ethics.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:21 a.m. – 10:24 a.m.)

PUBLIC COMMENT-4:

Joy Sunyata commented on citizen's support.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:25 a.m. – 10:28 a.m.)

PUBLIC COMMENT-5:

Lynn DeMaria commented on an alcohol license in Pacific Beach.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:28 a.m. – 10:30 a.m.)

PUBLIC COMMENT-6:

Katheryn Rhodes commented on Homeland Security.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:31 a.m. - 10:34 a.m.)

PUBLIC COMMENT-7:

Jarvis Ross commented on the New Year.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:34 a.m. – 10:37 a.m.)

COUNCIL COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

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

**CS-1 *Center for Biological Diversity, et al. v. Berg, et al.*
U.S. District 98cv2234**

DCA Assigned: G. Schaefer

The matter involves a lawsuit involving protection of seven vernal pools species in accordance with the Endangered Species Act in which a federal district court judge rendered a final amended decision and injunction on December 15, 2006. The injunction requires compliance by the City and other parties to the lawsuit. There is a pending appeal by a group of builders of the court's decision and a pending motion to clarify the scope of the injunction. The City Attorney's Office needs to update the Mayor and Council regarding the status of the litigation and appeal.

FILE LOCATION: AGENDA

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

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

CS-2 Agency Negotiator: Scott Chadwick, J. Rod Betts, Lisa Briggs, Rich Snapper, Jessica Falk Michelli, William Gersten, and Debora Buljat

Employee Organizations: Local 145 International Association of Firefighters
AFL-CIO, San Diego Police Officers Association, and
Deputy City Attorney Association

DCAs Assigned: W. Gersten/D. Buljat

Discuss with Council pending substantive negotiations with employee unions (Police Officers Association, International Association of Firefighters Local 145, and the Deputy City Attorney's Association).

FILE LOCATION: AGENDA

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

ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS:

Approval of Council Minutes for the meetings of:

11/13/2006 – Special Meeting
11/13/2006
11/14/2006
11/20/2006
11/21/2006
11/27/2006
11/28/2006

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:06 a.m. – 10:06 a.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-31: One Book, One San Diego Month.

MAYOR SANDERS' AND COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-676) ADOPTED AS RESOLUTION R-302287

Commending the San Diego Public Library and KPBS for their efforts to promote literacy, a love of reading, and deeper understanding about the issues that affect our community;

Proclaiming the month of January 2007 to be “One Book, One San Diego Month” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:06 a.m. – 10:15 a.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-60: Two actions related to Fund Exchange Agreement with the City of Carlsbad and First Amendment to Consultant Agreement with Parsons Brinckerhoff Quade & Douglas, Inc. for the Carroll Canyon Road Extension Project.

(Torrey Pines and Mira Mesa Community Areas. Districts 1 and 5.)

STAFF'S RECOMMENDATION:

Introduce the following ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2007-55) INTRODUCED, TO BE ADOPTED ON TUESDAY,
JANUARY 30, 2007

Introduction of an Ordinance authorizing the Mayor, or his designee, to execute, for and on behalf of the City, a First Amendment to the Agreement with Parsons Brinckerhoff Quade & Douglas, Inc., for professional preliminary and final engineering and design services on the Carroll Canyon Road Extension Project, under the terms and conditions set forth in the document;

Authorizing the City Auditor and Comptroller to expend an amount not to exceed \$152,471 from CIP-52-392.0, Carroll Canyon Road Extension with the funds received from the City of Carlsbad for the purpose of funding the aforementioned First Amendment to the Consultant Agreement with Parsons Brinckerhoff Quade & Douglas, Inc., contingent upon the City Auditor and Comptroller first certifying that the funds are, or will, be available in the City Treasury;
Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

NOTE: 6 votes required.

Subitem-B: (R-2007-590) ADOPTED AS RESOLUTION R-302290

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City, the execution of a Fund Exchange Agreement with the City of Carlsbad, under the terms and conditions set forth in the document;

Authorizing the City Auditor and Comptroller to establish a special interest-bearing account for the local funds to be received from the City of Carlsbad;

Authorizing the Mayor, or his designee, to accept funds not to exceed \$6,600,000, from the City of Carlsbad;

Authorizing the City Auditor and Comptroller to revise the Fiscal Year 2007 Capital Improvements Program budget, CIP-52-392.0, Carroll Canyon Road Extension Project, by de-appropriating Regional Surface Transportation Project (RSTP) Funds in the amount of \$7,438,000;

Authorizing the City Auditor and Comptroller to revise the Fiscal Year 2007 Capital Improvements Program budget, CIP-52-392.0, Carroll Canyon Road Extension Project, by appropriating local funds from the City of Carlsbad in the amount of \$6,600,000;

Authorizing the City Auditor and Comptroller to expend the amount of \$6,600,000 from CIP-52-392.0, Carroll Canyon Road Extension Project, for the purpose of design and construction of the project contingent upon the City Auditor and Comptroller certifying that the funds are, or will be, on deposit with the City Treasurer;

Declaring this activity is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

STAFF SUPPORTING INFORMATION:

This project proposes to extend Carroll Canyon Road from its existing terminus at Scranton Road, to the intersection of Sorrento Valley Road and the Interstate 805 (I-805) southbound off-ramp. Construction of the roadway would establish an important traffic link within the Torrey Pines and Mira Mesa communities as outlined in their community plans, would provide a more direct access to Sorrento Valley Road, and will alleviate some of the existing traffic congestion on eastbound Mira Mesa Boulevard.

Originally, the project was programmed Regional Surface Transportation Program (RSTP) Funds in the amount of \$7,438,000. In 2002, SANDAG transferred \$7,438,000 of RSTP Funds allocated to Carroll Canyon Road Extension into the City of Carlsbad's Rancho Santa Fe project.

At the time it was believed the full RSTP funding could be utilized by City of Carlsbad. In exchange, the City of Carlsbad agreed to reimburse the City of San Diego, a like amount with local funds. The exchange allows the Carroll Canyon Road project to be funded with 100% local funds, instead of federal funds, and eliminates the requirement for the project to undergo National Environmental Policy Act (NEPA) clearance. This is a substantial cost saving for the

project and streamlines the environmental clearance process. In 2004, when City of Carlsbad requested construction funding for their project it was determined only \$6,600,000 of RSTP funds from Carroll Canyon Rd. project could be swapped. Therefore, in order not to lose the remaining \$838,000 in RSTP funds, the City of San Diego concurred with SANDAG to reallocate those funds to the Clairemont Mesa Blvd./SR-163 interchange project.

The proposed resolution would execute the fund exchange agreement with the City of Carlsbad and allow the City of San Diego to receive the \$6,600,000 reimbursement, which would be allocated to CIP-52-392.0, Carroll Canyon Road Extension project.

On August 23, 2001, per Document No. C-10897, the City of San Diego entered into a Consultant Agreement with Parsons Brinckerhoff Quade & Douglas, Inc., for the design of the Carroll Canyon Road project. Originally, the consultant agreement was to provide environmental approval and 100% project plans, specifications and estimate (PS&E). However, due to project scope of work changes the agreement is insufficient to provide what was intended. Therefore, the proposed First Amendment plus the original Agreement was revised to provide for environmental approval and preliminary roadway design plans needed for environmental technical studies.

Some of the project changes in the scope of work include:

- Design changes in roadway alignments for avoidance of sensitive environmental areas, proposed Direct Access Ramps (DAR) for high occupancy vehicles, and future I-805 freeway widening. The proposed DAR is being evaluated and may not become part of the project;
- A minimum of three additional bridge structures are required, to avoid SDG&E high pressure gas main, for avoidance and protection of Caltrans I-805 bridge columns, and for access to commercial properties.
- Extensive environmental analysis, which includes, but not limited to site development permit, coastal development permit, fish and game permit, historic properties survey report, archeological recovery program and registration with the Historic Resource Board as a locally significant site, exotic plant removal program for impacts to wetland buffer, mitigation for loss of sycamore trees, alternative design to mitigate and avoid wetlands and archeological site, noise studies for construction and wildlife impacts, visual impact report, which includes visual simulations, extensive traffic studies, and extensive coordination with Caltrans and environmental agencies.

A future amendment, if needed, would be forthcoming to complete 100% PS&E.

FISCAL CONSIDERATIONS:

The amount of \$7,438,000 would be de-appropriated from the Carroll Canyon Road Project and \$6,600,000 would be authorized for appropriation and expenditure with this Council resolution for CIP-52-392.0, Carroll Canyon Road Extension project. An authorization of \$152,471 expenditures would be funded through Fund Transfer Agreement with the City of Carlsbad.

PREVIOUS COUNCIL COMMITTEE ACTION:

City Manager Action dated June 13, 2001, filed as Document No. C-10897 on August 23, 2001, which executed the agreement with Parsons Brinckerhoff Quade & Douglas, Inc.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On February 10, 2005, Torrey Pines Community Planning Board voted to approve Carroll Canyon Road Extension project and on August 15, 2005, Mira Mesa Planning Group voted to approve the Carroll Canyon Road Extension project. In addition, Planning Commission voted and approved the project environmental documents and permits for Carroll Canyon Road on June 8, 2006. Based on public comments received, all communities are in full support of the projects.

KEY STAKEHOLDERS:

Caltrans, City of San Diego, City of Carlsbad, Mira Mesa Community Planning Group, Torrey Pines Community Planning Board, Parsons Brinckerhoff Quade & Douglas, Inc.

Boekamp/Haas

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

FILE LOCATION: SUBITEM A: NONE
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 2:02 p.m. – 2:04 p.m.)

MOTION BY ATKINS TO INTRODUCE THE ORDINANCE IN SUBITEM A AND ADOPT THE RESOLUTION IN SUBITEM B. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

* ITEM-100: Barrett Reservoir Outlet Tower Upgrade – Construction Contract Award.

(See Executive Summary Sheet dated 7/20/2006. Unincorporated Area of San Diego County.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2007-668) ADOPTED AS RESOLUTION R-302288

Authorizing the Mayor, or his designee, to award the Barrett Reservoir Outlet Tower Upgrade contract to Orion Construction Corporation in an amount not to exceed \$1,487,000, 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 City Auditor and Comptroller to transfer an amount not to exceed \$320,000 from Water Fund 41500, CIP-70-954.0, North City Water Reclamation System to Water Fund 41500, CIP-73-317.0, Barrett Reservoir Outlet Tower Upgrade;

Authorizing the additional expenditure of an amount not to exceed \$320,000 from Water Fund 41500, CIP-73-317.0, Barrett Reservoir Outlet Tower Upgrade, solely and exclusively, for the purpose of providing funds for the project and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer;

Approving the use of City Forces on the project for the purpose of construction of Barrett Reservoir Outlet Tower Upgrade for a cost not to exceed \$45,000;

Declaring that this activity is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302, as this activity is the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced;

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 7/26/2006, NR&C voted 4-0 to approve. (Councilmembers Faulconer, Atkins, Frye and Hueso voted yea.)

SUPPORTING INFORMATION:

The City Council has previously approved the Plans and Specifications and authorized the Mayor to award a construction contract to the lowest responsible and reliable bidder as advertised by Contract Services by Resolution Number R-302014. On November 8, 2006, four bids were received and the apparent low bidder was Orion Construction whose bid (\$1,487,000) exceeded the advertised amount (\$1,200,000) by about 25%. We attribute this increase to the remote location of the site, the level of difficulty to perform the work and the unstable bidding climate in the region. Authorizing the award of this construction contract allows the Water Department to move local water stored at the Barrett Reservoir, and will result in a reduction in the amount of purchased water for the following year. This will result in a savings in water purchases.

The Barrett Reservoir Outlet Tower Upgrade was approved by the California Department of Safety of Dams (DSOD) on July 8, 2003, and the construction will address the essential elements of the outlet tower that affect operation and maintenance, personnel safety, and water supply reliability to downstream City facilities.

FISCAL CONSIDERATIONS:

The total estimated cost is \$2,553,502.56. Funding of \$2,233,502.56 was previously authorized by Council Resolution Number R-302014. However, bids received were about 25% higher than the estimated cost. The total additional request for this project is \$320,000. Funding is available in Water Fund 41500, CIP-70-954.0, North City Reclamation System, for this purpose. Short term private financing is expected to be implemented in January 2007 upon Council authorization. Approval for the short-term note and loan documents is expected to be scheduled for a mid-January 2007 Council Meeting. Proceeds from the short-term note will be used to reimburse this project and other Water Department construction projects during FY2007.

PREVIOUS COUNCIL COMMITTEE ACTION:

On July 23, 2001, Council authorized the City Manager to execute the original Agreement with Richard Brady & Associates (Resolution No. R-295172) and on October 10, 2006, the First Amendment was authorized (Resolution No. R-301955). On July 26, 2006, the Natural Resources and Culture Committee approved this requested action.

On November 3, 2006, City Council Approved Plans and Specifications as advertised by Contract Services and authorized the Mayor to award a construction contract to the lowest responsible and reliable bidder, authorized the expenditure of funds; award of public works contract; and taking related actions (Resolution No. R-302014).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community outreach is limited to lake area and users. Information will be disseminated to lake users prior to construction. This project has been advertised through the local contractor's association and newspaper.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

The key stakeholders are the City of San Diego Water Department customers, Orion Construction, C & W Diving Services, Inc., Neal Electric and WR Robbins Co. Inc., Richard Brady & Associates, and California Department of Safety of Dams. Failure to rehabilitate the Barrett Reservoir Outlet Tower will continue to put a constraint on the use of local raw water and will continue to import water from San Diego Water Authority.

Barrett/Haas

Aud. Cert. 2700447.

FILE LOCATION: CONT/Orion Construction Corp.

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:16 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-101: Additional Funding for Annual Allocations for the Point Loma and South Bay Wastewater Treatment Plants.

(See Executive Summary Sheet dated October 25, 2006. Peninsula and Tijuana River Valley Community Areas. Districts 2 and 8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2007-646) RETURNED TO MAYOR

Authorizing the City Auditor and Comptroller to transfer the amount of \$1,500,000 from Sewer Fund No. 41509, CIP-41-926.0, Annual Allocation - Metropolitan System Pump Station, as follows: \$750,000 to Sewer Fund No. 41508, CIP-46-119.0, Annual Allocation - Point Loma Treatment Plant and Related Facilities; and \$750,000 to Sewer Fund No. 41509, CIP-45-932.0, Annual Allocation-South Bay Water Reclamation Plant;

Authorizing the expenditure of an amount not to exceed \$1,500,000, solely and exclusively, to provide funds for various renovations and upgrades, to be expended as follows: \$750,000 from Sewer Fund No. 41508, CIP-46-119.0, Annual Allocation - Point Loma Treatment Plant & Related Facilities, including the South Use Areas and 84-inch Penstock Improvements; and \$750,000 from Sewer Fund No. 41509, CIP-45-932.0, Annual Allocation - South Bay Water Reclamation Plant, including the third reclaimed water pump, reclaimed water drain line, and telemetry work;

Declaring the above expenditures are contingent on appropriate approval and award of one or more contracts for performance of the above projects, if said projects will not be performed by City forces, and provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the funds necessary for expenditure under such contracts are, or will be, on deposit in the City Treasury;

Declaring this activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15060(c)(3) and 15004.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 12/6/2006, NR&C voted 3 to 0 to approve. (Councilmembers Faulconer, Frye, and Hueso voted yea. Councilmember Atkins not present.)

SUPPORTING INFORMATION:

The Metropolitan Wastewater Department (MWWD) uses annual allocations to fund minor renovations and upgrades of equipment and facilities at its treatment plants and pump stations. Due to budget constraints related to a lack of bond financing, MWWD conducted a review of proposed Capital Improvement Projects at all of its treatment plants and pump stations and updated its list of priority projects. Based on the revised priority list, there are insufficient funds in the Annual Allocations for the Point Loma Wastewater Treatment Plant (CIP-46-119.0) and the South Bay Water Reclamation Plant (CIP-45-932.0) to implement priority projects at these facilities. This request is to transfer funds from lower priority projects into these two Annual Allocations. Funds are available in Annual Allocation - Metropolitan System Pump Stations (CIP-41-926.0) for Transfer.

FISCAL CONSIDERATIONS:

The total amount of this request is \$1,500,000. Funds are available from Sewer Fund 41509, CIP-41-926.0, Annual Allocation - Metropolitan System Pump Stations.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This item was reviewed and approved by the Natural Resources and Culture Committee on December 6, 2006.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

This item will be reviewed by the Metro Commission on January 11, 2007.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

N/A

Ferrier

Aud. Cert. 2700344.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:16 a.m.)

MOTION BY COMMON CONSENT TO RETURN TO THE MAYOR FOR FURTHER REVIEW. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

- * ITEM-102: Cooperative Agreement with CalTrans and Funding for the Interstate-5/Sorrento Valley Road Interchange.

(Torrey Pines Community Area. District 1.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-661) ADOPTED AS RESOLUTION R-302289

Authorizing the Mayor, or his designee, to enter into a Cooperative Agreement with the California Department of Transportation (CalTrans) for CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange;

Authorizing the Mayor, or his designee, to apply for and accept \$1,400,000 in Section 115 Demo funds for CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange;

Authorizing the City Auditor and Comptroller to establish a special interest-bearing fund for the Section 115 Demo grant;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$1,400,000 in Section 115, State Demo funds, from CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange, contingent upon grant funding being secured and upon the City Auditor and Comptroller first certifying that the funds are, or will be, on deposit in the City Treasury;

Authorizing the Mayor, or his designee, to apply for and accept \$600,000 in STP Section 112 funds for CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange;

Authorizing the City Auditor and Comptroller to establish a special interest-bearing fund for the STP Section 112 grant;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$600,000 in STP Section 112 State funds, from CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange, contingent upon grant funding being secured and upon the City Auditor and Comptroller first certifying that the funds are, or will be, on deposit in the City Treasury;

Authorizing the Mayor, or his designee, to apply for and accept \$1,500,000 in STP Section 117 funds, from CIP-52-765.0, Interstate-5/Sorrento Valley Road;

Authorizing the City Auditor and Comptroller to establish a special interest-bearing fund for the STP Section 117 grant;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$1,500,000 in STP Section 117 funds from CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange, contingent upon grant funding being secured and upon the City Auditor and Comptroller first certifying that the funds are, or will be, on deposit in the City Treasury;

Authorizing the City Auditor and Comptroller to increase the FY 2007 Capital Improvements Program budget in CIP-52-765.0, Interstate-5/Sorrento Valley Road Interchange by \$3,500,000, contingent upon receipt of fully executed grant agreements;

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

Declaring that this activity is not a "project" per State CEQA Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

The existing Interstate-5 and Sorrento Valley Road Interchange is extremely congested during peak periods. The high traffic volumes from the surrounding businesses are complicated by the at-grade railroad crossing, the adjacent Coaster Station, and the close proximity to the 805/5 "Merge" project. The design development started with the Project Study Report (PSR) for this portion of the I-5 corridor that was conducted in 2004, which was jointly funded by the City, CalTrans, and SANDAG. This project was one of the recommendations from that study and will replace the current Interstate-5/Sorrento Valley Road Interchange with a more efficient roadway configuration allowing better access to and from Interstate 5. Since the original study, federal

grant funds have become available that would allow the design development and environmental analysis to begin. The Cooperative Agreement assigns responsibility to the City to prepare and obtain approval for the environmental document, plans, specifications, and estimates, and to obtain all necessary permits up to the limit of the federal grant funds.

The State is responsible for funding the City's costs in performing the City's responsibilities using the federal grant funds.

FISCAL CONSIDERATIONS:

The preliminary estimate of the total cost of this project is \$50,000,000, which could vary significantly depending on the alternative selected, cost escalations, and right-of-way impacts to local properties. Of this, grant funds in the amount of \$1.4 million has been processed by the State and is immediately available. Another \$2.1 million of grant funding has been programmed for this project and is anticipated to be awarded before June 30, 2007. The remaining \$46.5 million is unidentified at this time.

PREVIOUS COUNCIL ACTIONS:

None. The Interstate-5/Sorrento Valley Road Interchange is part of the approved Fiscal Year 2007 Budget as CIP-52-765.0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Some outreach was conducted as part of the Project Study Report in 2004. Significant additional outreach to the planning groups, surrounding business community, and affected property owners will be conducted as part of the environmental and design development of this project.

STAKEHOLDERS:

The Community Group, local businesses, and commuting public.

Boekamp/Haas

Staff: Frank Gaines - (619) 533-3771
Jeremy A. Jung - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:16 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



[ITEM-330](#): SANDAG/CalTrans Joint Presentation to Council on
Transportation Infrastructure Projects and Financing.

(See memorandum M-07-01-01 from Councilmember Madaffer dated 1/2/2007.)

COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Take the following action:

HEARING HELD; REPORT ACCEPTED

Hear informational report from SANDAG and CalTrans Infrastructure Project and
Financing.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:01 p.m. – 3:49 p.m.;
4:55 p.m. – 4:56 p.m.)

MOTION BY MADAFFER TO ACCEPT THE REPORT. Second by Hueso. Passed by
the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea,
Frye-yea, Madaffer-yea, Hueso-yea.



[ITEM-331](#): Council Policy for Prioritizing Transportation CIP Project.

(See Report to the City Council No. 07-015.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-594) ADOPTED WITH DIRECTION AS RESOLUTION
R-302291

Adopting Council Policy No. _____, Prioritizing Transportation and Drainage Capital Improvement Program Projects.

STAFF SUPPORTING INFORMATION:

This policy would establish an objective process for evaluating Transportation Capital Improvement Program (CIP) projects with respect to the overall needs of the City's transportation system. This is necessary so that transportation resources can be used in the most effective manner and to allow the City to compete better for outside grant opportunities. The policy contains several facets including the establishment of categories for the various types of transportation projects for a fair evaluation between similar types of work, standard project phases of development to compare projects with similar levels of completion, and a unified set of criteria for the evaluation of each projects merit within the program. If adopted, Transportation CIP projects would receive a ranking within their corresponding project category (Roadways, Bridges, etc) and phase of development (Planning, Design, and Construction), with the highest ranked projects receiving the resources needed to accomplish major project milestones. The policy also contains a process for changes to project conditions that would affect its ranking as well as allowances for unforeseen issues.

FISCAL CONSIDERATIONS:

The policy would have a moderate fiscal impact for implementation. However, it is anticipated that these costs will be recovered from existing Transportation CIP revenues, through a minor increase in the cost of each CIP project. Overall, this policy would result in savings through increased efficiency and the significant potential for increasing the amount of outside grant funds that are obtained by the City.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Since 2002, this recommendation has been presented to various Council Committees including Public Safety & Neighborhood Services and Land Use & Housing. This was included in the Zero Based Management Review (ZBMR) Task Force report. The most recent was made in October of 2006, to the Land Use and Housing Committee, where it was requested that the policy be brought to City Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Presentations have been made to several public works interest groups.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The policy effects would be Citywide and no direct impacts to any specific stakeholders are anticipated.

Boekamp/Haas

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:50 p.m. – 4:54 p.m.;
4:56 p.m. – 5:40 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION WITH DIRECTION TO:
1) DIRECT STAFF TO COME BACK ON FRIDAY, MAY 11, 2007, WITH AN
APPROACH THAT CREATES A DUAL TRACK CRITERIA SYSTEM FOR LARGE
AND SMALL PROJECTS; 2) INCLUDE A SPECIFIC CATEGORY FOR
AMERICANS WITH DISABILITY ACT COMPLIANT PROJECTS; AND 3) REPORT
BACK AFTER THE FIRST PROCESS FOR PUBLIC DISCUSSION. Second by Peters.
Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-nay,
Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



[ITEM-332](#): Refunding of the Ballpark Bonds.

(See Report to the City Council 06-193 and memorandums from Lakshmi Kommi
both dated 12/20/2006. Centre City East Community Area. District 2.)

STAFF'S RECOMMENDATION:

Introduce the following ordinance:

(O-2007-73) INTRODUCED, TO BE ADOPTED ON TUESDAY,
JANUARY 30, 2007

Introduction of an Ordinance approving the form of and authorizing the execution
and delivery of an Amended and Restated Site Lease, an Amended and Restated
Ballpark Facility Lease, a Continuing Disclosure Certificate, and a Purchase
Agreement and authorizing the execution, delivery and performance of a Second
Reaffirmation of Assignment Agreement, Escrow Instructions and an Indenture

by the Public Facilities Financing Authority of the City of San Diego and approving and authorizing the issuance and sale of not to exceed \$172,000,000 of the Authority's Lease Revenue Refunding Bonds, Series 2007A (Ballpark Refunding), authorizing the City Attorney to appoint bond counsel and disclosure counsel, and approving other documents and actions in connection therewith.

NOTE: 6 votes required pursuant to Section 99 of the City Charter.

STAFF SUPPORTING INFORMATION:

The Original Ballpark Bonds were issued on February 15, 2002 under a Lease Revenue Bond structure. Lease Revenue Bonds are based on a lease, lease-back arrangement between two entities: a governmental entity (the City) and a joint powers authority, which issues the bonds. The Original Ballpark Bonds were issued by the Public Facilities Financing Authority (the "Authority"), and the leasing arrangement is between the City and the Authority. Principal and interest payments on the Original Ballpark Bonds are paid from lease payments made by the City for use and occupancy of the Ballpark Facility under the leasing arrangement with the Authority.

There was significant litigation outstanding when the Original Ballpark Bonds were issued that caused legal uncertainty over the validity and tax-exempt status of the bonds. The pendency of the litigation caused the bonds to be issued with a qualified bond counsel opinion. Due to this reason, the interest rate on the Original Ballpark Bonds was considerably above other insured, tax-exempt Lease Revenue Bonds issued at the time.

It is proposed that the City Council authorize the issuance of fixed rate Lease Revenue Refunding Bonds, with the same lease, lease-back structure utilized for the Original Ballpark Bonds. The refunding bonds would be insured by Ambac Assurance Corporation, and would be privately placed with Bank of America N.A. ("Bank of America"), a subsidiary of Bank of America Corporation. No disclosure document, or official statement, would be required or provided under the Securities and Exchange Commission rules for this type of transaction. Bank of America would be required to make certain representations regarding its investment in the bonds, including that it has such knowledge and experience in financial and business matters and that it is capable of evaluating the merits and risks of the prospective investment, and that it understands that the City is not current with its Comprehensive Annual Financial Reports ("CAFRs"). The refunding bonds would also be issued with certain resale restrictions lasting up

to three years from the bond closing date. The City's disclosure counsel and the City Attorney's Office have advised that the City's CAFRs should be current before the City enters the public markets. By structuring the refunding as a private placement, the City could proceed with an offering now, rather than wait until it is current with its CAFRs. The Disclosure Practices Working Group reviewed the proposed financing on December 14, 2006. If the requested actions are approved, bond closing could occur in February 2007.

As an alternative to the proposed private placement structure, the City Council could request the Mayor's staff to wait until it can issue the refunding bonds in a public offering at a later date. The financing ordinance and related documents are structured to permit the Mayor's staff to issue the bonds in a public offering, conditioned upon City Council approval of a completed disclosure document.

FISCAL CONSIDERATIONS:

Based upon current estimates, the par amount of the fixed rate Refunding Ballpark Bonds would be approximately \$156.4 million. Under market conditions as of December 12, 2006, the estimated true interest cost ("TIC") and average coupon rate on the Refunding Ballpark Bonds would be approximately 4.78% and 5.23%, respectively; the estimated annual lease payment would be approximately \$11.3 million. By contrast, the comparable interest rates on the Original Ballpark Bonds are 8.53% (TIC) and 7.66% (average coupon), and the average annual lease payment is \$15.0 million. The estimated savings total \$3.7 million per year, and \$92.9 million over the term of the bonds (or \$51.5 million on a net present value basis). The pricing on the Refunding Ballpark Bonds is based on the Municipal Markets Data AAA Index (the "MMD Index," which is a national index of AAA rated municipal bonds) plus .55%.

Under current conditions in the California insured municipal market, general fund Lease Revenue Bonds would be expected to price at approximately MMD Index plus approximately .20%. While there is a .35% interest rate penalty for the proposed private placement, it should be noted that as of the date of this report, general municipal bond rates are at their lowest point in almost thirty years. By proceeding now, the City could lock-in immediate savings. Further, under the proposed refunding plan, Bank of America would grant the City an option, which, if exercised by the City within three years after the closing date of the bonds, would cause the bonds to be resold or revalued in a public offering subject to certain conditions, such as the delivery of a disclosure document. Under this option, the City could receive a one time cash payment from Bank of America if the value of the Refunding Ballpark Bonds improves based on the credit spread on the bonds tightening relative to the MMD Index compared to the original credit spread on the bonds.

PREVIOUS COUNCIL COMMITTEE ACTION:

Previous City Council actions include the adoption of Ordinance O-19204 and Resolution R-298301 on August 4, 2003. Due to the passage of time, new authorization for the refunding is requested.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There were no community participation or outreach efforts.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Business entities involved in this transaction are: Bank of America N.A. (Refunding Ballpark Bonds purchaser); Banc of America Securities LLC (structuring agent); Fulbright & Jaworski LLP (purchaser's counsel); Nixon Peabody LLP (bond counsel); Hawkins, Delafield, & Wood LLP (disclosure counsel); Wells Fargo Bank, National Association (trustee); Ambac Assurance Corporation (bond insurer); Chicago Title Company (title insurer); and Kitahata & Company (financial advisor).

Kommi/Goldstone

Staff: Elizabeth Kelly - (619) 236-6932
Mark D. Blake – Chief Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 7:16 p.m. – 8:42 p.m.)

MOTION BY MADAFFER TO INTRODUCE. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-not present, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-333: Subordinated Water Revenue Notes, Series 2007A.

(See Reports to the City Council 06-194 and 06-195 and memorandum from Lakshmi Kommi dated 12/21/2006.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-670) ADOPTED AS RESOLUTION R-302292

Approving the form of and authorizing the issuance of the Public Facilities Financing Authority of the City of San Diego Non-Transferable Subordinated Water Revenue Notes, Series 2007A (payable solely from subordinated installment payments secured by net system revenues of the Water Utility Fund) in an aggregate principal amount not to exceed \$57,000,000, approving the form of an indenture, approving the form and authorizing the execution and delivery of a Note Purchase Agreement, a Second Amendatory Supplement to the Master Installment Purchase Agreement and a 2007A supplement to the Master Installment Purchase Agreement relating to an Installment Purchase Financing, authorizing the City Attorney to appoint co-bond counsel and approving certain other agreements and actions in connection therewith.

STAFF SUPPORTING INFORMATION:

This financing is intended to fund the Water Department's capital improvement needs until early FY 2008, as detailed in the companion Water System Improvements. All projects being funded with 2007A Note proceeds are included in the Strategic Plan. Financing for these projects is not dependent on water rate increases in FY 2008 and FY 2009, as debt service for this financing in those years will be covered under the existing rate structure. Under the proposed rate case and CIP Plan, the Water Department is expected to require another bond issuance in early FY 2008.

FISCAL CONSIDERATIONS:

The Note issue of \$57 million is estimated to result in semi-annual interest payments of approximately \$1.1 million over the two-year Note term, with the principal to be repaid by the end of the term. Depending on the final interest rate established in January 2007, the Water Department could pay an estimated total of \$4.4 million in interest payments over the full term of the Note. Interest is payable semi-annually, on February 1st and August 1st of each year until the Note is paid off.

Staff currently expects to repay the principal by issuing long-term bonds in FY 2008 that is anticipated to include additional borrowing for CIP needs in FY 2008 and FY 2009.

PREVIOUS COUNCIL COMMITTEE ACTION:

N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Business entities involved in this transaction are: Morgan Stanley (note purchaser); Hawkins Delafield & Wood LLP and Robinson & Pearman LLP (co-bond counsel); Wells Fargo Bank, National Association (Note trustee); and Montague DeRose and Associates (financial advisor)

Kommi/Goldstone

Staff: Michael J. Frattali - (619) 235-5834.
Mark D. Blake – Chief Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:56 p.m. – 7:08 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Hueso. Passed by the following vote: Peters-recused, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-nay, Frye-nay, Madaffer-yea, Hueso-yea.



ITEM-334: Continuing Provisions of Legal Services for Former and Current City Officials and Staff Related to Securities Exchange Commission (SEC), District Attorney and U.S. Attorney's Investigations, and in SDCERS v. Aguirre, et. al.

MAYOR SANDERS' AND CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-529 Cor. Copy 2) ADOPTED AS AMENDED AS RESOLUTION
R-302293

Authorizing the additional expenditure of an amount not to exceed \$750,000 to pay attorney's fees for the representation of past and present City employees

related to their participation in interviews and proceedings, including compliance with subpoenas, related to investigations by the Securities and Exchange Commission (SEC), United States Attorney's Office (USAO), San Diego District Attorney's Office (DA) and the City for Financial Disclosures Investigation, and City employees related to their participation in SDERS v. Aguirre, et al., 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 City Auditor and Comptroller to allocate these expenditures across all funds using an allocation based on full-time equivalent salaries. That said allocation is attached to the Request for Council Action and on file with the City Clerk;

Authorizing the City Auditor and Comptroller to appropriate and transfer \$534,825 from the General Fund Unallocated Reserve to the Public Liability Fund in order to meet the General Fund portion of the \$750,000 allocation;

Declaring that the authorization for the above attorneys' fees is to be suspended if criminal charges are brought against any past or present City employee, and that the City shall reserve its right to terminate the payment of fees and seek reimbursement of fees paid in the event that criminal charges are brought against any past or present employee, or if a conviction is obtained.

SUPPORTING INFORMATION:

Requested action relates to additional funding for the ongoing SEC/US Attorney/District Attorney investigations.

1. Outside Counsel Fees for Individual Current and Former City Staff

In February of 2004, the SEC and USAO informed the City that they were undertaking investigations into certain financial disclosure practices by the City. Additionally, the District Attorney's Office has initiated its own investigation into the propriety of acts relating to the granting of pension benefits. In addition, several City employees have been interviewed, called to testify and/or subpoenaed in connection with the investigation and litigation of SDCERS v. Aguirre, et al., SDSC, Case No. GIC 841845.

These investigations remain ongoing, with each agency requesting and/or issuing subpoenas requiring City employees to appear for interview and/or testimony. In order to facilitate the conduct of necessary interviews and testimony, and yet provide necessary advice to affected City employees, the City Council, acting pursuant to the discretion provided by Government Code Section 995.8, has determined that it is in the best interests of the City to provide independent representation to employees. The total cost allotted for the representation thus far was \$2,225,000, apportioned among a number of represented individuals, and appropriated as a result of seven requests: \$250,000 (AC 2401177, dated June 17, 2004); \$75,000 (AC 2500664, dated November 14, 2004); \$150,000 (AC 2500688, dated on January 25, 2005); \$200,000 (AC 2500802, dated on March 7, 2005); \$350,000 (AC 2501122, on June 28, 2005); \$500,000 (AC 2600236, dated October 11, 2005); \$450,000 (AC 2600542, dated January 18, 2006); and \$250,000 (AC 2600902, dated June 13, 2006).

Over 30 current and former City employees have requested and/or retained outside legal counsel, and have submitted bills to be reviewed and processed by the City Attorney's Office. These totals do not include elected officials, the former Mayor, Council, and their staff.

Several firms have submitted significant invoices on behalf of their clients. As of November 1, 2006, the following firms had incurred the largest expenses:

- Shartsis Friese - More than \$911,000 for clients including former City Manager Lamont Ewell and former Assistant City Attorney Les Girard;
- Wertz McDade Wallace Moot & Brower - More than \$242,000 for client Ed Ryan;
- DLA Piper Rudnick - More than \$310,000 on behalf of three clients, including two Deputy City Attorneys; and
- McKenna Long & Aldridge - More than \$260,000 on behalf of clients including former City Manager Michael Uberuaga.

It is recommended that the City Attorney continue to execute and monitor the contracts on behalf of the City for the representation of individual current and former City employees. It is also recommended that each employee be permitted to retain only one law firm for representation. To pay outstanding invoices and anticipated invoices for the remainder of 2006, and in preparation for invoices in the first quarter of 2007, it is requested that an additional \$750,000 be appropriated.

It is requested that the City Auditor and Comptroller be authorized to issue an Auditor's Certificate to fund the outside counsel obligations.

FISCAL CONSIDERATIONS:

These expenditures would be allocated across funds based upon an allocation formula based on full-time equivalent salaries. Of the \$750,000, \$534,825 would be allocated from the General Fund. The Council is being asked to authorize the transfer of \$534,825 in General Fund Unallocated Reserves to the Public Liability Fund to cover the General Fund portion of these expenditures.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Numerous Council Actions approving outside counsel fees for counsel retained related to the ongoing Securities Exchange Commission, United States Attorney's Office and District Attorney's Office investigations into City finances, and the litigation of SDCERS v. Aguirre, et. al.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Various law firms including the firms of Shartsis Friese; Wertz McDade Wallace Moot & Brower; DLA Piper Rudnick and McKenna Long & Aldridge.

Sachs

Aud. Cert. 2700396.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:41 p.m. – 5:47 p.m.)

MOTION BY YOUNG TO ADOPT THE RESOLUTION AS AMENDED TO INCLUDE THAT ANY NEW EMPLOYEE SHALL SELECT AN ATTORNEY THAT IS PRESENTLY BEING RETAINED OR RETURN TO COUNCIL TO OBTAIN APPROVAL. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-350: **Notice** of Pending Final Map Approval – 4516 Idaho Street.

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 “4516 Idaho Street” (T.M. No. 234544 PTS No. 115939), located on the west side of Idaho Street between Madison Avenue and Monroe Avenue in the Greater North Park 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



[ITEM-S500:](#) Two actions related to Authorization of Contract for Independent Oversight Monitoring Services.

(Citywide.)

(Continued from the meeting of January 9, 2007, Item 331, at the request of Councilmember Frye, for further review.)

MAYOR SANDERS' RECOMMENDATION:

Introduce the ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2007-87) INTRODUCED WITH DIRECTION, TO BE ADOPTED
ON TUESDAY, JANUARY 30, 2007

Introduction of an Ordinance adopting the Annual Budget for the Fiscal Year 2006-2007 and Appropriating the Necessary Money to Operate the City of San Diego for said Fiscal Year, by authorizing the City Auditor and Comptroller to appropriate and to transfer up to \$1,417,400 from the City's General Fund Unallocated Reserve to the Public Liability Fund to pay for independent consultant services to be rendered by Edwards Angell Palmer & Dodge LLP in connection with Securities and Exchange Commission Cease-and-Desist Order entered against the City.

NOTE: This item is not subject to Mayor's veto.

Subitem-B: (R-2007-692) ADOPTED WITH DIRECTION AS RESOLUTION
R-302294

Authorizing the Mayor to enter into an Agreement with Edwards Angell Palmer & Dodge for Independent Consulting Services.

SUPPORTING INFORMATION:

On November 14, 2006, the Securities and Exchange Commission (SEC) entered a Cease-And-Desist Order which requires the City of San Diego to engage an "Independent Consultant" for 3 years. The SEC order requires this Independent Consultant (Monitor) to do the following:

- Review and make recommendations regarding the City's policies, procedures and internal controls with respect to disclosures made in bond offerings, financial statements, and rating agency presentations; to review and make recommendations regarding the hiring of internal and external personnel for disclosure functions; and to review and make recommendations for training provided to City personnel, including the Offices of the Mayor, City Council Members, City Attorney, and City Auditor & Comptroller.

- Make recommendations concerning these policies, procedures and internal controls with a view to assuring compliance with disclosure obligations.
- In years 2 and 3, assess whether the City is complying with its policies, procedures and internal controls, whether the City has adopted any of the Monitor's recommendations from prior years and whether such recommendations were effective.
- Within 120 days after the date of engagement, issue a report describing the review performed and the conclusions reached and include any recommendations deemed necessary to make the policies, procedures and internal controls adequate and address the deficiencies identified in Section III.D. of the SEC Order. Similar reports will be required to be issued within 60 days of the anniversary of the engagement in years two and three. These reports will be presented to both the City and the SEC.

The Kroll Report recommended the retention of such monitor in its report dated August 8, 2006. Based on the Kroll recommendation, the Mayor's Office began initial interviews with potential candidates in September of 2006. Members of the City Council, the City Attorney's Office and the Independent Budget Analyst participated in this process. More than 15 candidates were reviewed and 4 candidates, each of whom the City believed would be acceptable to the SEC, received personal interviews.

As a result of this interview process, the Mayor recommends the authorization of the contract for Independent Consultant/Monitoring services with Mr. Stanley Keller, a partner in the law firm of Edwards, Angell, Palmer & Dodge, LLP. Mr. Keller's resume and the resume of his law firm are attached. The contract will expire on March 1, 2010. The total contract amount is not to exceed \$4,000,000.

FISCAL CONSIDERATIONS:

This item authorizes funding in the amount of \$2,000,000 to provide the Independent Consultant/Monitoring services through the end of Fiscal Year 2007. These costs will be allocated on a full time equivalent position (FTE) basis consistent with the Council Policy, and as detailed in the attached. This item also authorizes the City Auditor and Comptroller to appropriate and to transfer up to \$1,417,400 from the Unallocated Reserve to the Public Liability Fund to pay the General Fund portion of this Fiscal Year 2007 expenditure. After this transfer the Unallocated Reserve balance will be \$40,236,233.

Dubick/Goldstone

FILE LOCATION: SUBITEM A: NONE
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 10:37 a.m. – 11:59 a.m.;
2:05 p.m. – 2:53 p.m.)

MOTION BY MADAFFER TO INTRODUCE THE ORDINANCE IN SUBITEM A; AND ADOPT THE RESOLUTION IN SUBITEM B WITH THE DIRECTION TO: 1) ENSURE THAT EXPENDITURES FROM THE ENTERPRISE FUND BE DONE IN CONFORMITY WITH GENERAL ACCOUNTING PRINCIPLES; 2) PROVIDE INVOICES FOR REVIEW TO THE INDEPENDENT BUDGET ANALYST AND AUDIT COMMITTEE; 3) INCLUDE AN AMENDMENT THAT \$2 MILLION BE AUTHORIZED UNTIL THE END OF THE FISCAL YEAR; 4) CONTRACTOR SHALL NOT BE REQUIRED TO OBTAIN APPROVAL BY COUNCIL FOR ANY CONSULTANT HE MAY USE; 5) ON PAGE 3 OF 11 OF THE CONSULTANT AGREEMENT, SECTION “B”, “PROVISIONS REGARDING SERVICES”, IN THE PORTION WHICH READS “... QUESTIONS OF LAW THE FIRM SHALL REPORT TO THE CITY ATTORNEY”, CHANGE THE WORD “REPORT” TO “POINT OF CONTACT”; AND 6) ON PAGE 5 OF 11 OF THE CONSULTANT AGREEMENT, SECTION “E”, “OUT OF POCKET DISBURSEMENTS”, REMOVE THE LANGUAGE WHICH READS “2 PERCENT COVERING TELECOPY, TELEX, POSTAGE AND DOMESTIC LONG DISTANCE TELEPHONE AND OTHER PHONE CHARGES.” Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 8:46 p.m. in honor of the memory of:

Diane Carpenter as requested by Council President Pro Tem Young.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 8:42 p.m. – 8:46 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego