

MEMORANDUM OF LAW

DATE: July 6, 1995

TO: William C. Hanley, III, Deputy Director, Metropolitan
Wastewater Department, Contract Management Division

FROM: City Attorney

SUBJECT: City Manager's Authority to Award Construction Contracts
Funded From Annual Allocation CIP

By memorandum dated May 25, 1995, you report that the City Auditor's Office has raised a question concerning the City Manager's authority to advertise and award construction contracts which are funded from the "Annual Allocation" Capital Improvements Program (CIP) account of the Metropolitan Wastewater Department. The question implicates San Diego Municipal Code section 22.0211, which provides in pertinent part:

As to those public works contracts for which the expenditure shall not exceed one million dollars (\$1,000,000), the City Manager may let the same without further Council authorization for those projects previously approved and appropriated through development of the Annual Capital Improvements Program (CIP) budget.

The Annual Allocation CIP account presents a unique issue with respect to the language of the ordinance which refers to "those projects previously approved and appropriated." This is because the Annual Allocation item in the CIP does not specify any particular project, but instead is meant to cover incidental capital improvement requirements. The ordinance delegates to the City Manager the authority to award contracts under \$1,000,000 where the "project" in question has already been considered by the Council in adoption of the annual CIP. Since the Council included an Annual Allocation account in the CIP, the Council's intent with respect to that account is considered dispositive.

The Council's intent is manifested by past and continuing practice. The annual allocation account has been appropriated by the Council from year to year for minor or incidental capital improvements that are relatively lower in cost than the major projects specifically identified in the CIP. The Council has left discretion to the department to identify and execute these incidental projects as operational needs have required.

Thus, a project undertaken as an Annual Allocation project is a project "previously approved and appropriated through the annual CIP budget," because that budget does include a provision for such Annual Allocation projects. Since no Annual Allocation project will require expense of more than \$1,000,000, it would be inconsistent with the language of the ordinance to conclude that the City Manager lacks the authority to advertise and award those contracts. The ordinance and the purpose of the annual allocation suggest otherwise; the City Manager has the authority to advertise and award contracts which are under \$1,000,000 and which are funded by a Council-approved and appropriated Annual Allocation in the CIP.

JOHN W. WITT, City Attorney

By

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