Exhibit 1

Mail

Close

Previous Next

From: Terri Webster
To: Grissom, Lawrence
CC: Lexin, Cathy
Date: 12/3/2001 10:06 AM
Subject: earnings EEEK !

Larry

Oct statements showed $15.4 m loss on sale of stocks and a total monthly loss of $7m bringing YTD earnings at Oct 31, 2001 to only $14.1 million compared to $107 m last year same time. A 87% decrease ! EEEK !

In Sept you said Doug and you were comfortable that FY 02 earnings would be enough to cover the "base " needs...about $120m. Are you still on track for that? Was the October loss of $7m a part of that plan ?

Sincerely,
Sleepless in San Diego

EXHIBIT # 9

Exhibit 2

Municipal Secondary Market Disclosure Information Cover Sheet

This cover sheet should be sent with all submissions made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, and any applicable State Information Depository, whether the filing is voluntary or made pursuant to Securities and Exchange Commission rule 15c2-12 or any analogous state statute.

See www.sec.gov/info/municipal/nrmsir.htm for list of current NRMSIRs and SIDs

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IF THIS FILING RELATES TO A SINGLE BOND ISSUE:
Provide name of bond issue exactly as it appears on the cover of the Official Statement (please include name of state where issuer is located):

_____

_____

_____

Provide nine-digit CUSIP* numbers if available, to which the information relates:

_____ _____ _____

_____ _____ _____

IF THIS FILING RELATES TO ALL SECURITIES ISSUED BY THE ISSUER OR ALL SECURITIES OF A SPECIFIC CREDIT OR ISSUED UNDER A SINGLE INDENTURE:
Issuer's Name (please include name of state where Issuer is located):

THE CITY OF SAN DIEGO, CALIFORNIA (OBLIGOR, PURSUANT TO CERTIFICATES OF PARTICIPATION); PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO; CITY OF SAN DIEGO/MTDB AUTHORITY; AND CONVENTION CENTER EXPANSION FINANCING AUTHORITY (STATE: CALIFORNIA)

Other Obligated Person's Name (if any):

THE CITY OF SAN DIEGO, CALIFORNIA – IN EACH CASE, THE ULTIMATE CREDIT BEING THE GENERAL FUND OF THE CITY OF SAN DIEGO

Provide six-digit CUSIP* number(s), if available, of Issuer: **797299, 797260, 797448, 797299, and 79727L**

*(Contact CUSIP's Municipal Disclosure Assistance Line at 212.438.6518 for assistance with obtaining the proper CUSIP numbers.)

TYPE OF FILING:
☐ Electronic (Number of pages attached) √ Paper (Number of pages attached): 23

If information is also available on the Internet, give URL: _____

WHAT TYPE OF INFORMATION ARE YOU PROVIDING? (Check all that apply)

A. ▯ Annual Financial Information and Operating Data pursuant to Rule 15c2-12
(Financial information and operating data should not be filed with the MSRB.)

B. ▯ Audited Financial Statements or CAFR pursuant to Rule 15c2-12

C. ▯ Notice of a Material Event pursuant to Rule 15c2-12 (Check as appropriate)

1. ▯ Principal and interest payment delinquencies
2. ▯ Non-payment related defaults
3. ▯ Unscheduled draws on debt service reserves reflecting financial difficulties
4. ▯ Unscheduled draws on credit enhancements reflecting financial difficulties
5. ▯ Substitution of credit or liquidity providers, or their failure to perform
6. ▯ Adverse tax opinions or events affecting the tax-exempt status of the security
7. ▯ Modifications to the rights of security holders
8. ▯ Bond calls
9. ▯ Defeasances
10. ▯ Release, substitution, or sale of property securing repayment of the securities
11. ▯ Rating changes

D. ▯ Notice of Failure to Provide Annual Financial Information as Required

E. √ Other Secondary Market Information (Specify): **Voluntary Report of Information relating to the obligations of the City with respect to the San Diego City Employees Retirement System and certain errors to the Comprehensive Annual Financial Report of the City of San Diego for the fiscal year ended June 30, 2002.**

I hereby represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:

Issuer Contact:

Name: **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Obligor Contact, if any:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Investor and Credit Relations Contact:

Name: **LAKSHMI KOMMI** Title: **DEPUTY DIRECTOR, FINANCING SERVICES**

Telephone: **(619) 236-6928** Fax: **(619) 235-5835**

Press Contact:

Name: **CARL NETTLETON** Title: **DIRECTOR OF PUBLIC AND MEDIA AFFAIRS**

Telephone: **(619) 236-6851** Fax: **(619) 235-5266**

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

RELATING TO

$25,070,000
Public Facilities Financing Authority
of the City of San Diego
Lease Revenue Bonds, Series 2002B
(Fire and Life Safety Facilities Project)
(CUSIP Number 797299)

$15,255,000
City of San Diego/MTDB Authority
2003 Lease Revenue Refunding Bonds
(San Diego Old Town Light
Rail Transit Extension Refunding)
(CUSIP Number 797448)

$17,425,000
City of San Diego
2003 Certificates of Participation
(1993 Balboa Park/Mission Bay Park Refunding)
Evidencing Undivided Proportionate Interest in Lease
Payments to be Made by the City of San Diego
Pursuant to a Lease with the San Diego Facilities and
Equipment Leasing Corporation
(CUSIP Number 797260)

$169,685,000
Public Facilities Financing Authority
of the City of San Diego
Lease Revenue Bonds, Series 2002 (Ballpark Project)
(CUSIP Number 797299)

$205,000,000
Convention Center Expansion Financing Authority
Lease Revenue Bonds, Series 1998A
(City of San Diego, California, as Lessee)
(CUSIP Number 79727L)

$33,430,000
City of San Diego, California
Certificates of Participation
(Balboa Park and Mission Bay Park Capital
Improvements Program)
Series 1996A
(CUSIP Number 797260)

$11,720,000
City of San Diego, California
Refunding Certificates of Participation
(Balboa Park and Mission Bay Park Capital
Improvements Program, Series 1991)
Series 1996B
(CUSIP Number 797260)

$68,425,000
Public Facilities Financing Authority
of the City of San Diego
Taxable Lease Revenue Bonds, Series 1996A
(San Diego Jack Murphy Stadium)
(CUSIP Number 797299)

The City of San Diego, California (the "City") is submitting this Voluntary Report of Information (this "Report") to the Municipal Securities Rulemaking Board ("MSRB") and the Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs"). See Exhibit A for the listing of NRMSIRs. The City is submitting this Report on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego, the City of San Diego/MTDB Authority, and the Convention Center Expansion Financing Authority (the "Issuers") for the above-mentioned issuances. The City may or may not from time to time voluntarily submit additional information. This submission does not constitute a commitment to provide information beyond the disclosure requirements of the Continuing Disclosure Agreements related to each of the above-mentioned issuances (collectively, the "Continuing Disclosure Agreements").

This Report is dated as of January 27, 2004 (the "Dated Date") and speaks only as of the Dated Date. Readers are cautioned not to assume that any information has been updated beyond the Dated Date unless this Report expressly states that it constitutes an update of a specific matter in a document. The City expressly disclaims any duty of the City or any of the other Issuers to provide an update of this Report or a further update of any document, or matter therein, specifically referenced.

The filing of this Report does not constitute or imply any representation (1) that any or all of the information provided is material to investors, (2) regarding any other financial, operating or other information about the City or any of the other Issuers, or the above stated issuances, (3) that no changes, circumstances or events have occurred which may have a bearing on the security for the above-mentioned issuances or an investor's decision to buy, sell or hold the above-mentioned issuances.

Certain statements contained in this Report reflect not historical facts but forecasts and "forward-looking" statements. In this respect, the words "estimate," "project," "anticipate," "expect," "intend," "believe" and similar expressions are intended to identify forward-looking statements. Projections, forecasts, assumptions, expressions of opinions, estimates and other forward-looking statements, are not to be construed as representations of fact and are qualified in their entirety by the cautionary statements set forth in this Report.

Any statements regarding the above-mentioned issuances, other than a statement made by the City in an official release or subsequent notice or annual report, published in a financial newspaper of general circulation and/or filed with the MSRB or the NRMSIRs, are not authorized by the City or any of the other Issuers. Neither the City nor any of the other Issuers shall be responsible for the accuracy, completeness or fairness of any such unauthorized statement.

DATED: January 27, 2004

CITY OF SAN DIEGO

Patricia T. Frazier

Patricia T. Frazier
Deputy City Manager

EXHIBIT A

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission.

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, NJ 08558
Email: Munis@Bloomberg.com
Phone: (609) 279-3225
FAX: (609) 279-5962

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, NY 10038
Email: NRMSIR@FTID.com
Phone: (212) 771-6999
FAX: (212) 771-7390

Standard & Poor's J. J. Kenny Repository
55 Water Street, 45th Floor
New York, NY 10041
Email: nrmsir_repository@sandp.com
Phone: (212) 438-4595
FAX: (212) 438-3975

DPC Data, Inc.
One Executive Drive
Fort Lee, NJ 07024
Email: nrmsir@dpcdata.com
Phone: (201) 346-0701
FAX: (201) 947-0107

$25,070,000
Public Facilities Financing Authority
of the City of San Diego
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$17,425,000
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2003 Certificates of Participation
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City of San Diego, California
Refunding Certificates of Participation
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Series 1996B
(CUSIP Number 797260)

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Public Facilities Financing Authority
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Taxable Lease Revenue Bonds, Series 1996A
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(CUSIP Number 797299)

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

This Voluntary Report of Information (this "Report") is being provided by the City of San Diego (the "City") on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego, the City of San Diego/MTDB Authority, and the Convention Center Expansion Financing Authority (the "Issuers") for the above stated issuances. This Report consists of two parts. First, Part I of this Report provides information regarding the obligations of the City's general fund to make payments to the San Diego City Employees Retirement System ("SDCERS"). Part I supercedes all disclosure made by the City with respect to the general fund's obligations to make payments to SDCERS pursuant to Securities and Exchange Commission Rule 15c2-12 or otherwise, including information under the heading "10. Pension Plan" contained in the Annual Report as of June 30, 2002. Second, Part II of this Report provides information regarding certain errors made in the Comprehensive Annual Financial Report of the City as of June 30, 2002.

PART I

PENSION PLAN

City Employees' Retirement System

General

All benefited City employees participate with the full-time employees of the Airport Authority (the "Airport Authority") and the San Diego Unified Port District (the "District") in the City Employees' Retirement System ("CERS"). CERS is a public employee retirement system that acts as a common investment and administrative agent for the City, the Airport Authority and the District and is governed by a board of trustees (the "Board"), the membership of which is composed as follows: three members are elected by the general members (who are active employees of the City other than police, fire and other safety members), one member is elected by active fire employees of the City, one member is elected by active police employees of the City, one member is elected by retirees who are members of CERS, three members are ex-officio members (who are a designee of the City Manager, a designee of the City Auditor, and the City Treasurer), and four members are appointed by the City Council. Through various City benefit plans, CERS provides retirement benefits to all general, safety (police and fire), and legislative members. The information set forth herein relates solely to the City's participation in CERS and not to the Airport Authority or the District.

The CERS plans are structured as defined benefit plans in which benefits are based on salary, length of service, and age. City employees are required to contribute a percentage of their annual salary to CERS. The obligation to make contributions to CERS is based on the San Diego City Charter and the San Diego Municipal Code and, to the extent that available CERS assets are less than vested benefits, is an obligation imposed by law upon the City.

According to the preliminary Annual Actuarial Valuation of CERS dated as of December 18, 2003 (the "Preliminary Valuation"), the funded ratio (valuation of assets available for benefits to total actuarial accrued liability) of the CERS fund as of June 30, 2003 was 67.2%, which is the lowest funded ratio as of the end of any of the fiscal years ended June 30, 1996 through 2003. According to the Preliminary Valuation, the CERS fund had an unfunded actuarial accrued liability (the "UAAL") of $1.157 billion as of June 30, 2003, which represented a $437 million increase in the UAAL over the previous actuarial calculation as of June 30, 2002. The UAAL is the difference between total actuarially accrued liabilities of $3.533 billion and actuarially calculated assets allocated to funding of $2.375 billion. The estimated portion of the UAAL attributable to employees payable from the general fund was approximately $902 million as of June 30, 2003, which is calculated based on a 78% pro rata share attributable to the general fund and is derived from a three-year average of the general fund's portion of total employer contribution amounts for fiscal years 2000, 2001, and 2002. The increase in the UAAL as of June 30, 2003 resulted primarily from lower actual investment returns as compared to the 8% actuarially assumed rate of return on investments. The Preliminary Valuation has neither been finalized by the CERS actuary nor approved by the Board, and the final annual actuarial valuation of CERS for the year ended June 30, 2003 will not be completed until the first calendar

quarter of 2004. Accordingly, the results presented in the Preliminary Valuation are subject to change.

Currently, the UAAL is being amortized over a 30-year period, which started July 1, 1991, with each year's amortization payment reflected as a portion of the percentage of payroll representing the employer's contribution rate. As of June 30, 2003, there were 18 years remaining in the amortization period. (The Board can change the amortization period at any time and from time to time.) However, while the UAAL is currently being amortized over a fixed 30-period ending June 30, 2021, for purposes of financial reporting by the City, a Net Pension Obligation ("NPO") has been calculated using a rolling forty-year period and not over the remaining portion of the fixed thirty-year period. See **"Part II — 2002 Financial Statement Errors"** in the third paragraph, Item 4.a. for a discussion regarding the amortization of the City's actuarially required contribution on the basis of a running forty-year amortization rather than a thirty-year fixed amortization beginning July 1, 1991.

Agreements with CERS

1996 Arrangement. Since July 1996, the City has been making annual contributions to CERS in accordance with a funding method which, under two successive arrangements with CERS (the "1996 Arrangement" and the "2002 Agreement"), permitted contributions to be made by the City to CERS at specified rates which were below the rates of more conventional pension plan funding methods (the "Corridor Method of Funding"). Under the 1996 Arrangement, the City's annual contribution rates in respect of employee retirement benefits were to be specified rates expressed as percentages of payroll, which were increased through the fiscal year ended June 30, 2006, after which time the City contributions were to be calculated at one of the conventional pension plan contribution rates, Projected Unit Credit ("PUC"). As a consequence, the difference between the amounts paid and the amounts which would have been paid at the actuarially determined rate was approximately $80.2 million (derived by calculating actual payroll at full actuarial rates and subtracting the amount actually paid to CERS) through June 30, 2003. The additional amount which CERS assets could have earned during such period from such difference is estimated to be approximately $18.1 million. See **"Part II — 2002 Financial Statement Errors"** in the third paragraph, Item 4.b. for information regarding a reserve against which the differences between the amounts paid and the amounts which would have been paid was charged, which CERS had maintained, and which reserve was eliminated without any increase or decrease in CERS actuarial assets during the year ended June 30, 2003.

The 1996 Arrangement also provided that in the event the "funded ratio" of CERS fell below 82.3% (the "Threshold Ratio") the City-paid rate was to be increased on July 1 of the year following the date of the report of the actuarial evaluation in which the funded ratio dropped below the Threshold Ratio (the "Shortfall Amount"), and the increase was to be in an amount determined by the actuary necessary to restore a funded ratio no more than the level that is 82.3%. There were differences of views as to the nature and timing of the City's duties in the event the funded ratio fell below the Threshold Ratio. It is the view of the City that if the funded ratio dropped below the Threshold Ratio of 82.3%, under the 1996 Agreement, the City's duty was to increase the amount of annual contribution to an amount equal to the actuarially determined PUC contribution rate, but that there was no duty to directly fund any or all of the Shortfall Amount over any particular period. Some Board members and others thought that there

was a duty to fund up the Shortfall Amount over one or small number of annual periods without regard to actuarially determined contribution rates.

Between the fiscal years ended June 30, 1997 and 2003, a number of events occurred which impacted the UAAL: Investment results of CERS below the actuarially assumed rate of 8% per annum occurred as a consequence of declines in the securities market; the City, like other local agencies in California, in settlement of litigation (the "Corbett Settlement")* seeking to calculate compensation for benefits over a greater amount than just direct pay, agreed to increase benefits which in turn increased actuarially determined liabilities; demographic changes; the City's contributions to CERS of approximately $80.2 million less than the City would have contributed if it had contributed at the actuarially determined rates as of June 30, 2003 (utilizing a 30-year fixed amortization period ending June 30, 2021); increases in CERS reserves, as well as other events to a lesser degree. During the same period, the funded ratio declined from 93.3% to 67.2%.

2002 Agreement. In the Spring of 2002, the City commenced negotiations with CERS regarding modifications to the 1996 Arrangement which culminated in approval by the City Council on November 18, 2002, and the Board on November 15, 2002 of an agreement between the City and CERS (the "2002 Agreement"). The 2002 Agreement amended the 1996 Arrangement regarding annual City Corridor contributions and made more specific the contributions to be made by the City if the funding ratio of CERS fell below the Threshold Ratio, as it first did as of the year ended June 30, 2002. (Beginning July 1, 2003, however, the City began making contributions for Non-Governmental Funds at the actuarially determined rates in addition to making specific contributions under the 2002 Agreement.)

Under the 2002 Agreement, with respect to employer contribution rates for the remaining years of the 1996 Arrangement (through the year ending June 30, 2007), the rates for each of the fiscal years ended June 30, 2004 and thereafter were higher percentages of payroll than were contemplated by the 1996 Arrangement and provides for "full PUC contribution rates," to be paid for the year ending June 30, 2009, subject to the Board not changing actuarial assumptions used to determine contributions as of June 30, 2001. The 2002 Agreement also provides that if the City increases retirement benefits to employees at any time, the City will pay, in addition to the contractual rate, the full actuarially determined rate occasioned by such an increase commencing July 1 of the fiscal year following the benefits increase (and this is being done for the year ended June 30, 2004, for increased benefits approved by the City during the year ended June 30, 2003).

With respect to payments by the City on account of the existence of a Shortfall Amount, the 2002 Agreement provides that if the funded ratio falls below the Threshold Ratio, the City's annual contribution rate shall be incrementally, ratably and annually increased to a percentage of

* With regard to retired employees covered by the Corbett Settlement (approximately 4,000 in number), the settlement provided for a flat increase of 7% in benefits, payable from net earnings and gains in CERS, after deducting amounts for expenses, certain benefits and certain reserves (the "Corbett Contingency"). The last Corbett Contingency was paid in November 2001. To the extent not paid by CERS, the unpaid amount is carried forward until there are available net earnings, but no interest is accrued thereon. The Corbett Contingency is not reflected in the UAAL or the City's contractually or actuarially determined contribution rates. As of June 30, 2003, the cumulative unpaid Corbett Contingency was approximately $10.8 million.

the actuarially determined rate such that the City will pay, for the year ending June 30, 2009 (the "Catch Up Period"), a rate equal to the actuarially determined rate using actuarial assumptions in effect on June 30, 2001. (The 2002 Agreement does not require any payment for any Shortfall Amount as such). The increased funding rate commenced during the Catch Up Period on July 1, 2003. Once operative, the duty of the City to make incremental contributions continues as described above, even though the funding ratio later improves to at or above the Threshold Ratio.

According to the 2002 Agreement, the City's obligations with respect to base rate contributions and incremental contributions by virtue of the funded ratio falling below the Threshold Ratio terminate in full on June 30, 2009. Thereafter, the Board is to determine the City's contribution rates, with the advice of its actuary, for the fiscal year beginning July 1, 2009 and thereafter, without regard to the contribution provisions of the 2002 Agreement or the 1996 Arrangement. Such determination is to be made taking into account any changes in actuarial assumption that may be recommended by the CERS actuary and approved by its governing body. In addition, the City and the Board agree that the Board will take all necessary steps and appropriate actions to "rapidly" bring the City's contribution to CERS to the contribution rates determined by the entry age normal funding method and the City is to use its best efforts to contribute, beginning July 1, 2011, to CERS utilizing such method, which the City and CERS believe will produce less volatility in contributions than the PUC method. Should the City fail to meet any of its obligations under the 2002 Agreement, it is to immediately contribute to CERS, utilizing the PUC method.

At the time it approved the 2002 Agreement on November 15, 2002, the Board of CERS was provided with an opinion of its fiduciary counsel, reciting the facts and circumstances surrounding the 1996 Arrangement and leading up to the 2002 Agreement and describing the negotiations leading to the 2002 Agreement. The fiduciary counsel opinion concluded that, under the circumstances described in the opinion, it was reasonable for the Board to have decided that the 2002 Agreement was the best way to achieve long-term financial integrity and soundness of CERS, that the Board had diligently examined the alternatives presented to the City, that the Board had obtained information from outside experts, that the Board provided a full and reasonable consideration of the facts and issues before approving the 2002 Agreement, and, therefore, in the opinion of such counsel, it was reasonable for the Board to have entered into the 2002 Agreement in the exercise of its fiduciary responsibilities. This opinion took into account statements of the CERS actuary indicating that from an actuarial viewpoint, maintaining the City's duties regarding any Shortfall Amount as provided for in the 1996 Arrangement and not providing transition periods to achieve actuarially determined rates would have provided for greater funding levels than the solution provided for in the 2002 Agreement, but if the Board decided in its judgment that a transition period was needed, the period chosen under the 2002 Agreement was reasonable.

Funding Status and Prospects.

Status.

The following table sets forth for the years ended June 30, 2003 and June 30, 2004, which is the City's current fiscal year, total employer contributions made by the City, the general fund portion of the total employer contributions, and the difference between the actuarially

determined contribution rates (calculated on the basis of a thirty-year fixed amortization beginning July 1, 1991) and the actual contributions made.

Year Ended	Total Contributions (In Millions)	General Fund Portion (In Millions)	Difference Between Actual Contributions and Actuarially Determined Contribution Rates (In Millions)[2]
June 30, 2003	$70.1[1]	$41.8	$12.4
June 30, 2004 (Budgeted)	$85.3	$55.5	$38.8

[1] Includes approximately $10 million paid by the Non-Governmental Funds representing the previously calculated and unpaid NPO attributed to the Non-Governmental Funds for the years ended June 30, 1997 through 2002. See **"Part II — 2002 Financial Statements Errors"**, third paragraph, Item 4.d. for a discussion regarding certain errors to the NPO presented in the Comprehensive Annual Financial Report of the City for the fiscal year ended June 30, 2002.

[2] The general fund's share is estimated to be 95% of these amounts.

Further, the UAAL was $1.157 billion as of June 30, 2003, of which the general fund's share is estimated to be $902 million which is calculated based on a 78% pro rata share attributable to the general fund and is derived from a 3-year average of the general fund's portion of total employer contribution amounts for fiscal years 2000, 2001, and 2002. The UAAL as of June 30, 2003 will be used in calculating that portion of the City's contributions for the fiscal year ending June 30, 2005 that relate to the amortized portion of the UAAL. The City has not contributed to CERS at actuarially determined rates since the year ended June 30, 1996, and the magnitude of difference between the agreed-upon rates under the 1996 Arrangement and the 2002 Agreement and estimated actuarially determined rates have increased significantly between June 30, 1997, and the current year. (For the year ended June 30, 2003, the City contributed to CERS for employees and former employees of non-governmental funds at the actuarially determined rate and expects to continue this in future years.)

Prospects. As discussed below in "*City and CERS Actions*," the City is assessing the status of CERS and potential actions to address the circumstances described herein. Assuming the City takes no further action to enhance the funding status or decrease the UAAL, and assuming no newly created pension benefit increases or decreases between now and June 30, 2011, the City's annual pension plan contribution obligations may continue to rise as set forth in the following table. The information contained in the table, and the related assumptions, are "forward-looking" in nature and are not to be construed as representations of fact or representations that in fact the various tabular information shown will be the correct amounts for the years indicated. Rather, these reflect good faith estimates by the CERS actuary taking into account a variety of assumptions, a number of which are specified below. Accordingly,

prospective investors are cautioned to review these estimates as general indications of orders of magnitude and not as precise amounts.

Year Ending June 30,	City Required Contributions [(1)(2)(3)] (In Millions)	Funded Ratio[(2)]	UAAL[(2)(3)] (In Billions)
2004	$85	66.1%	$1.3
2005	$115	65.3%	$1.5
2006	$138	64.8%	$1.6
2007	$173	64.6%	$1.8
2008	$220	64.8%	$1.9
2009	$268	65.4%	$2.1
2010	$288	65.9%	$2.2
2011	$306	66.2%	$2.4

(1) 2002 Agreement contract rates through June 30, 2008, in respect of the general fund and, for such funds, actuarially determined rates thereafter, and, for non-governmental funds, including enterprise funds, actuarially determine rates throughout the period. Based on the estimate of the general fund's share of the UAAL as of June 30, 2003, the estimate of the general fund's share of City Required Contributions and UAAL is 78% which is calculated based on a 78% pro rata share attributable to the general fund and is derived from a three-year average of total contribution amounts between fiscal years 2000, 2001 and 2002.

(2) The following assumptions were used in preparing the estimates:

a. That the UAAL as of June 30, 2003 that was calculated to be $1.157 billion in the Preliminary Valuation remains the same in the final annual actuarial valuation of CERS for the year ended June 30, 2003.

b. The net investment return on the actuarial value of the CERS assets will be 8% per annum. (This is before giving effect to the "smoothing" of investment returns. For actuarial purposes, net realized and unrealized investments gains and losses are spread over a five year period. Accordingly, for these projections, the net investment returns will be negatively affected by the smoothing of investment losses for prior years which are being carried forward to the years ending June 30, 2004 through 2008.) This compares to historical net investment return on the actuarial value of CERS assets of (3.4%) for the year ended June 30, 2003; (1.2%) for the three years then ended; 5.5% for the five years then ended and 8.0% for the ten years then ended.

c. Eligible employee payroll will rise an average of 4.25% in each year during the period from increases in wages and changes in the number of employees, or both. This compares with an average annual eligible employee payroll increase in each of the three years ended June 30, 2002 of 8%.

d. Other employee demographic assumptions utilized in the actuarial report as of the year ended June 30, 2001 will be realized.

(3) The UAAL is amortized over a period of 18 years as of June 30, 2003, declining by one year each subsequent year through June 30, 2006. Thereafter the amortization of the UAAL is calculated on a rolling 15-year basis, the import of which is to reduce the actuarially determined contribution rates below those which would be required by the remaining fixed amortization period, which is currently in effect through June 30, 2021, unless changed by the Board.

As can be seen from the foregoing table, the magnitude of the annual pension plan payments to be made by the City may be increasing in the near future and, without new City revenues, or a reduction in the pension benefits payable by the City or other actions to enhance the funding ratio or reduce the UAAL, these payments may become difficult for the City to fund without reductions in other services.

The foregoing estimates do not take into account employee contributions paid to CERS by the City pursuant to labor agreements ("Offsets"). Between the years ended June 30, 1998 and 2003, the Offsets increased from approximately $20 million per year to approximately $28.8 million per year. (The general fund's shares of these were approximately 78% which is calculated based on a 78% pro rata share attributable to the general fund and is derived from a three-year average of total contribution amounts between fiscal years 2000, 2001 and 2002.) Nor do the estimates include any direct payments that the City may have to make in the future for post-retirement health care benefits. See **"Post Retirement HealthCare Benefits"** below. Further, these estimates do not take into account direct supplemental or contingent payments by CERS from CERS net earnings, including net realized gains from the sale of securities, or the direct or indirect deposits from such net earnings into reserves therefor by CERS, all of which diverts assets in CERS ("Basic Assets") from availability for paying basic benefits and cause increases to UAAL.

The following table sets forth for the periods indicated the amounts paid by CERS from Basic Assets for supplemental or contingent payments or directly or indirectly into reserves therefor.

Supplemental and Contingent Payments
Years Ended June 30

Category	1998	1999	2000	2001	2002	2003	Totals
Annual Supplement Benefit Payments[1]	$3,206,315	$3,319,544	$3,427,519	$3,540,643	$3,627,495	$3,725,490	$ 20,847,006
Corbett Contingency Payments[2]	-	-	-	23,630,603	5,265,570	1,453	28,897,626
Interest on "DROP" Reserves[3]	381,478	1,194,608	2,333,565	4,207,312	6,424,652	9,218,282	23,759,897
Reserve for Supplemental COLA[4]	-	37,800,000	2,722,012	2,643,834	2,848,815	-	46,014,661
Reserve for Employee Contribution Rate Increase[5]	37,800,000	2,864,612[4]	3,093,281[4]	3,161,312[4]	3,239,204[4]	-	50,158,409
Reserve for Retiree Health Insurance[6]	7,000,000	9,000,000	9,000,000	11,374,263	12,771,254	14,317,073	63,462,590
Totals	$48,387,793	$54,178,764	$20,576,377	$48,557,967	$34,176,990	$27,262,298	$233,140,189

(1) Supplemental Benefit Payments to retirees generally equal to approximately $30.00 times the number of years of employment
(the "13th Check").
(2) See discussion above under *"**Agreements with CERS** – 1996 Arrangement"* for information regarding the Corbett Settlement and the Corbett Contingency.
(3) Interest paid on Deferred Retirement Option Plan reserves at the actuarially-assumed rate, whether or not earned.
(4) These reflect a payment into a CERS reserve for Supplemental COLA (June 30, 1999) and interest on the balance of that amount in each of the subsequent years at the actuarial assumed rate, whether or not earned. Amounts in this account are used to pay supplemental cost of living adjustments to certain eligible retirees.
(5) These reflect payments into a CERS reserve for employee pension plan payments (June 30, 1998) and interest on the balance of that amount in each of the subsequent years at the actuarial assumed rate, whether or not earned. Amounts in this account are used to pay Offsets.
(6) See "**Post-Retirement Healthcare Benefits**" below. The amounts shown represent amounts contributed from net earnings of CERS to Basic Assets with equal equivalent amounts paid by the City into a CERS reserve for post-retirement healthcare benefits.

Pending Litigation Challenging the City's Funding Arrangements. As indicated below under **"Litigation Relating to the Retirement System"**, the plaintiffs in pending litigation have alleged that neither the 1996 Arrangement nor the 2002 Agreement provided for permissible

levels of contributions to CERS required by the City Charter or the Municipal Code, each of which, it is alleged, would require larger contributions by the City historically and prospectively. An adverse decision in such litigation could adversely affect the general fund of the City in that it could result in the acceleration of the time when the City is required to make contributions at actuarially determined rates. See discussion under **"Litigation Relating to the Retirement System"** below.

City and Other Actions. The City is evaluating the fiscal status of CERS to determine the best course of action to improve funding status of CERS as regards pension benefits and availability of surplus funds in CERS to pay post-retirement healthcare premiums/benefit payments. To this end, the Mayor and the City Council have recently formed a pension reform committee to study, and provide recommendations to address, any unfunded liability problems of CERS. The committee will also review and consider the scope and depth of certain audits that have been commissioned by the CERS Board (including audits of the actuarial process and the investment operations) and provide input to the Board's Audit Committee. The Committee will also examine how CERS has performed compared to other systems, including actions other systems have taken to address funding shortfalls. The group will also analyze the representative constitution of the Board and consider whether it should be restructured. It is expected to make an interim report to the City Council no later than February 2004.

Post-Retirement Healthcare Benefits

The City provides healthcare benefits/premiums to a variety of retired employees. Currently, the benefits are primarily for employees who were actively employed and retired on or after October 1980 and were otherwise entitled to retirement allowances. Most eligible employees are entitled to receive health insurance premiums up to a cap established in 2002 and based upon other healthcare programs/ premiums sponsored by the City, and adjusted annually based upon the projected increase for national health expenditures by the centers for Medicare and Medicaid Services. Employees who retired or terminated prior to October 1980 who were eligible for retirement allowances prior to that date are also eligible for healthcare benefits (currently approximately 750 employees) but their healthcare benefits are limited to a total of $1,200 per year.

Since 1995, amounts have been transferred to CERS Basic Assets from net earnings on the Basic Assets in CERS, i.e., dividends, interest and net realized gains from the sale of securities, and an equivalent amount is paid by the City into a CERS reserve for post-retirement healthcare benefits (the "Insurance Benefit Account"). It is from this Account that post-retirement/healthcare premiums/benefits are paid. Accordingly, the statement in Note 13 of Notes to the Comprehensive Annual Financial Report for the fiscal year ended June 30, 2002 regarding recognized expenditures refers to expenditures from the Insurance Benefit Account of CERS, not the general fund or any other resources of the City. There have been no payments by the City into the Insurance Benefit Account of CERS since the year ended June 30, 2003.

For the year ended June 30, 2003, approximately $11,450,200 was charged against the Insurance Benefit Account for health benefits and insurance premiums payments, and the remaining balance in the account at that date was $20,740,269. For the fiscal year ending June 30, 2004, the amount of $13 million is projected for healthcare benefits. Neither CERS nor the

City tracks the departments or funds from which retired personnel receiving health benefits or premium payments, when in active service, were paid.

The City projects that if there are no further contributions to the Insurance Benefit Account, such Account will be exhausted during the fiscal year ending June 30, 2005, whereupon the City will be required to make direct payments. (Subject to approval of the City Council, it is anticipated that another $25 million will be transferred from Basic Assets to the Insurance Benefit Account, which, it is estimated, will extend through June 30, 2006 the payment by CERS of healthcare benefits/premiums for eligible retired employees.) If the Insurance Benefit Account of CERS becomes exhausted, the general fund of the City may have to incur additional annual expenses related to post-retirement healthcare benefits.

In a report to the City Council Committee on Rules, Finance and Intergovernment Relations rendered February 5, 2003, the Administrator of CERS reported that based on very general estimates, and not on an actuarial analysis, the present value of the liability for such benefits for current active employees and existing retirees in the retirement plan was in the neighborhood of an amount of which could be between $600 million and $1.1 billion (or $468 million to $858 million for the general fund which is calculated based on a 78% pro rata share attributable to the general fund and is derived from a three-year average of the general fund's portion of total employer contribution amounts for fiscal years 2000, 2001, and 2002); and, unless included in an actuarially computed contribution or unless earnings from CERS were sufficient to create ongoing excess earnings, any future responsibility of the City would have to be funded from other sources. The Administrator's report indicates that the current method will almost certainly require a change in the benefits or funding from sources other than CERS and its reserves in the not too distant future.

Currently, there is no accounting rule that requires governmental agencies, such as the City, to account for post-retirement healthcare benefits as it accounts for vested pension benefits. A recent exposure draft by the Governmental Accounting Standards Board, which would have required such accounting, is being revised and is expected that a new such exposure draft will be published sometime in the calendar year 2004, and may be formally considered as early as July, 2004.

Litigation Relating to the Retirement System

General. In January 2003, a putative class action complaint (*Gleason v. San Diego City Employees' Retirement System, et al.*) was filed in the San Diego Superior Court against the City and CERS. A class has not yet been certified. The complaint alleges that from the fiscal year ended June 30, 1997 to the present, the City has not contributed to CERS the annual amount required by certain provisions of the San Diego City Charter and the San Diego Municipal Code. Instead, the plaintiffs allege that the City has been contributing an annual amount to CERS that is based on the 1996 Arrangement and the 2002 Agreement. Plaintiffs further allege that as a result of these violations, and the breaches of duty of the Board, as of the date the complaint was filed, CERS was less than 68% funded and the UAAL was $720 million. (According to the CERS annual actuarial valuation, the funded ratio as of June 30, 2002 was 77.3%.) As to the City, the plaintiffs seek (a) a judicial declaration that the City has violated the City Charter and Municipal

Code provisions, and (b) a judicial declaration as to the appropriate remedies for the City's alleged violation of the City Charter and the Municipal Code.

The plaintiffs allege that the City is obligated to make additional contributions to CERS on two bases. First, the plaintiffs allege that the City has failed to comply with a provision of the City Charter that requires the City to contribute to CERS an amount substantially equal to the amounts that employees contribute to CERS (this basis is referred to herein as the "substantially equal basis"). The plaintiffs allege that the difference between the amount of total employee contributions between fiscal years 1997 and 2002 and the amount of contributions by the City during the same period were not substantially equal. The City disputes the plaintiffs' calculations and maintains that the amount of its contributions between fiscal years 1997 and 2002 is substantially equal to the amount of employee contributions during the same period. Second, the plaintiffs allege that the City Charter and the Municipal Code require the City to contribute to CERS in respect to members a percentage of earnable compensation as determined by the CERS's actuary pursuant to the annual actuarial valuation (this basis is referred to herein as the "actuary basis"). In a separate lawsuit (Gleason v. San Diego City Employees' Retirement System), the plaintiff is attempting to invalidate the 2002 Agreement between the City and CERS based on certain conflict of interest allegations concerning certain Board members. The City contends that its contracts with CERS are lawful and binding contracts.

Impact on the General Fund. Based on the plaintiffs' theories and arguments, with which the City disagrees, the City's maximum aggregate general fund exposure through June 30, 2002 under either of the plaintiffs' theories could be in excess of $70 million. An adverse determination in this litigation may also expose the City to liability with respect to fiscal year 2003, and may cause the City to incur additional expenses in fiscal year 2004 and beyond. If the plaintiffs succeed on either of their theories, then the maximum amount including lost interest earnings, the general fund of the City could be ordered to pay for the fiscal year 2003 is estimated to be approximately $17 million, and for the fiscal year 2004 is estimated to be approximately $47 million which includes estimated lost interest earnings calculated at 8% per annum. Accordingly, compliance with any such order could have an adverse effect on the City's general fund.

PART II

2002 FINANCIAL STATEMENTS ERRORS

In September 2003, the City Auditor and Comptroller (the "City Auditor") and Caporicci & Larson, the outside auditor (the "Outside Auditor") of the Comprehensive Annual Financial Report of the City (the "CAFR") discovered that certain errors existed in the CAFR for the fiscal year ended June 30, 2002 (the "2002 CAFR"). The discovered errors were primarily limited to the footnotes to the 2002 CAFR. The 2002 CAFR was audited by Calderon, Jaham & Osborn ("CJ&O"), to which the Outside Auditor is the successor firm. Upon such discovery, the City Auditor and the Outside Auditor undertook a variety of activities, which continued into December 2003.

The City Auditor's activities were as follows: (1) confirmed footnote information to supporting sources and source documentation including outside third party sources; (2) compared various footnote disclosures for conformance to generally accepted accounting principles in the United States ("GAAP"); (3) compared footnotes in separate financial statements to footnotes in the combined all-funds financial statements to ascertain consistency in numbers or narratives; (4) recalculated the totals of all numerical columns within footnotes; (5) traced and reconciled footnote information to other portions of the 2002 CAFR if applicable; and (6) reviewed the footnotes to determine if any could be enhanced for additional clarity in the subsequent year's financial statements. This process was separately undertaken by each of the Accounting Division and the Audit Division.

The Outside Auditor undertook the following activities: (1) the audit team which audited the 2002 CAFR compared the 2002 CAFR (including both the financial statements themselves and the footnotes thereto) to the audit working papers that were prepared in connection with the 2002 CAFR; (2) the Engagement Partner and the Senior Partner of the Outside Auditor reviewed the 2002 CAFR (including both the financial statements themselves and the footnotes thereto) for technical compliance with the requirements of GAAP, which includes relevant Governmental Accounting Standards Board ("GASB") pronouncements by comparing the 2002 CAFR to a technical compliance checklist recommended by the Government Finance Officers Association; (3) the Outside Auditor had a technical Quality Control Review of the 2002 CAFR performed by their independent Quality Control Reviewer who is a certified public accountant; and (4) the Outside Auditor met with members of the Accounting Division and the Audit Division of the City Auditor's Office to compare results of the City Auditor's and the Outside Auditor's reviews of the 2002 CAFR and assisted the City Auditor in preparing a comprehensive list of the errors in the 2002 CAFR. All of the activities of the City and the Outside Auditor were substantially completed in December 2003.

The review processes undertaken did not constitute a re-audit or re-issuance of either the footnotes or of any other part of the 2002 CAFR, and therefore would not necessarily have brought to light any errors that such an re-audit or re-issuance may have uncovered. The review process of the Outside Auditor included both the financial statements themselves and the footnotes thereto; and the review process of the City Auditor did not extend beyond the footnotes of the 2002 CAFR to the actual financial statements, as such, except as indicated above. It is the

opinion of the City Auditor and the Outside Auditor that, in accordance with accounting and auditing professional guidelines, discovered errors related primarily to footnotes, and were not material either individually or in the aggregate in the context of the 2002 CAFR taken as a whole. Neither the City Auditor nor the Outside Auditor extended this review to any financial statements of the City for years prior to the fiscal year ended June 30, 2002.

Among the errors and correctible statements discovered by the City Auditor and the Outside Auditor in the 2002 CAFR were the following:

1. In Note 5 of Notes to the 2002 CAFR (Governmental Activities of Long-Term Debt), there were miscellaneous errors in stated interest rates and maturities on various bonds which did not affect the actual financial statements, as such. There were also miscellaneous errors in interest payable on bonds and notes payable resulting in a net overstatement of prospective interest ranging from an understatement of approximately $211,000 per year to an overstatement of approximately $1,582,000 per year for a total net overstatement of approximately $26,229,000, primarily the future accreting value on capital appreciation bonds of the City's redevelopment agency. This did not affect the actual financial statements, as such. However, there were also errors in prospective bond principal payable in Note 5 of which approximately $2,615,000 was the already accrued (accreted) value on such capital appreciation bonds, which affected the following financial statements in the 2002 CAFR: (Statement of Net Assets – Governmental Activities; Statement of Activities – Governmental Activities; the Reconciliation to Net Assets at the bottom of the Governmental Funds – Balance Sheet; and the Reconciliation of the Statement of Revenues, Expenditure, and Changes in Fund Balances of Governmental Funds to the Statement of Activities) in that it understated a category of liabilities and expenses therein and overstated net assets by an equal amount.

2. In Note 6 of Notes to the 2002 Financial Statements (Business Type Activity Long-Term Debt), miscellaneous errors were found, which were primarily in stated interest rates and maturity dates. This did not affect the actual financial statements, as such. In addition, the amortization of discounts and premiums on bonds issued, in the aggregate net amount of $19,232,000, was not reflected in Note 6. There were corresponding misclassifications of a like amount in certain categories of assets and liabilities in the following financial statements in the 2002 CAFR (Statement of Net Assets – Business Type Activities; Statement of Net Assets – Proprietary Funds). These misclassifications offset each other resulting in no change in total net assets, and therefore, did not have an impact on the financial statements, as such.

3. In Note 10 of Notes to the 2002 Financial Statements (Lease Commitments – Operating Leases), the total amount payable on operating leases between June 30, 2003 and June 30, 2027 was stated to be $13.7 million, whereas the correct amounts ranged from approximately $3 million to approximately $10 million per year higher for a total of $127.2 million (of which approximately $72,069,000 represented amounts payable on operating leases for which the general fund is obligated). This did not affect the actual financial statements, as such.

4. In addition, there were a variety of corrections to Note 12 of Notes to the 2002 CAFR (Pension Plans—Deferred Benefit Plan) (the "Note"). The discussion in this item 4 and item 7 relates to the City Employees' Retirement System ("CERS") as a whole and reflects

pension matters for governmental activities (of which the general fund is a component) and business-type activities collectively.

a. The Note indicated, under subparagraphs c (Funding Policy) and d (Annual Required Contributions) that the City's unfunded actuarially accrued liability ("UAAL") to CERS was being amortized at a percentage of payroll over a period of 30 years with 19 years remaining. In addition, the City reported a net pension obligation ("NPO") as the difference between the actual contributions to the pension plan (pursuant to the 1996 arrangement) and the required amount. The NPO is derived by first amortizing the UAAL over a number of years to establish an annual actuarially required contribution ("ARC"). However, the Note did not indicate that in calculating the ARC the UAAL was being amortized using a running 40-year period, rather than a 30-year fixed period with 19 years remaining. While utilizing such a running 40-year period is permissible under generally accepted accounting principles for reporting an NPO liability it results in an NPO less than would have been reported had the 30 years fixed/19 years remaining amortization method been used. This did not affect the financial statements, as such.

b. In subparagraph c of the Note (Funding Policy), it was indicated that (a) as a consequence of utilizing the "Corridor" funding method in accordance with the 1996 arrangement, which was not a funding method formally sanctioned by GASB for financial reporting purposes, the City was required to report a liability of $39.2 million more than had been paid by the City (as an NPO) even though the shortfall was funded in a reserve, and (b) the actuary believed that the Corridor funding method was an excellent method for the City and superior to one of the GASB acceptable methods of funding. The subparagraph did not make clear that the reserve was, in fact, maintained by CERS, not the City. The reserve was eliminated by CERS during the year ended June 30, 2003, and the elimination of the reserve neither increased nor decreased CERS actuarial assets. While the actuary statements regarding the belief of the actuary and its efforts to obtain an endorsement by the GASB for using such method were correct in 1997, these statements were no longer correct at the time the 2002 CAFR were issued. This did not affect the actual financial statements, as such.

Further, while subparagraph c specified the total contributions made during the year, it did not, as required by GAAP relating to accounting for pensions by state and local government employers, show tables of the City's varying contribution rates expressed as percentages of active payroll which range from a low of 8.56% to 52.23% for general members and a low of 18.91% to a high of 21.54% for safety members. This did not affect the actual financial statements, as such.

c. In subparagraph d of the Note (Annual Required Contribution), there were a variety of miscellaneous errors: Among them, the date of June 30, 1996, as the actuarial valuation used to determine the City's annual required contributions should have been June 30, 2001, and the inflation rate assumption should have been 4.25% rather than 4.5% as stated in the subparagraph. This did not affect the actual financial statements, as such.

d. In subparagraph e of the Note (Three-Year Trend Analysis), the Annual Pension Cost amounts in the table for the years ended 6/30/00 and 6/30/01 were erroneously

stated, as were the percentage being contributed and the resulting NPO; the NPO recorded in the table for the year ended 6/30/00, was approximately $700,000 understated and the amount for the year ended 6/30/01, was approximately $1.7 million understated. The same numerical errors occurred in subparagraph f of the Note (Net Pension Obligation – Three Year Trend Analysis) in the table. These errors also resulted in the understatement of a category of expenses and a category of liabilities by $1.7 million in total, of which approximately $1.4 million is in each of the following financial statements in the 2002 CAFR that present financial data in which governmental activities, including the general fund, are components: (1) Statement of Net Assets; (2) Statement of Activities; (3) the Reconciliation to Net Assets at the bottom of the Governmental Funds – Balance Sheet; and (4) Reconciliation of the Statement of Revenues, Expenditure; and Changes in Fund Balances of Governmental Funds to the Statement of Activities. The remaining amount was excluded from comparable business-type funds.

e. A 2002 agreement between CERS and the City relating to, among other things, City pension plan contribution funding requirements, to be effective July 1, 2003, which agreement had been approved before the time of the issuance of the 2002 CAFR by both the City and CERS, was not mentioned in the footnotes to the 2002 Financial Statements as a subsequent event. This agreement superceded the 1996 arrangement referred to in 4.b above. (See "Part I — Pension Plan" for information regarding the 1996 arrangement and the 2002 agreement.) This did not affect the actual financial statements, as such.

5. In Note 17 of Notes to Financial Statements (Commitments), the amount of a revolving line of credit guarantee of which the San Diego Housing Commission, a discretely presented component unit in the 2002 CAFR, guarantees 10%, was understated by approximately $3.5 million; the sewer utility construction plans cost estimates were understated by approximately $1 million; and the water utility construction plan cost estimates were understated by approximately $1.6 million and its contractual commitments were understated by approximately $4.2 million. This did not affect the actual financial statements, as such.

6. In Note 22 of Notes to Financial Statements (Restatement of Beginning Balances), in the table, the various balances, adjustments and restated balances for the Sewer Utility Fund were omitted. The restated balance as of June 30, 2001, for such enterprise fund was approximately $1.66 million. This did not affect the actual financial statements, as such.

7. An unaudited required table of supplemental information relating to pension plan funding levels was included in the 2002 CAFR (following the footnotes thereto) for each of the fiscal years ended June 30, 1996 through 2001, and included the funded ratio, the UAAL, and the ratio of the UAAL to the covered payroll. This table was prepared including pension data regarding the San Diego Unified Port District, which should have been excluded. As a result, the funded ratio, UAAL, and the ratio of the UAAL to the covered payroll were each misstated. These errors did not affect the financial statements, as such. If corrected, as of June 30, 2000 and 2001 (the last two fiscal years presented), such table of supplemental information would have reflected a UAAL, the funded ratio, and the ratio of the UAAL to the covered payroll as follows (as compared to the numbers as published) (dollars in thousands):

Fiscal Year Ended	UAAL		Funded Ratio		Ratio of UAAL to Covered Payroll[1]	
June 30,	As Published	If Corrected	As Published	If Corrected	As Published	If Corrected
2000	$32,936	$68,959	98.75%	97.3%	6.87%	15.4%
2001	$261,741	$283,893	91.07%	89.9%	50.50%	58.9%

(1) The higher the ratio of the UAAL to the covered payroll, the greater the economic burden to the City.

No Reissuance; Future Procedures. The City Auditor and the Outside Auditor are of the opinion that, based upon the activities undertaken by each of them with respect to the 2002 CAFR, as described above, and in accordance with accounting and auditing professional guidelines, the errors that were discovered, primarily relating to footnotes, were not material either individually or in the aggregate in the context of the 2002 CAFR taken as a whole, and therefore the City Auditor has elected not to reissue 2002 CAFR. Further, the Outside Auditor, as the successor to CJ&O, has advised the City Auditor that the City may continue to rely on the CJ&O audit report dated November 27, 2002 related to the 2002 CAFR as well as the letter dated the same date from CJ&O to the City Auditor related to the City's internal accounting controls. To the extent that the errors in the 2002 CAFR would have had an effect upon the audited financial statements of the City as of June 30, 2003 (the "2003 Statements"), the necessary corrections were made in the course of the preparation of such 2003 Statements.

As a consequence of the discovery of errors, the City Auditor has implemented the following additional procedures relative to the review process: (1) the establishment and maintenance of a centralized control point and repository for the preparation, review, cross checking of source documentation and source approvals for all footnotes; (2) the requiring of formal consents and approvals by appropriate departments or third parties of all applicable footnotes, and the overall acknowledgment and approval of the obtaining of all such consents and approvals; (3) mandatory cross-checking between separate financial statements and the combined all-funds financial statements; and (4) the reviewing of each of the steps described above by the Audit Division. The Outside Auditor likewise has implemented the following additional audit process procedures with respect to City financial statements: (1) cross-checking of all source documentation provided by the City for reasonableness and appropriateness; (2) requiring written communication by the City for any known material or immaterial errors or misstatements; (3) enhanced documentation of audit progress meetings conducted with key City staff; (4) enhanced communication and cross-checking of information relating to subsequent events, commitments and contingencies and litigation with the offices of the City Auditor and City Attorney; (5) enhanced cross-checking of separate fund and related-entity financial statements to the City's financial statements; (6) a person independent from the audit team for the City will review these financial statements for technical compliance with the requirements of GASB by comparing the financial statements against a technical compliance checklist recommended by the Government Finance Officers Association; and (7) the Director of Accounting and Auditing will review these financial statements for technical compliance with GASB requirements.

Municipal Secondary Market Disclosure Information Cover Sheet

This cover sheet should be sent with all submissions made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, and any applicable State Information Depository, whether the filing is voluntary or made pursuant to Securities and Exchange Commission rule 15c2-12 or any analogous state statute.

See www.sec.gov/info/municipal/nrmsir.htm for list of current NRMSIRs and SIDs

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IF THIS FILING RELATES TO A SINGLE BOND ISSUE:
Provide name of bond issue exactly as it appears on the cover of the Official Statement (please include name of state where issuer is located):

_____

_____

_____

Provide nine-digit CUSIP* numbers if available, to which the information relates:

_____ _____ _____

_____ _____ _____

IF THIS FILING RELATES TO ALL SECURITIES ISSUED BY THE ISSUER OR ALL SECURITIES OF A SPECIFIC CREDIT OR ISSUED UNDER A SINGLE INDENTURE:
Issuer's Name (please include name of state where Issuer is located):

PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, CALIFORNIA

Other Obligated Person's Name (if any):

THE CITY OF SAN DIEGO, CALIFORNIA – THE ULTIMATE CREDIT BEING THE SEWER REVENUE FUND OF THE CITY OF SAN DIEGO

Provide six-digit CUSIP* number(s), if available, of Issuer: **79730A**

*(Contact CUSIP's Municipal Disclosure Assistance Line at 212.438.6518 for assistance with obtaining the proper CUSIP numbers.)

TYPE OF FILING:
☐ Electronic (Number of pages attached) √ Paper (Number of pages attached): 18

If information is also available on the Internet, give URL: _____

WHAT TYPE OF INFORMATION ARE YOU PROVIDING? (Check all that apply)

A. ▯ Annual Financial Information and Operating Data pursuant to Rule 15c2-12
(Financial information and operating data should not be filed with the MSRB.)

B. ▯ Audited Financial Statements or CAFR pursuant to Rule 15c2-12

C. ▯ Notice of a Material Event pursuant to Rule 15c2-12 (Check as appropriate)

1. ▯ Principal and interest payment delinquencies
2. ▯ Non-payment related defaults
3. ▯ Unscheduled draws on debt service reserves reflecting financial difficulties
4. ▯ Unscheduled draws on credit enhancements reflecting financial difficulties
5. ▯ Substitution of credit or liquidity providers, or their failure to perform
6. ▯ Adverse tax opinions or events affecting the tax-exempt status of the security
7. ▯ Modifications to the rights of security holders
8. ▯ Bond calls
9. ▯ Defeasances
10. ▯ Release, substitution, or sale of property securing repayment of the securities
11. ▯ Rating changes

D. ▯ Notice of Failure to Provide Annual Financial Information as Required

E. √ Other Secondary Market Information (Specify): **Voluntary Report of Information relating to the obligations of the City with respect to the San Diego City Employees Retirement System and certain errors to the financial statements of the Metropolitan Wastewater Utility as of June 30, 2002 and 2001.**

I hereby represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:

Issuer Contact:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Obligor Contact, if any:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Investor and Credit Relations Contact:

Name: **LAKSHMI KOMMI** Title: **DEPUTY DIRECTOR, FINANCING SERVICES**

Telephone: **(619) 236-6928** Fax: **(619) 235-5835**

Press Contact:

Name: **CARL NETTLETON** Title: **DIRECTOR OF PUBLIC AND MEDIA AFFAIRS**

Telephone: **(619) 236-6851** Fax: **(619) 235-5266**

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

RELATING TO

$315,410,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1999A and Series 1999B
(Payable Solely From Installment Payments Secured
By Wastewater System Net Revenues)
(CUSIP Number 79730A)

$250,000,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1997A and 1997B
(Payable Solely From Installment Payments Secured
By Wastewater System Net Revenues)
(CUSIP Number 79730A)

$350,000,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1995
(CUSIP Number 79730A)

$250,000,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1993
(CUSIP Number 79730A)

The City of San Diego, California (the "City") is submitting this Voluntary Report of Information (this "Report") to the Municipal Securities Rulemaking Board ("MSRB") and the Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs"). See Exhibit A for the listing of NRMSIRs. The City is submitting this Report on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego (the "Authority") for the above-mentioned issuances. The City may or may not from time to time voluntarily submit additional information. This submission does not constitute a commitment to provide information beyond the disclosure requirements of any applicable Continuing Disclosure Agreements related to any of the above-mentioned issuances (collectively, the "Continuing Disclosure Agreements").

This Report is dated as of January 27, 2004 (the "Dated Date") and speaks only as of the Dated Date. Readers are cautioned not to assume that any information has been updated beyond the Dated Date unless this Report expressly states that it constitutes an update of a specific matter in a document. The City expressly disclaims any duty of the City or the Authority to provide an update of this Report or a further update of any document, or matter therein, specifically referenced.

The filing of this Report does not constitute or imply any representation (1) that any or all of the information provided is material to investors, (2) regarding any other financial, operating or other information about the City or the Authority, or the above stated issuances, (3) that no changes, circumstances or events have occurred which may have a bearing on the security for the above-mentioned issuances or an investor's decision to buy, sell or hold the above-mentioned issuances.

Certain statements contained in this Report reflect not historical facts but forecasts and "forward-looking" statements. In this respect, the words "estimate," "project," "anticipate," "expect," "intend," "believe" and similar expressions are intended to identify forward-looking statements. Projections, forecasts, assumptions, expressions of opinions,

estimates and other forward-looking statements, are not to be construed as representations of fact and are qualified in their entirety by the cautionary statements set forth in this Report.

Any statements regarding the above-mentioned issuances, other than a statement made by the City in an official release or subsequent notice or annual report, published in a financial newspaper of general circulation and/or filed with the MSRB or the NRMSIRs, are not authorized by the City or the Authority. Neither the City nor the Authority shall not be responsible for the accuracy, completeness or fairness of any such unauthorized statement.

DATED: January 27, 2004

CITY OF SAN DIEGO

Patricia T. Frazier
Deputy City Manager

EXHIBIT A

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission.

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, NJ 08558
Email: Munis@Bloomberg.com
Phone: (609) 279-3225
FAX: (609) 279-5962

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, NY 10038
Email: NRMSIR@FTID.com
Phone: (212) 771-6999
FAX: (212) 771-7390

Standard & Poor's J. J. Kenny Repository
55 Water Street, 45th Floor
New York, NY 10041
Email: nrmsir_repository@sandp.com
Phone: (212) 438-4595
FAX: (212) 438-3975

DPC Data, Inc.
One Executive Drive
Fort Lee, NJ 07024
Email: nrmsir@dpcdata.com
Phone: (201) 346-0701
FAX: (201) 947-0107

$315,410,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1999A and Series 1999B
(Payable Solely From Installment Payments Secured
By Wastewater System Net Revenues)
(CUSIP Number 79730A)

$250,000,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1997A and 1997B
(Payable Solely From Installment Payments Secured
By Wastewater System Net Revenues)
(CUSIP Number 79730A)

$350,000,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1995
(CUSIP Number 79730A)

$250,000,000
Public Facilities Financing Authority
of the City of San Diego
Sewer Revenue Bonds, Series 1993
(CUSIP Number 79730A)

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

This Voluntary Report of Information (this "Report") is being provided by the City of San Diego (the "City") on behalf of itself and on behalf of the Public Facilities Financing Authority (the "Authority") for the above-mentioned issuances. This Report consists of two parts. First, Part I of this Report provides information regarding the obligations of the City's Sewer Revenue Fund to make payments to the San Diego City Employees Retirement System ("SDCERS"). Part I supercedes all disclosure made by the City with respect to the Sewer Revenue Fund's obligations to make payments to SDCERS pursuant to Securities and Exchange Commission Rule 15c2-12 or otherwise, including information under the heading "PENSION PLAN" contained in the Annual Report as of June 30, 2002. Second, Part II of this Report provides information regarding certain errors made in the financial statements of the Metropolitan Wastewater Utility as of June 30, 2002 and 2001.

PART I

PENSION PLAN

City Employees' Retirement System

All benefited City employees participate with the full-time employees of the Airport Authority (the "Airport Authority") and the San Diego Unified Port District (the "District") in the City Employees' Retirement System ("CERS"). CERS is a public employee retirement system that acts as a common investment and administrative agent for the City, the Airport Authority and the District and is governed by a board of trustees (the "Board"), the membership of which is composed as follows: three members are elected by the general members (who are active employees of the City other than police, fire and other safety members), one member is elected by active fire employees of the City, one member is elected by active police employees of the City, one member is elected by retirees who are members of CERS, three members are ex-officio members (who are a designee of the City Manager, a designee of the City Auditor, and the City Treasurer), and four members who are appointed by the City Council. Through various City benefit plans, CERS provides retirement benefits to all general, safety (police and fire), and legislative members. The information set forth herein relates solely to the City's, including the Wastewater System's, participation in CERS and not to the Airport Authority or the District.

The CERS plans are structured as defined benefit plans in which benefits are based on salary, length of service, and age. City employees are required to contribute a percentage of their annual salary to CERS. The obligation to make contributions to CERS is based on the San Diego City Charter and the San Diego Municipal Code and, to the extent that available CERS assets are less than vested benefits, is an obligation imposed by law upon the City.

According to the preliminary Annual Actuarial Valuation of CERS dated as of December 18, 2003 (the "Preliminary Valuation"), the funded ratio (valuation of assets available for benefits to total actuarial accrued liability) of the CERS fund as of June 30, 2003 was 67.2%, which is the lowest funded ratio as of the end of any of the fiscal years ended June 30, 1996 through 2003. According to the Preliminary Valuation, the CERS fund had an unfunded actuarial accrued liability (the "UAAL") of $1.157 billion as of June 30, 2003, which represented a $437 million increase in the UAAL over the previous actuarial calculation as of June 30, 2002. The UAAL is the difference between total actuarially accrued liabilities of $3.533 billion and actuarially calculated assets allocated to funding of $2.375 billion. The estimated portion of the UAAL attributable to employees payable from the Wastewater System was approximately $63.6 million as of June 30, 2003, which is calculated based on a 5.5% pro rata share attributable to the Wastewater System and is derived from a three -year average of the Wastewater System's portion of total employer contribution amounts for fiscal years 2000, 2001, and 2002. The increase in the UAAL as of June 30, 2003 resulted primarily from lower actual investment returns as compared to the 8% actuarially assumed rate of return on investments. The Preliminary Valuation has neither been finalized by the CERS actuary nor approved by the Board, and the final annual actuarial valuation of CERS for the year ended June 30, 2003 will not be completed until the first calendar quarter of 2004. Accordingly, the results presented in the Preliminary Valuation are subject to change.

Currently, the UAAL is being amortized over a 30-year period, which started July 1, 1991, with each year's amortization payment reflected as a portion of the percentage of payroll representing the employer's contribution rate. As of June 30, 2003, there were 18 years remaining in the amortization period. (The Board can change the amortization period at any time and from time to time.) However, while the UAAL is currently being amortized over a fixed 30-period ending June 30, 2021, for purposes of financial reporting by the City, a Net Pension Obligation ("NPO") has been calculated using a rolling forty-year period and not over the remaining portion of the fixed thirty-year period. See **"Part II — 2002 Financial Statement Errors"** in the third paragraph, Item 3.a. for a discussion regarding the amortization of the City's actuarially required contribution on the basis of a running forty-year amortization rather than a thirty-year fixed amortization beginning July 1, 1991.

Wastewater System Funding Status. Between June 1996 through June 30, 2002, the City made annual contributions to CERS in accordance with a funding method which, under two successive arrangements with CERS (the "1996 Arrangement" and the "2002 Agreement"), permitted contributions to be made by the City to CERS at specified rates (the "Corridor Method of Funding"). These specified rates were below the rates of more conventional pension plan funding methods, which calculate annual contributions in accordance with the rates determined by a reporting actuary, which in the case of the City, utilized a fixed 30-year amortization period which began on June 30, 1991 (the "Actuary Method"). During fiscal years 1997 through 2002, the Wastewater System also made contributions in accordance with the Corridor Method of Funding. During those years, the aggregate difference in the amounts that the Wastewater System paid to CERS in accordance with the Corridor Method of Funding and the amounts that the Wastewater System would have paid to CERS if it had paid in accordance with the Actuary Method was approximately $3.7 million (the "Additional Amount").

Between the fiscal years ended June 30, 1997 and 2003, a number of events occurred which impacted the UAAL: Investment results of CERS below the actuarially assumed rate of 8% per annum occurred as a consequence of declines in the securities market; the City, like other local agencies in California, in settlement of litigation (the "Corbett Settlement")* seeking to calculate compensation for benefits over a greater amount than just direct pay, agreed to increase benefits which in turn increased actuarially determined liabilities; demographic changes; the City's contributions to CERS of approximately $80.2 million less than the City would have contributed if it had contributed at the actuarially determined rates as of June 30, 2003 (utilizing a 30-year fixed amortization period ending June 30, 2021); increases in CERS reserves, as well as other events to a lesser degree. During the same period, the funded ratio declined from 93.3% to 67.2%.

Under the 1996 Arrangement, if the funded ratio fell below 82.3% the City's contributions to CERS would increase. It is the view of the City that such increased payments

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* With regard to retired employees covered by the Corbett Settlement (approximately 4,000 in number), the settlement provided for a flat increase of 7% in benefits, payable from net earnings and gains in CERS, after deducting amounts for expenses, certain benefits and certain reserves (the "Corbett Contingency"). The last Corbett Contingency was paid in November 2001. To the extent not paid by CERS, the unpaid amount is carried forward until there are available net earnings, but no interest is accrued thereon. The Corbett Contingency is not reflected in the UAAL or the City's contractually or actuarially determined contribution rates. As of June 30, 2003, the cumulative unpaid Corbett Contingency approximately was $10.8 million.

needed to be only up to the actuarially determined contribution rate. Under the view of certain Board members and others, the City was obliged to fund up the difference over one or a small number of annual periods without regard to actuarially determined contribution rates. The 2002 Agreement made clear that the City's duty is to make such increases in payments such that, for the fiscal year ended June 30, 2009, contributions are being made at actuarially determined rates.

Starting with fiscal year 2003, the Wastewater System ceased making its annual contributions to CERS in accordance with the Corridor Funding Method, and began to make its annual contributions to CERS in accordance with the Actuary Method. The Wastewater System anticipates that for fiscal year 2004 and for the foreseeable future, the Wastewater System will make annual contributions to CERS in accordance with the Actuary Method. In addition, on June 30, 2003, the Wastewater System paid $3.0 million in addition to the amounts that the Wastewater System paid pursuant to the Actuary Method for fiscal year 2003. This amount represented the Wastewater System's share of the estimated Net Pension Obligation as of June 30, 2002, which is an amount that is presented on the Metropolitan Wastewater Utility financial statements and, like other amounts presented on those financial statements, was calculated on the basis of amortizing the UAAL over a rolling forty-year amortization period (as opposed to the 30-year fixed period that the annual actuary valuation uses). The Wastewater System paid these additional amounts to CERS to reduce the Additional Amount for fiscal years 1997 through 2002, to $726,000.

Based upon estimates prepared for the City, assuming no newly created pension benefit increases or decreases between now and fiscal year 2011, the City anticipates (1) that the annual contributions of the City (including the general fund and the Wastewater System) will continue to rise, (2) that the funded ratio may drop to as low as 65%, and (3) that the UAAL may rise to as high as $2.4 billion. In addition, this does not take into account contingent or supplemental payments from CERS and the portions of employee contributions (which are referred to as "offsets") that the City may be required to pay pursuant to labor arrangements. While these issues may adversely impact the City's general fund, the City does not believe that these issues will be materially adverse to the Wastewater System. Moreover, it should be noted that in the Installment Purchase Agreement, the City has covenanted to fix, prescribe and collect rates and charges for the wastewater service that will be at least sufficient to pay during each fiscal year all Obligations payable in such fiscal year, and to yield during each fiscal year Net System Revenues equal to 120% of the debt service on Parity Obligations for such fiscal year.

Pending Litigation Challenging the City's Funding Arrangements. As indicated below under **"Litigation Relating to the Retirement System"**, the plaintiffs in pending litigation have alleged that neither the 1996 Arrangement nor the 2002 Agreement provided for permissible levels of contributions to CERS required by the City Charter or the Municipal Code, each of which, it is alleged, would require larger contributions by the City. The City does not believe that an adverse decision in such litigation will be materially adverse to the Wastewater System.

Post-Retirement Healthcare Benefits. As indicated in Note 7 of Notes to the Financial Statements of the Metropolitan Wastewater Utility as of June 30, 2002 and 2001 (the "Financial Statements"), the City, including the Wastewater System, provides healthcare benefits/premiums to a variety of retired employees. Currently, the benefits are primarily for employees who were actively employed and retired on or after October 1980 and were otherwise entitled to retirement

allowances. Most eligible employees are entitled to receive health insurance premiums up to a cap established in 2002 and based upon other healthcare programs/ premiums sponsored by the City (including the Wastewater System), and adjusted annually based upon the projected increase for national health expenditures by the centers for Medicare and Medicaid Services. Employees who retired or terminated prior to October 1980 who were eligible for retirement allowances prior to that date are also eligible for healthcare benefits (currently approximately 750 employees) but their healthcare benefits are limited to a total of $1,200 per year.

Since 1995, amounts have been transferred to CERS Basic Assets from net earnings on the Basic Assets in CERS, *i.e.*, dividends, interest and net realized gains from the sale of securities, and an equivalent amount is paid by the City into a CERS reserve for post-retirement healthcare benefits (the "Insurance Benefit Account"). It is from this Account that post-retirement/healthcare premiums/benefits are paid. Accordingly, the statement in Note 7 of Notes to the Financial Statements regarding recognized expenditures refers to expenditures from the Insurance Benefit Account of CERS, not the Wastewater System or any other resources of the City. There have been no payments by the City into the Insurance Benefit Account of CERS since the year ended June 30, 2003.

For the year ended June 30, 2003, approximately $11,450,200 was charged against the Insurance Benefit Account for health benefits and insurance premiums payments, and the remaining balance in the account at that date was $20,740,269. For the fiscal year ending June 30, 2004, the amount of $13 million is projected for healthcare benefits. Neither CERS nor the City tracks the departments or funds from which retired personnel receiving health benefits or premium payments, when in active service, were paid.

The City projects that if there are no further contributions to the Insurance Benefit Account, such Account will be exhausted during the fiscal year ending June 30, 2005, whereupon the City will be required to make direct payments. (Subject to approval of the City Council, it is anticipated that another $25 million will be transferred from Basic Assets to the Insurance Benefit Account, which, it is estimated, will extend through June 30, 2006 the payment by CERS of healthcare benefits/premiums for eligible retired employees.) If the Insurance Benefit Account of CERS becomes exhausted, the Wastewater System may have to incur additional annual expenses related to post-retirement healthcare benefits.

In a report to the City Council Committee on Rules, Finance and Intergovernment Relations rendered February 5, 2003, the Administrator of CERS reported that based on very general estimates, and not on an actuarial analysis, the present value of the liability for such benefits for current active employees and existing retirees in the retirement plan was in the neighborhood of an amount of which could be between $600 million and $1.1 billion (or $33 million to $61 million for the Wastewater System, which is calculated based on a 5.5% pro rata share attributable to the Wastewater System and is derived from a three-year average of the Wastewater System's portion of total employer contribution amounts for fiscal years 2000, 2001, and 2002); and, unless included in an actuarially computed contribution or unless earnings from CERS were sufficient to create ongoing excess earnings, any future responsibility of the City would have to be funded from other sources. The Administrator's report indicates that the current method will almost certainly require a change in the benefits or funding from sources other than CERS and its reserves in the not too distant future.

Currently, there is no accounting rule that requires governmental agencies, such as the City, to account for post-retirement healthcare benefits as it accounts for vested pension benefits. A recent exposure draft by the Governmental Accounting Standards Board, which would have required such accounting, is being revised and is expected that a new such exposure draft will be published sometime in the calendar year 2004, and may be formally considered as early as July, 2004.

City and Other Actions. The City is evaluating the fiscal status of CERS to determine the best course of action to improve funding status of CERS as regards pension benefits and availability of surplus funds in CERS to pay post-retirement healthcare premiums/benefit payments. To this end, the Mayor and the City Council have recently formed a pension reform committee to study, and provide recommendations to address, any unfunded liability problems of CERS. The committee will also review and consider the scope and depth of certain audits that have been commissioned by the Board (including audits of the actuarial process and the investment operations) and provide input to the Board's Audit Committee. The Committee will also examine how CERS has performed compared to other systems, including actions other systems have taken to address funding shortfalls. The group will also analyze the representative constitution of the Board and consider whether it should be restructured. It is expected to make an interim report to the City Council no later than February 2004.

Litigation Relating to the Retirement System

General. In January 2003, a putative class action complaint (*Gleason v. San Diego City Employees' Retirement System, et al.*) was filed in the San Diego Superior Court against the City and CERS. A class has not yet been certified. The complaint alleges that from the fiscal year ended June 30, 1997 to the present, the City has not contributed to CERS the annual amount required by certain provisions of the San Diego City Charter and the San Diego Municipal Code. Instead, the plaintiffs allege that the City has been contributing an annual amount to CERS that is based on the 1996 Arrangement and the 2002 Agreement. Plaintiffs further allege that as a result of these violations, and the breaches of duty of the Board, as of the date the complaint was filed, CERS was less than 68% funded and the UAAL was $720 million. (According to the CERS annual actuarial valuation, the funded ratio as of June 30, 2002 was 77.3%.) As to the City, the plaintiffs seek (a) a judicial declaration that the City has violated the City Charter and Municipal Code provisions, and (b) a judicial declaration as to the appropriate remedies for the City's alleged violation of the City Charter and the Municipal Code.

The plaintiffs allege that the City is obligated to make additional contributions to CERS on two bases. First, the plaintiffs allege that the City has failed to comply with a provision of the City Charter that requires the City to contribute to CERS an amount substantially equal to the amounts that employees contribute to CERS. The plaintiffs allege that the difference between the amount of total employee contributions between fiscal years 1997 and 2002 and the amount of contributions by the City during the same period were not substantially equal. The amount of the difference alleged by the plaintiffs which the City believes is attributable to employees of the Wastewater System is approximately $2.1 million, which is calculated based on a 5.5% pro rata share attributable to the Wastewater System and is derived from a three-year average of the Wastewater System's portion of total employer contribution amounts for fiscal years 2000, 2001,

and 2002. The City disputes the plaintiffs' calculations and maintains that the amount of its contributions between fiscal years 1997 and 2002 is substantially equal to the amount of employee contributions during the same period. Second, the plaintiffs allege that the City Charter and the Municipal Code require the City to contribute to CERS in respect to members a percentage of earnable compensation as determined by the CERS's actuary pursuant to the annual actuarial valuation. In a separate lawsuit (Gleason v. San Diego City Employees' Retirement System), the plaintiff is attempting to invalidate the 2002 Agreement between the City and CERS based on certain conflict of interest allegations. The City contends that its contracts with CERS are lawful and binding contracts.

Impact on the Wastewater System. As discussed above under "**City Employees' Retirement System** — *Wastewater System's Funding Status*" in more detail, the Wastewater System has made its annual contributions to CERS in accordance with the Actuary Method since fiscal year 2003. As discussed above under "**City Employees' Retirement System** — *Wastewater System's Funding Status.*" On June 30, 2003, the Wastewater System made certain payments, which reduced the Additional Amount to $726,000. The City anticipates that the Wastewater System will continue to pay amounts to CERS in accordance with the Actuary Method, and this approach is reflected in the projections contained in Table 14 above. In addition, the City anticipates that the Wastewater System, for fiscal years 2004 and for the foreseeable future, even under the plaintiffs' calculations, will contribute amounts to CERS that will exceed the amounts of the employee contributions. Therefore, under either of the theories espoused at present by the plaintiffs, the Wastewater System will most likely have minimal additional exposure from this litigation.

PART II

2002 FINANCIAL STATEMENTS ERRORS

In September 2003, the City Auditor and Comptroller (the "City Auditor") and Caporicci & Larson, the outside auditor of the financial statements of the City (the "Outside Auditor") discovered that certain errors existed in the financial information presented for Fiscal Year 2002 in the audited financial statements of the Metropolitan Wastewater Utility for the Fiscal Years ended June 30, 2002 and 2001 (the "2002 Statements"). The discovered errors were primarily limited to the footnotes to the 2002 Statements. The 2002 Statements present the financial results of the Sewer Revenue Fund. The 2002 Statements were audited by Calderon, Jaham & Osborn ("CJ&O"), to which the Outside Auditor is the successor firm. Upon such discovery, the City Auditor and the Outside Auditor undertook a variety of activities, which continued into December 2003.

The City Auditor's activities were as follows: (1) confirmed footnote information to supporting sources and source documentation including outside third party sources; (2) compared various footnote disclosures for conformance to generally accepted accounting principles in the United States ("GAAP"); (3) compared footnotes in the 2002 Statements to footnotes in the combined all-funds financial statements to ascertain consistency in numbers or narratives; (4) recalculated the totals of all numerical columns within footnotes; (5) traced and reconciled footnote information to other portions of the 2002 Statements if applicable; and (6) reviewed the footnotes to determine if any could be enhanced for additional clarity in the subsequent year's financial statements. This process was separately undertaken by each of the Accounting Division and the Audit Division.

The Outside Auditor undertook the following activities: (1) the audit team which audited the 2002 Statements compared the 2002 Statements (including both the financial statements themselves and the footnotes thereto) to the audit working papers that were prepared in connection with the 2002 Statements; (2) the Engagement Partner and the Senior Partner of the Outside Auditor reviewed the 2002 Statements (including both the financial statements themselves and the footnotes thereto) for technical compliance with the requirements of GAAP, which includes relevant Governmental Accounting Standards Board ("GASB") pronouncements by comparing the 2002 Statements to a technical compliance checklist recommended by the Government Finance Officers Association; (3) the Outside Auditor had a technical Quality Control Review of the 2002 Statements performed by their independent Quality Control Reviewer who is a certified public accountant; and (4) the Outside Auditor met with members of the Accounting Division and the Audit Division of the City Auditor's Office to compare results of the City Auditor's and the Outside Auditor's reviews of the 2002 Statements and assisted the City Auditor in preparing a comprehensive list of the errors in the 2002 Statements. All of the activities of the City Auditor and the Outside Auditor were substantially completed in December 2003.

The review processes undertaken did not constitute a re-audit or re-issuance of either the footnotes or of any other part of the 2002 Statements, and therefore would not necessarily have brought to light any errors that such a re-audit or re-issuance may have uncovered. The review

process of the Outside Auditor included both the financial statements themselves and the footnotes thereto; and the review process of the City Auditor did not extend beyond the footnotes of the 2002 Statements to the actual financial statements, as such, except as indicated above. It is the opinion of the City Auditor and the Outside Auditor that, in accordance with accounting and auditing professional guidelines, discovered errors related primarily to footnotes, and were not material either individually or in the aggregate in the context of the 2002 Statements taken as a whole. Neither the City Auditor nor the Outside Auditor extended this review to any financial statements of the City for years prior to the fiscal year ended June 30, 2002.

Among the errors and correctible statements discovered by the City Auditor and the Outside Auditor in the 2002 Statements were the following:

1. In Note 3 of the Notes to the 2002 Statements (Capital Assets), a Retirement of $152,839 was incorrectly netted against Additions. This did not affect the actual financial statements, as such.

2. In Note 4 of Notes to the 2002 Financial Statements (Long-Term Debt), miscellaneous errors were found in stated interest rates. This did not affect the actual financial statements, as such.

3. In addition, there were a variety of corrections to Note 6 of the Notes to the 2002 Statements (Pension Plans) (the "Pension Note"). The discussion in this item 3 relates to the City Employees' Retirement System ("CERS") as a whole and reflects pension matters for governmental and business-type funds collectively.

a. The Pension Note indicated, under subparagraphs b (Funding Policy) and c (Annual Required Contributions) that the City's unfunded actuarially accrued liability ("UAAL") to CERS was being amortized at a percentage of payroll over a period of 30 years with 19 years remaining. In addition, the City reported a net pension obligation ("NPO") as the difference between the actual contributions to the pension plan (pursuant to the 1996 arrangement) and the required amount. The NPO is derived by first amortizing the UAAL over a number of years to establish an annual actuarially required contribution ("ARC"). However, the Pension Note did not indicate that in calculating the ARC the UAAL was being amortized using a running 40-year period, rather than a 30-year fixed period with 19 years remaining. While utilizing such a running 40-year period is permissible under generally accepted accounting principles for reporting an NPO liability it results in an NPO less than would have been reported had the 30 years fixed/19 years remaining amortization method been used. This did not affect the financial statements, as such.

b. In subparagraph b of the Note (Funding Policy), it was indicated that (1) as a consequence of utilizing the "Corridor" funding method in accordance with the 1996 arrangement, which was not a funding method formally sanctioned by GASB for financial reporting purposes, the City was required to report a liability of $39.2 million more than had been paid by the City (as an NPO) even though the shortfall was funded in a reserve, and (2) the actuary believed that the Corridor funding method was an excellent method for the City and superior to one of the GASB acceptable methods of funding. The subparagraph did not make

clear that the reserve was, in fact, maintained by CERS, not the City. The reserve was eliminated by CERS during the year ended June 30, 2003, and the elimination of the reserve neither increased nor decreased CERS actuarial assets. While the actuary statements regarding the belief of the actuary and its efforts to obtain an endorsement by the GASB for using such method were correct in 1997, these statements were no longer correct at the time the 2002 Statements were issued. This did not affect the actual financial statements, as such.

Further, while subparagraph b specified the total contributions made during the year, it did not, as required by GAAP relating to accounting for pensions by state and local government employers, show tables of the City's varying contribution rates expressed as percentages of active payroll which range from a low of 8.56% to 52.23% for general members and a low of 18.91% to a high of 21.54% for safety members. This did not affect the actual financial statements, as such.

c. In subparagraph c of the Pension Note (Annual Required Contribution), there were a variety of miscellaneous errors: Among them, the date of June 30, 1996, as the actuarial valuation used to determine the City's annual required contributions should have been June 30, 2001, and the inflation rate assumption should have been 4.25% rather than 4.5% as stated in the subparagraph. This did not affect the actual financial statements, as such.

d. In subparagraph d of the Pension Note (Three-Year Trend Analysis), a column was incorrectly labeled "Actuarially Required Contributions (ARC)" instead of "Annual Pension Cost (APC)," and amounts in that column for the years ended 6/30/00 and 6/30/01 were erroneously stated. The percentage being contributed and the resulting NPO were erroneously stated in those respective columns; the NPO recorded in the table for the year ended 6/30/00, was approximately $700,000 understated and the amount for the year ended 6/30/01, was approximately $1.7 million understated. These errors also resulted in the understatement of a category of expenses and a category of liabilities by less than $100,000 in each of the following financial statements in the 2002 Statements: (1) the Statement of Net Assets, (2) the Statement of Revenues, Expenses, and Changes in Fund Net Assets, and (3) the Statement of Cash Flows.

e. In subparagraph e of the Pension Note (Net Pension Obligation – Three Year Trend Analysis), the same numerical errors as those described in 3.d. above with respect to subparagraph d of the Pension Note were made. In addition, various numerical errors were made in the columns entitled "Interest on NPO," "ARC Adjustment," "APC," "Contributions Made," and "Change in NPO." The numerical errors in the amounts presented under the column NPO (which are the same as those described in 3.d. above with respect to subparagraph d of the Pension Note) resulted in the understatement of a category of expenses and a category of liabilities by less than $100,000 in each of the following financials statements in the 2002 Statements: (1) the Statement of Net Assets, (2) the Statement of Revenues, Expenses, and Changes in Fund Net Assets, and (3) the Statement of Cash Flows.

f. The Pension Note failed to disclose a table required by GAAP that would have shown the City's analysis of funding progress for the last three Fiscal Years. This did not affect the actual financial statements, as such.

g. A 2002 agreement between CERS and the City relating to, among other things, City pension plan contribution funding requirements, to be effective July 1, 2003, which agreement had been approved before the time of the issuance of the 2002 Statements by both the City and CERS, was not mentioned in the Pension Note as a subsequent event. This agreement superceded the 1996 arrangement referred to in 3.b above. This did not affect the actual financial statements, as such.

h. The Pension Note, under the heading "Defined Contribution Plans", understated the fair value of the assets of the Supplemental Pension Savings Plan as of June 30, 2002 by approximately $2.3 million. In addition, under the same heading, the Pension Note understated the amount of the employees' contributions for Fiscal Year 2002 to the 401(k) Plan by approximately $2.3 million and the fair value of the assets of the 401(k) Plan assets as of June 30, 2002 by approximately $6 million. This did not affect the actual financial statements, as such.

4. In Note 8 of the Notes to the 2002 Statements (Commitments and Contingencies), the amount estimated at the year ended June 30, 2001 for the Wastewater System's contracted construction plans for various projects was understated by approximately $40.6 million. This did not affect the actual financial statements, as such.

5. In Note 9 of the Notes to the 2002 Statements (Restatement of Beginning Balances) the amount of the restatement is correct for Retained Earnings but, under a GAAP pronouncement, such amount is no longer presented. The restatement should have shown the change to Net Assets instead. This did not affect the actual financial statements, as such.

6. In the Statement of Net Assets at June 30, 2002, certain assets and liabilities were misclassified when compared to GAAP. The total net effect of these misclassifications was that assets were overstated by approximately $14 million of total assets, and liabilities were overstated by approximately $14 million of total liabilities. These misclassifications canceled each other out and did not change total net assets, and therefore did not have an impact on the financial statements, as such.

No Reissuance; Future Procedures. The City Auditor and the Outside Auditor are of the opinion that, based upon the activities undertaken by each of them with respect to the 2002 Statements, as described above, and in accordance with accounting and auditing professional guidelines, the errors that were discovered, primarily relating to footnotes, were not material either individually or in the aggregate in the context of the 2002 Statements taken as a whole, and therefore the City Auditor has elected not to reissue 2002 Statements. Further, the Outside Auditor, as the successor to CJ&O, has advised the City Auditor that the City may continue to rely on the CJ&O audit report dated November 27, 2002 related to the 2002 Statements as well as the letter dated the same date from CJ&O to the City Auditor related to the City's internal accounting controls. To the extent that the errors in the 2002 Statements would have had an effect upon the audited financial statements of the Metropolitan Wastewater Utility for the Fiscal Year ended June 30, 2003 (the "2003 Statements"), the necessary corrections were made in the course of the preparation of the 2003 Statements.

As a consequence of the discovery of errors, the City Auditor has implemented the following additional procedures relative to the review process: (1) the establishment and maintenance of a centralized control point and repository for the preparation, review, cross checking of source documentation and source approvals for all footnotes; (2) the requiring of formal consents and approvals by appropriate departments or third parties for all applicable footnotes, and the overall acknowledgment and approval of the obtaining of all such consents and approvals; (3) mandatory cross-checking between separate financial statements and the combined all-funds financial statements; and (4) the reviewing of each of the steps described above by the Audit Division. The Outside Auditor likewise has implemented the following additional audit process procedures with respect to City financial statements: (1) cross-checking of all source documentation provided by the City for reasonableness and appropriateness; (2) requiring written communication by the City for any known material or immaterial errors or misstatements; (3) enhanced documentation of audit progress meetings conducted with key City staff; (4) enhanced communication and cross-checking of information relating to subsequent events, commitments and contingencies and litigation with the offices of the City Auditor and City Attorney; (5) enhanced cross-checking of separate fund and related-entity financial statements to the City's financial statements; (6) a person independent from the audit team for the City will review these financial statements for technical compliance with the requirements of GASB by comparing the financial statements against a technical compliance checklist recommended by the Government Finance Officers Association; and (7) the Director of Accounting and Auditing will review these financial statements for technical compliance with GASB requirements.

Municipal Secondary Market Disclosure Information Cover Sheet

This cover sheet should be sent with all submissions made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, and any applicable State Information Depository, whether the filing is voluntary or made pursuant to Securities and Exchange Commission rule 15c2-12 or any analogous state statute.

See www.sec.gov/info/municipal/nrmsir.htm for list of current NRMSIRs and SIDs

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IF THIS FILING RELATES TO A SINGLE BOND ISSUE:
Provide name of bond issue exactly as it appears on the cover of the Official Statement (please include name of state where issuer is located):

_____
_____
_____

Provide nine-digit CUSIP* numbers if available, to which the information relates:

_____ _____ _____
_____ _____ _____

IF THIS FILING RELATES TO ALL SECURITIES ISSUED BY THE ISSUER OR ALL SECURITIES OF A SPECIFIC CREDIT OR ISSUED UNDER A SINGLE INDENTURE:
Issuer's Name (please include name of state where Issuer is located):

THE CITY OF SAN DIEGO, CALIFORNIA (OBLIGOR, PURSUANT TO CERTIFICATES OF UNDIVIDED INTEREST IN INSTALLMENT PAYMENTS PAYABLE FROM NET SYSTEM REVENUES OF THE WATER UTILITY FUND OF THE CITY OF SAN DIEGO, CALIFORNIA);
PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, CALIFORNIA

Other Obligated Person's Name (if any):
THE CITY OF SAN DIEGO, CALIFORNIA – THE ULTIMATE CREDIT BEING THE WATER UTILITY FUND OF THE CITY OF SAN DIEGO

Provide six-digit CUSIP* number(s), if available, of Issuer: **797263 and 79730C**

*(Contact CUSIP's Municipal Disclosure Assistance Line at 212.438.6518 for assistance with obtaining the proper CUSIP numbers.)

TYPE OF FILING:
☐ Electronic (Number of pages attached) √ Paper (Number of pages attached): 6
If information is also available on the Internet, give URL: _____

WHAT TYPE OF INFORMATION ARE YOU PROVIDING? (Check all that apply)

A. ▯ Annual Financial Information and Operating Data pursuant to Rule 15c2-12
(Financial information and operating data should not be filed with the MSRB.)

B. ▯ Audited Financial Statements or CAFR pursuant to Rule 15c2-12

C. ▯ Notice of a Material Event pursuant to Rule 15c2-12 (Check as appropriate)

1. ▯ Principal and interest payment delinquencies
2. ▯ Non-payment related defaults
3. ▯ Unscheduled draws on debt service reserves reflecting financial difficulties
4. ▯ Unscheduled draws on credit enhancements reflecting financial difficulties
5. ▯ Substitution of credit or liquidity providers, or their failure to perform
6. ▯ Adverse tax opinions or events affecting the tax-exempt status of the security
7. ▯ Modifications to the rights of security holders
8. ▯ Bond calls
9. ▯ Defeasances
10. ▯ Release, substitution, or sale of property securing repayment of the securities
11. ▯ Rating changes

D. ▯ Notice of Failure to Provide Annual Financial Information as Required

E. √ Other Secondary Market Information (Specify): **Voluntary Report of Information relating to the filing by the City of Voluntary Reports of Information with respect to the General Fund of the City and the Sewer Revenue Fund of the City.**

I hereby represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:
Issuer Contact:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Obligor Contact, if any:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Investor and Credit Relations Contact:

Name: **LAKSHMI KOMMI** Title: **DEPUTY DIRECTOR, FINANCING SERVICES**

Telephone: **(619) 236-6928** Fax: **(619) 235-5835**

Press Contact:

Name: **CARL NETTLETON** Title: **DIRECTOR OF PUBLIC AND MEDIA AFFAIRS**

Telephone: **(619) 236-6851** Fax: **(619) 235-5266**

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

RELATING TO

$385,000,000
Certificates of Undivided Interest
In Installment Payments Payable From
Net System Revenues Of The Water Utility Fund
Of The City Of San Diego, California
Series 1998
(CUSIP Number 797263)

$286,945,000
Public Facilities Financing Authority
Subordinated Water Revenue Bonds, Series 2002
(Payable Solely from Subordinated Installment
Payments Secured By
Net System Revenues of the Water Utility Fund)
(CUSIP Number 79730C)

The City of San Diego, California (the "City") is submitting this Voluntary Report of Information (this "Report") to the Municipal Securities Rulemaking Board ("MSRB") and the Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs"). See Exhibit A for the listing of NRMSIRs. The City is submitting this Report on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego (the "Authority") for the above-mentioned issuances. The City may or may not from time to time voluntarily submit additional information. This submission does not constitute a commitment to provide information beyond the disclosure requirements of the Continuing Disclosure Agreements related to each of the above-mentioned issuances (collectively, the "Continuing Disclosure Agreements").

This Report is dated as of January 27, 2004 (the "Dated Date") and speaks only as of the Dated Date. Readers are cautioned not to assume that any information has been updated beyond the Dated Date unless this Report expressly states that it constitutes an update of a specific matter in a document. The City expressly disclaims any duty of the City or the Authority to provide an update of this Report or a further update of any document, or matter therein, specifically referenced.

The filing of this Report does not constitute or imply any representation (1) that any or all of the information provided is material to investors, (2) regarding any other financial, operating or other information about the City or the Authority, or the above stated issuances, (3) that no changes, circumstances or events have occurred which may have a bearing on the security for the above-mentioned issuances or an investor's decision to buy, sell or hold the above-mentioned issuances.

Certain statements contained in this Report reflect not historical facts but forecasts and "forward-looking" statements. In this respect, the words "estimate," "project," "anticipate," "expect," "intend," "believe" and similar expressions are intended to identify forward-looking statements. Projections, forecasts, assumptions, expressions of opinions, estimates and other forward-looking statements, are not to be construed as representations of fact and are qualified in their entirety by the cautionary statements set forth in this Report.

Any statements regarding the above-mentioned issuances, other than a statement made by the City in an official release or subsequent notice or annual report, published in a financial newspaper of general circulation and/or filed with the MSRB or the NRMSIRs, are not authorized by the City or the Authority. Neither the City nor the Authority shall be responsible for the accuracy, completeness or fairness of any such unauthorized statement.

DATED: January 27, 2004

CITY OF SAN DIEGO

Patricia T. Frazier
Deputy City Manager

EXHIBIT A

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission.

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, NJ 08558
Email: Munis@Bloomberg.com
Phone: (609) 279-3225
FAX: (609) 279-5962

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, NY 10038
Email: NRMSIR@FTID.com
Phone: (212) 771-6999
FAX: (212) 771-7390

Standard & Poor's J. J. Kenny Repository
55 Water Street, 45th Floor
New York, NY 10041
Email: nrmsir_repository@sandp.com
Phone: (212) 438-4595
FAX: (212) 438-3975

DPC Data, Inc.
One Executive Drive
Fort Lee, NJ 07024
Email: nrmsir@dpcdata.com
Phone: (201) 346-0701
FAX: (201) 947-0107

$385,000,000
Certificates of Undivided Interest
In Installment Payments Payable From
Net System Revenues Of The Water Utility Fund
Of The City Of San Diego, California
Series 1998
(CUSIP Number 797263)

$286,945,000
Public Facilities Financing Authority
Subordinated Water Revenue Bonds, Series 2002
(Payable Solely from Subordinated Installment
Payments Secured By
Net System Revenues of the Water Utility Fund)
(CUSIP Number 79730C)

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

This Voluntary Report of Information (this "Report") is being provided by the City of San Diego (the "City") on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego (the "Authority") for the above-mentioned issuances. Concurrently with the publication of this Report, the City is publishing two Voluntary Reports of Information, one relating to its general fund and one relating to the Sewer Revenue Fund relating to the City's Wastewater System. These Voluntary Reports of Information for the general fund and the Sewer Revenue Fund disclose information regarding the obligations of the City to make payments to the San Diego City Employees Retirement System ("SDCERS") and certain errors discovered in the Comprehensive Annual Financial Report (the "CAFR") of the City as of June 30, 2002 and the financial statements of the Metropolitan Wastewater Utility as of June 30, 2002 and 2001 (the "Wastewater Financials"). The errors contained both in the CAFR and the Wastewater Financials related to the fiscal year ended June 30, 2002, primarily were contained in the footnotes to the CAFR and the Wastewater Financials. The City and its outside auditors, Caporicci & Larson, undertook a review of the CAFR and the Wastewater Financials, to ascertain whether other errors occurred.

This process has not been undertaken with respect to the fiscal year ended June 30, 2002 for the financial statements of the City of San Diego Water Utility as of June 30, 2002 and 2001 (the "Water Financials"). The City is proposing to promptly undertake a review of the 2002 Water Financials together with its outside auditors and will publish an additional Voluntary Report of Information as expeditiously as possible. Such notice will also discuss the obligations of the Water Utility Fund to make payments to SDCERS.

Municipal Secondary Market Disclosure Information Cover Sheet

This cover sheet should be sent with all submissions made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, and any applicable State Information Depository, whether the filing is voluntary or made pursuant to Securities and Exchange Commission rule 15c2-12 or any analogous state statute.

See www.sec.gov/info/municipal/nrmsir.htm for list of current NRMSIRs and SIDs

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IF THIS FILING RELATES TO A SINGLE BOND ISSUE:
Provide name of bond issue exactly as it appears on the cover of the Official Statement (please include name of state where issuer is located):

SEE BELOW

Provide nine-digit CUSIP* numbers if available, to which the information relates:

SEE BELOW

IF THIS FILING RELATES TO ALL SECURITIES ISSUED BY THE ISSUER OR ALL SECURITIES OF A SPECIFIC CREDIT OR ISSUED UNDER A SINGLE INDENTURE:
Issuer's Name (please include name of state where Issuer is located):

THE CITY OF SAN DIEGO (OBLIGOR, PURSUANT TO CERTIFICATES OF PARTICIPATION); PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO; CITY OF SAN DIEGO/MTDB AUTHORITY; AND CONVENTION CENTER EXPANSION FINANCING AUTHORITY (STATE: CALIFORNIA)

Other Obligated Person's Name (if any):

THE CITY OF SAN DIEGO, CALIFORNIA – IN EACH CASE, THE ULTIMATE CREDIT BEING THE GENERAL FUND OF THE CITY OF SAN DIEGO

Provide six-digit CUSIP* number(s), if available, of Issuer:

Public Facilities Financing Authority, The City of San Diego, City of San Diego/MTDB Authority and Convention Center Expansion Financing Authority related CUSIPs: 797299, 797260, 797448, 797299, and 79727L

*(Contact CUSIP's Municipal Disclosure Assistance Line at 212.438.6518 for assistance with obtaining the proper CUSIP numbers.)

TYPE OF FILING:
☐ Electronic (Number of pages attached) 11 √ Paper (Number of pages attached): 11

If information is also available on the Internet, give URL: NOT AVAILABLE

WHAT TYPE OF INFORMATION ARE YOU PROVIDING? (Check all that apply)

A. ▯ Annual Financial Information and Operating Data pursuant to Rule 15c2-12
(Financial information and operating data should not be filed with the MSRB.)

B. ▯ Audited Financial Statements or CAFR pursuant to Rule 15c2-12

C. ▯ Notice of a Material Event pursuant to Rule 15c2-12 (Check as appropriate)

1. ▯ Principal and interest payment delinquencies
2. ▯ Non-payment related defaults
3. ▯ Unscheduled draws on debt service reserves reflecting financial difficulties
4. ▯ Unscheduled draws on credit enhancements reflecting financial difficulties
5. ▯ Substitution of credit or liquidity providers, or their failure to perform
6. ▯ Adverse tax opinions or events affecting the tax-exempt status of the security
7. ▯ Modifications to the rights of security holders
8. ▯ Bond calls
9. ▯ Defeasances
10. ▯ Release, substitution, or sale of property securing repayment of the securities
11. ▯ Rating changes

D. ▯ Notice of Failure to Provide Annual Financial Information as Required

E. √ Other Secondary Market Information (Specify): **Voluntary Report of Information relating to certain errors to the Comprehensive Annual Financial Report of the City of San Diego for the fiscal year ended June 30, 2002.**

I hereby represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:
Issuer Contact:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Obligor Contact, if any:

Name **PATRICIA T. FRAZIER** Title: **DEPUTY CITY MANAGER**

Employer: **CITY OF SAN DIEGO**

Address: **202 C STREET, MAIL STATION 9B, SAN DIEGO, CA 92101**

Investor and Credit Relations Contact:

Name: **LAKSHMI KOMMI** Title: **DEPUTY DIRECTOR, FINANCING SERVICES**

Telephone: **(619) 236-6928** Fax: **(619) 235-5835**

Press Contact:

Name: **CARL NETTLETON** Title: **DIRECTOR OF PUBLIC AND MEDIA AFFAIRS**

Telephone: **(619) 236-6851** Fax: **(619) 235-5266**

RELATING TO
VOLUNTARY REPORT OF INFORMATION
DATED MARCH 12, 2004

Public Facilities Financing Authority
of the City of San Diego
Lease Revenue Bonds, Series 2002B
(Fire and Life Safety Facilities Project)
(CUSIP Number 797299)

City of San Diego/MTDB Authority
2003 Lease Revenue Refunding Bonds
(San Diego Old Town Light
Rail Transit Extension Refunding)
(CUSIP Number 797448)

City of San Diego
2003 Certificates of Participation
(1993 Balboa Park/Mission Bay Park Refunding)
Evidencing Undivided Proportionate Interest in Lease
Payments to be Made by the City of San Diego
Pursuant to a Lease with the San Diego Facilities and
Equipment Leasing Corporation
(CUSIP Number 797260)

Public Facilities Financing Authority
of the City of San Diego
Lease Revenue Bonds, Series 2002 (Ballpark Project)
(CUSIP Number 797299)

Convention Center Expansion Financing Authority
Lease Revenue Bonds, Series 1998A
(City of San Diego, California, as Lessee)
(CUSIP Number 79727L)

City of San Diego, California
Certificates of Participation
(Balboa Park and Mission Bay Park Capital
Improvements Program)
Series 1996A
(CUSIP Number 797260)

City of San Diego, California
Refunding Certificates of Participation
(Balboa Park and Mission Bay Park Capital
Improvements Program, Series 1991)
Series 1996B
(CUSIP Number 797260)

Public Facilities Financing Authority
of the City of San Diego
Taxable Lease Revenue Bonds, Series 1996A
(San Diego Jack Murphy Stadium)
(CUSIP Number 797299)

The City of San Diego, California (the "City") is submitting this Voluntary Report of Information (this "Report") to the Municipal Securities Rulemaking Board ("MSRB") and the Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs"). See Exhibit A for the listing of NRMSIRs. The City is submitting this Report on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego, the City of San Diego/MTDB Authority, and the Convention Center Expansion Financing Authority (the "Issuers") for the above-mentioned issuances. The City may or may not from time to time voluntarily submit additional information. This submission does not constitute a commitment to provide information beyond the disclosure requirements of the Continuing Disclosure Agreements related to each of the above-mentioned issuances (collectively, the "Continuing Disclosure Agreements").

This Report is dated as of March 12, 2004 (the "Dated Date") and speaks only as of the Dated Date. Readers are cautioned not to assume that any information has been updated beyond the Dated Date unless this Report expressly states that it constitutes an update of a specific matter in a document. The City expressly disclaims any duty of the Issuers to provide an update of this Report or a further update of any document, or matter therein, specifically referenced.

The filing of this Report does not constitute or imply any representation (1) that any or all of the information provided is material to investors, (2) regarding any other financial, operating or other information about the Issuers, or the above stated issuances, (3) that no changes, circumstances or events have occurred which may have a bearing on the security for the above-mentioned issuances or an investor's decision to buy, sell or hold the above-mentioned issuances.

Any statements regarding the above-mentioned issuances, other than a statement made by the Issuers in an official release or subsequent notice or annual report, published in a financial newspaper of general circulation and/or filed with the MSRB or the NRMSIRs, are not authorized by the Issuers. The Issuers shall not be responsible for the accuracy, completeness or fairness of any such unauthorized statement.

DATED: March 12, 2004

CITY OF SAN DIEGO

Patricia T. Frazier

Patricia T. Frazier
Deputy City Manager

EXHIBIT A

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission.

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, NJ 08558
Email: Munis@Bloomberg.com
Phone: (609) 279-3225
FAX: (609) 279-5962

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, NY 10038
Email: NRMSIR@FTID.com
Phone: (212) 771-6999
FAX: (212) 771-7390

Standard & Poor's J. J. Kenny Repository
55 Water Street, 45th Floor
New York, NY 10041
Email: nrmsir_repository@sandp.com
Phone: (212) 438-4595
FAX: (212) 438-3975

DPC Data, Inc.
One Executive Drive
Fort Lee, NJ 07024
Email: nrmsir@dpcdata.com
Phone: (201) 346-0701
FAX: (201) 947-0107

VOLUNTARY REPORT OF INFORMATION
DATED MARCH 12, 2004

This Voluntary Report of Information (this "Report") is being provided by the City of San Diego (the "City") on behalf of itself and on behalf of the Public Facilities Financing Authority of the City of San Diego, the City of San Diego/MTDB Authority, and the Convention Center Expansion Financing Authority (the "Issuers") for the above-mentioned issuances.

On January 27, 2004, the City, on behalf of itself and certain other issuers, filed a Voluntary Report of Information (the "Voluntary Report") with the MSRB and the NRMSIRs relating to certain securities backed by the general credit of the City and concerning in part certain errors discovered in the City's Comprehensive Annual Financial Report for the fiscal year ended June 30, 2002 (the "2002 CAFR"). Part II of the Voluntary Report set forth how the errors were discovered, the City's actions in response to that discovery including the actions of the City's internal auditor (the "City Auditor") and Caporicci & Larson, its outside auditor (the "Outside Auditor"), and described a number of the discovered errors and correctible statements. A copy of Part II of the Voluntary Report is enclosed as Attachment A.

In finalizing the review of the City of San Diego Redevelopment Agency (the "Agency") stand alone Annual Financial Report for the fiscal year ended June 30, 2003 (the "2003 AFR"), it was learned that an error previously discovered in the preparation of the 2003 AFR, which impacted the 2002 CAFR, was not included in the list of errors assessed in preparing the Voluntary Report. That error was as follows:

Incident to a transaction between the Agency and a real estate developer, land received from the developer in the amount of $6.0 million was not recorded as an asset. This resulted in an understatement of both Assets and Unrestricted Net Assets in the Statement of Net Assets contained in the 2002 CAFR by $6.0 million. The understatement of net assets also affects the following financial statements: the Statement of Activities, the Governmental Funds Balance Sheet, and the Governmental Funds Statement of Revenues, Expenditures and Changes in Fund Balances.

Had this error been included in the list of errors assessed for purposes of preparing Part II of the Voluntary Report, it would have been included as an example of the errors and correctible statements set forth therein.

The City Auditor and the Outside Auditor are of the opinion that, based upon the activities undertaken by each of them with respect to the 2002 CAFR, as described in Part II of the Voluntary Report, and in accordance with accounting and auditing professional guidelines, the error described above is not material either individually or in the aggregate with the other errors and correctible statements set forth in Part II of the Voluntary Report in the context of the 2002 CAFR taken as a whole, and therefore the City Auditor has elected not to reissue the 2002 CAFR. Further, the Outside Auditor, as the successor to Calderon, Jaham & Osborn ("CJ&O"), has advised the City Auditor that the City may continue to rely on the CJ&O audit report dated November 27, 2002, related to the 2002 CAFR, as well as the letter dated the same date from CJ&O to the City Auditor related to the City's internal accounting controls. To the extent that the above described error in the 2002 CAFR would have had an effect upon the audited financial statements of the City as of June 30, 2003 (the "2003 Statement"), the necessary corrections were made in the course of the preparation of such 2003 Statements.

PART II

2002 FINANCIAL STATEMENTS ERRORS

In September 2003, the City Auditor and Comptroller (the "City Auditor") and Caporicci & Larson, the outside auditor (the "Outside Auditor") of the Comprehensive Annual Financial Report of the City (the "CAFR") discovered that certain errors existed in the CAFR for the fiscal year ended June 30, 2002 (the "2002 CAFR"). The discovered errors were primarily limited to the footnotes to the 2002 CAFR. The 2002 CAFR was audited by Calderon, Jaham & Osborn ("CJ&O"), to which the Outside Auditor is the successor firm. Upon such discovery, the City Auditor and the Outside Auditor undertook a variety of activities, which continued into December 2003.

The City Auditor's activities were as follows: (1) confirmed footnote information to supporting sources and source documentation including outside third party sources; (2) compared various footnote disclosures for conformance to generally accepted accounting principles in the United States ("GAAP"); (3) compared footnotes in separate financial statements to footnotes in the combined all-funds financial statements to ascertain consistency in numbers or narratives; (4) recalculated the totals of all numerical columns within footnotes; (5) traced and reconciled footnote information to other portions of the 2002 CAFR if applicable; and (6) reviewed the footnotes to determine if any could be enhanced for additional clarity in the subsequent year's financial statements. This process was separately undertaken by each of the Accounting Division and the Audit Division.

The Outside Auditor undertook the following activities: (1) the audit team which audited the 2002 CAFR compared the 2002 CAFR (including both the financial statements themselves and the footnotes thereto) to the audit working papers that were prepared in connection with the 2002 CAFR; (2) the Engagement Partner and the Senior Partner of the Outside Auditor reviewed the 2002 CAFR (including both the financial statements themselves and the footnotes thereto) for technical compliance with the requirements of GAAP, which includes relevant Governmental Accounting Standards Board ("GASB") pronouncements by comparing the 2002 CAFR to a technical compliance checklist recommended by the Government Finance Officers Association; (3) the Outside Auditor had a technical Quality Control Review of the 2002 CAFR performed by their independent Quality Control Reviewer who is a certified public accountant; and (4) the Outside Auditor met with members of the Accounting Division and the Audit Division of the City Auditor's Office to compare results of the City Auditor's and the Outside Auditor's reviews of the 2002 CAFR and assisted the City Auditor in preparing a comprehensive list of the errors in the 2002 CAFR. All of the activities of the City and the Outside Auditor were substantially completed in December 2003.

The review processes undertaken did not constitute a re-audit or re-issuance of either the footnotes or of any other part of the 2002 CAFR, and therefore would not necessarily have brought to light any errors that such an re-audit or re-issuance may have uncovered. The review process of the Outside Auditor included both the financial statements themselves and the footnotes thereto; and the review process of the City Auditor did not extend beyond the footnotes of the 2002 CAFR to the actual financial statements, as such, except as indicated above. It is the opinion of the City Auditor and the Outside Auditor that, in accordance with accounting and auditing professional guidelines, discovered errors related primarily to footnotes, and were not material either individually or in the

aggregate in the context of the 2002 CAFR taken as a whole. Neither the City Auditor nor the Outside Auditor extended this review to any financial statements of the City for years prior to the fiscal year ended June 30, 2002.

Among the errors and correctible statements discovered by the City Auditor and the Outside Auditor in the 2002 CAFR were the following:

1. In Note 5 of Notes to the 2002 CAFR (Governmental Activities of Long-Term Debt), there were miscellaneous errors in stated interest rates and maturities on various bonds which did not affect the actual financial statements, as such. There were also miscellaneous errors in interest payable on bonds and notes payable resulting in a net overstatement of prospective interest ranging from an understatement of approximately $211,000 per year to an overstatement of approximately $1,582,000 per year for a total net overstatement of approximately $26,229,000, primarily the future accreting value on capital appreciation bonds of the City's Redevelopment Agency. This did not affect the actual financial statements, as such. However, there were also errors in prospective bond principal payable in Note 5 of which approximately $2,615,000 was the already accrued (accreted) value on such capital appreciation bonds, which affected the following financial statements in the 2002 CAFR: (Statement of Net Assets – Governmental Activities; Statement of Activities – Governmental Activities; the Reconciliation to Net Assets at the bottom of the Governmental Funds – Balance Sheet; and the Reconciliation of the Statement of Revenues, Expenditure, and Changes in Fund Balances of Governmental Funds to the Statement of Activities) in that it understated a category of liabilities and expenses therein and overstated net assets by an equal amount.

2. In Note 6 of Notes to the 2002 Financial Statements (Business Type Activity Long-Term Debt), miscellaneous errors were found, which were primarily in stated interest rates and maturity dates. This did not affect the actual financial statements, as such. In addition, the amortization of discounts and premiums on bonds issued, in the aggregate net amount of $19,232,000, was not reflected in Note 6. There were corresponding misclassifications of a like amount in certain categories of assets and liabilities in the following financial statements in the 2002 CAFR (Statement of Net Assets – Business Type Activities; Statement of Net Assets – Proprietary Funds). These misclassifications offset each other resulting in no change in total net assets, and therefore, did not have an impact on the financial statements, as such.

3. In Note 10 of Notes to the 2002 Financial Statements (Lease Commitments – Operating Leases), the total amount payable on operating leases between June 30, 2003 and June 30, 2027 was stated to be $13.7 million, whereas the correct amounts ranged from approximately $3 million to approximately $10 million per year higher for a total of $127.2 million (of which approximately $72,069,000 represented amounts payable on operating leases for which the general fund is obligated). This did not affect the actual financial statements, as such.

4. In addition, there were a variety of corrections to Note 12 of Notes to the 2002 CAFR (Pension Plans—Deferred Benefit Plan) (the "Note"). The discussion in this item 4 and item 7 relates to the City Employees' Retirement System ("CERS") as a whole and reflects pension matters for governmental activities (of which the general fund is a component) and business-type activities collectively.

a. The Note indicated, under subparagraphs c (Funding Policy) and d (Annual Required Contributions) that the City's unfunded actuarially accrued liability ("UAAL") to CERS

was being amortized at a percentage of payroll over a period of 30 years with 19 years remaining. In addition, the City reported a net pension obligation ("NPO") as the difference between the actual contributions to the pension plan (pursuant to the 1996 arrangement) and the required amount. The NPO is derived by first amortizing the UAAL over a number of years to establish an annual actuarially required contribution ("ARC"). However, the Note did not indicate that in calculating the ARC the UAAL was being amortized using a running 40-year period, rather than a 30-year fixed period with 19 years remaining. While utilizing such a running 40-year period is permissible under generally accepted accounting principles for reporting an NPO liability it results in an NPO less than would have been reported had the 30 years fixed/19 years remaining amortization method been used. This did not affect the financial statements, as such.

b. In subparagraph c of the Note (Funding Policy), it was indicated that (a) as a consequence of utilizing the "Corridor" funding method in accordance with the 1996 arrangement, which was not a funding method formally sanctioned by GASB for financial reporting purposes, the City was required to report a liability of $39.2 million more than had been paid by the City (as an NPO) even though the shortfall was funded in a reserve, and (b) the actuary believed that the Corridor funding method was an excellent method for the City and superior to one of the GASB acceptable methods of funding. The subparagraph did not make clear that the reserve was, in fact, maintained by CERS, not the City. The reserve was eliminated by CERS during the year ended June 30, 2003, and the elimination of the reserve neither increased nor decreased CERS actuarial assets. While the actuary statements regarding the belief of the actuary and its efforts to obtain an endorsement by the GASB for using such method were correct in 1997, these statements were no longer correct at the time the 2002 CAFR were issued. This did not affect the actual financial statements, as such.

Further, while subparagraph c specified the total contributions made during the year, it did not, as required by GAAP relating to accounting for pensions by state and local government employers, show tables of the City's varying contribution rates expressed as percentages of active payroll which range from a low of 8.56% to 52.23% for general members and a low of 18.91% to a high of 21.54% for safety members. This did not affect the actual financial statements, as such.

c. In subparagraph d of the Note (Annual Required Contribution), there were a variety of miscellaneous errors: Among them, the date of June 30, 1996, as the actuarial valuation used to determine the City's annual required contributions should have been June 30, 2001, and the inflation rate assumption should have been 4.25% rather than 4.5% as stated in the subparagraph. This did not affect the actual financial statements, as such.

d. In subparagraph e of the Note (Three-Year Trend Analysis), the Annual Pension Cost amounts in the table for the years ended 6/30/00 and 6/30/01 were erroneously stated, as were the percentage being contributed and the resulting NPO; the NPO recorded in the table for the year ended 6/30/00, was approximately $700,000 understated and the amount for the year ended 6/30/01, was approximately $1.7 million understated. The same numerical errors occurred in subparagraph f of the Note (Net Pension Obligation – Three Year Trend Analysis) in the table. These errors also resulted in the understatement of a category of expenses and a category of liabilities by $1.7 million in total, of which approximately $1.4 million is in each of the following financial statements in the 2002 CAFR that present financial data in which governmental activities, including the general fund, are components: (1) Statement of Net Assets; (2) Statement of Activities; (3) the Reconciliation to Net Assets at the bottom of the Governmental Funds – Balance

Sheet; and (4) Reconciliation of the Statement of Revenues, Expenditure; and Changes in Fund Balances of Governmental Funds to the Statement of Activities. The remaining amount was excluded from comparable business-type funds.

e. A 2002 agreement between CERS and the City relating to, among other things, City pension plan contribution funding requirements, to be effective July 1, 2003, which agreement had been approved before the time of the issuance of the 2002 CAFR by both the City and CERS, was not mentioned in the footnotes to the 2002 Financial Statements as a subsequent event. This agreement superceded the 1996 arrangement referred to in 4.b above. (See "Part I — Pension Plan" for information regarding the 1996 arrangement and the 2002 agreement.) This did not affect the actual financial statements, as such.

5. In Note 17 of Notes to Financial Statements (Commitments), the amount of a revolving line of credit guarantee of which the San Diego Housing Commission, a discretely presented component unit in the 2002 CAFR, guarantees 10%, was understated by approximately $3.5 million; the sewer utility construction plans cost estimates were understated by approximately $1 million; and the water utility construction plan cost estimates were understated by approximately $1.6 million and its contractual commitments were understated by approximately $4.2 million. This did not affect the actual financial statements, as such.

6. In Note 22 of Notes to Financial Statements (Restatement of Beginning Balances), in the table, the various balances, adjustments and restated balances for the Sewer Utility Fund were omitted. The restated balance as of June 30, 2001, for such enterprise fund was approximately $1.66 million. This did not affect the actual financial statements, as such.

7. An unaudited required table of supplemental information relating to pension plan funding levels was included in the 2002 CAFR (following the footnotes thereto) for each of the fiscal years ended June 30, 1996 through 2001, and included the funded ratio, the UAAL, and the ratio of the UAAL to the covered payroll. This table was prepared including pension data regarding the San Diego Unified Port District, which should have been excluded. As a result, the funded ratio, UAAL, and the ratio of the UAAL to the covered payroll were each misstated. These errors did not affect the financial statements, as such. If corrected, as of June 30, 2000 and 2001 (the last two fiscal years presented), such table of supplemental information would have reflected a UAAL, the funded ratio, and the ratio of the UAAL to the covered payroll as follows (as compared to the numbers as published) (dollars in thousands):

Fiscal Year Ended	**UAAL**		**Funded Ratio**		**Ratio of UAAL to Covered Payroll[1]**	
June 30,	As Published	If Corrected	As Published	If Corrected	As Published	If Corrected
2000	$32,936	$68,959	98.75%	97.3%	6.87%	15.4%
2001	$261,741	$283,893	91.07%	89.9%	50.50%	58.9%

(1) The higher the ratio of the UAAL to the covered payroll, the greater the economic burden to the City.

No Reissuance; Future Procedures. The City Auditor and the Outside Auditor are of the opinion that, based upon the activities undertaken by each of them with respect to the 2002 CAFR,

as described above, and in accordance with accounting and auditing professional guidelines, the errors that were discovered, primarily relating to footnotes, were not material either individually or in the aggregate in the context of the 2002 CAFR taken as a whole, and therefore the City Auditor has elected not to reissue 2002 CAFR. Further, the Outside Auditor, as the successor to CJ&O, has advised the City Auditor that the City may continue to rely on the CJ&O audit report dated November 27, 2002 related to the 2002 CAFR as well as the letter dated the same date from CJ&O to the City Auditor related to the City's internal accounting controls. To the extent that the errors in the 2002 CAFR would have had an effect upon the audited financial statements of the City as of June 30, 2003 (the "2003 Statements"), the necessary corrections were made in the course of the preparation of such 2003 Statements.

As a consequence of the discovery of errors, the City Auditor has implemented the following additional procedures relative to the review process: (1) the establishment and maintenance of a centralized control point and repository for the preparation, review, cross checking of source documentation and source approvals for all footnotes; (2) the requiring of formal consents and approvals by appropriate departments or third parties of all applicable footnotes, and the overall acknowledgment and approval of the obtaining of all such consents and approvals; (3) mandatory cross-checking between separate financial statements and the combined all-funds financial statements; and (4) the reviewing of each of the steps described above by the Audit Division. The Outside Auditor likewise has implemented the following additional audit process procedures with respect to City financial statements: (1) cross-checking of all source documentation provided by the City for reasonableness and appropriateness; (2) requiring written communication by the City for any known material or immaterial errors or misstatements; (3) enhanced documentation of audit progress meetings conducted with key City staff; (4) enhanced communication and cross-checking of information relating to subsequent events, commitments and contingencies and litigation with the offices of the City Auditor and City Attorney; (5) enhanced cross-checking of separate fund and related-entity financial statements to the City's financial statements; (6) a person independent from the audit team for the City will review these financial statements for technical compliance with the requirements of GASB by comparing the financial statements against a technical compliance checklist recommended by the Government Finance Officers Association; and (7) the Director of Accounting and Auditing will review these financial statements for technical compliance with GASB requirements.

Exhibit 3

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
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February 18, 2004

Casey Gwinn, Esq.
San Diego City Attorney
Office of the City Attorney
Civic Center Plaza
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Dear Mr. Gwinn:

We appreciate being asked to represent the City of San Diego in connection with the Securities and Exchange Commission's ("SEC") inquiry *In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)*. Our experience has been that it is mutually beneficial to set forth, at the outset of our representation, the role and responsibilities of both our law firm and the client. That is the purpose of both this letter and the separate Standard Terms of Engagement for Legal Services that is enclosed with this letter.

Client

The client for this engagement is the City of San Diego ("the City"). This engagement does not create an attorney-client relationship with any related persons or entities, such as parents, subsidiaries, affiliates, employees, officers, directors, shareholders, or partners. Our representation of the City will not involve the representation of any City employee in their individual capacity.

Scope of Engagement

As your counsel we will provide legal advice and representation to the City in the SEC and U.S. Attorney inquiry. As part of our representation, we will conduct an internal review of City disclosure relating to pension matters in its municipal bond offerings from 1996 to the present and prepare a report with observations, conclusions and recommendations (the "Report"). The initial scope of internal review will be agreed upon by separate cover. We agree that the Report is not to be an advocacy document, but an objective "warts and all" report. This engagement will include only the matter described in this paragraph and any additional matters that are made part of the engagement by written supplement to this letter.

We understand and agree that this is not an exclusive agreement, and you are free to retain any other counsel of your choosing. We recognize that we shall be disqualified from representing any other client with interests materially and directly adverse to yours (i) in any matter which is substantially related to our representation of you and (ii) with respect to any matter where there is a reasonable probability that confidential information you furnished to us could be used to your disadvantage. You understand and agree that, with those exceptions, we are free to represent other clients, including clients whose interests may conflict with yours in litigation, business transactions, or other legal matters. You agree that our representing you in this matter will not prevent or disqualify us from representing clients adverse to you in other matters and that you consent in advance to our undertaking such adverse representations.

This engagement and our attorney-client relationship will be terminated when we have completed the services in the matters covered by this engagement letter and any written supplements to this engagement letter. If you later retain us to perform further or additional services, our attorney-client relationship will be established by another engagement letter.

Our firm represents a number of lawyers and law firms in professional liability, business, tax and other matters. This means that we may have represented, may currently represent, or in the future may represent counsel opposing your interests in a matter in which we represent you. This will not in any way affect the diligence or vigor with which we represent your interests in the matter or the matters on which you engage our firm. If this is a concern to you, please let us know and we will check on the particular lawyers involved in your matter or matters.

We understand that our initial representation is in an amount not to exceed $150,000. This amount may be supplemented in the future based upon mutual agreement.

Cooperation

In order to enable us to render effectively the legal services contemplated, the City has agreed to disclose fully and accurately all facts and keep us informed of all developments relating to the inquiry. We necessarily must rely on the accuracy and completeness of the facts and information you and your agents provide to us. The City has agreed to cooperate fully with us and to make certain City representatives available to attend meetings, discovery proceedings and conferences, hearings and other proceedings. We will attempt to schedule depositions, hearings, etc. to serve the convenience of those representatives, but it is the nature of inquiries and of litigation that such schedules are often not within our control.

We will of course make our best efforts to achieve a result in this inquiry that is satisfactory to the City. However, because the outcome of inquiry and any subsequent litigation is subject to the vagaries and risks inherent in the litigation process, it is understood that we make no promises or guarantees to the City concerning the outcome and cannot do so.

Fees

For this matter, our fees will be based on the time spent by the lawyers and paralegal personnel who work on the matter. Based on our understanding of this matter, we anticipate that most of the work on the City's matter will be undertaken by me and my partner, Richard Sauer with the assistance of several associates as needed. We will also be assisted by our partner Mark

Tuohey. My hourly rate for this matter will be $425, Rick Sauer's will be $425 and Mark's will be $450. All associates will be billed at our reduced level II rates, in recognition of the governmental nature of the client. In addition to Mark Tuohey, we expect to seek the advice of partners with expertise in certain areas, such as pension and employee benefits law. Their time will be charged at the lower of our level II rates or $450 per hour. In an effort to reduce overall legal costs, we utilize paralegal personnel whenever appropriate. Time devoted by such paralegal personnel to client matters is currently charged at billing rates generally ranging from $145 to $175 per hour. Billing rates for both attorneys and paralegal personnel are, from time to time, reviewed and adjusted and may be changed with or without notice.

In further effort to minimize legal costs, we anticipate working with and utilizing the staff of the City Attorney's Office in a variety of tasks, including the assembly and production of documents and other materials as requested by the SEC.

By engaging us, you acknowledge and agree that you are responsible for payment of fees, expenses and disbursements. In appropriate matters as an accommodation to you, we may agree to direct our bills to third-party payors (*e.g.*, an insurer), but you agree that you will remain fully responsible for timely payment of our bills if for any reason the third party does not timely pay such bills. Likewise, we agree that we owe our professional obligations to you, even when a third party pays our bills.

Other Charges

In addition to our fees, there will be other charges for items incident to the performance of our legal services, such as photocopying, messengers, travel expenses, long-distance telephone calls, facsimile transmissions, postage, overtime for secretaries and other non-legal staff, specialized computer applications such as computerized legal research, and filing fees. The basis upon which we establish these other charges is set forth in the Standard Terms of Engagement For Legal Services.

Investment Disclosures

Many of the Firm's lawyers, directly or beneficially, own interests in corporations and other entities or in real property. Although our computerized system used for checking conflicts of interest tracks all investments made in the name of the Firm, it does not contain data as to investments made individually by each of the Firm's lawyers. If you are at all concerned about these individual investments, we will be pleased to canvass our lawyers about their individual investments in any entity or entities about which you may be concerned.

Withdrawal or Termination

Our relationship is based upon mutual consent and you may terminate our representation at any time, with or without cause, by notifying us. Your termination of our services will not affect your responsibility for payment of fees for legal services rendered and of other charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the rules of professional conduct for the jurisdictions in which we practice, which list several types of conduct or circumstances that require or allow us to

withdraw from representing a client, including for example, nonpayment of fees or costs, misrepresentation or failure to disclose material facts, fundamental disagreements, and conflict of interest with another client. We try to identify in advance and discuss with you any situation which may lead to our withdrawal, and if withdrawal ever becomes necessary, we give you written notice of our withdrawal. If we elect to withdraw for any reason, you will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and other charges accrued on your behalf to the date of withdrawal.

Other

If the foregoing, including the items set forth in the enclosed Standard Terms of Engagement For Legal Services, correctly reflects your understanding of the terms and conditions of our representation, please so indicate by executing the enclosed copy of this letter in the space provided below and return it to the undersigned.

Please contact me if you have any questions. We are pleased to have this opportunity to be of service and to work with you.

Very truly yours,

VINSON & ELKINS L.L.P.

By _____
Paul S. Maco

Enclosure

AGREED TO AND ACCEPTED:

The City of San Diego

By: _____
Leslie J. Girard
Assistant City Attorney

VINSON & ELKINS L.L.P.

Standard Terms of Engagement for Legal Services

This statement sets forth certain standard terms of our engagement as your lawyers and is intended as a supplement to the engagement letter that we have with you as our client. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you as reflected in the engagement letter. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file with the engagement letter.

The Scope of Our Work

You should have a clear understanding of the legal services we will provide. Any questions that you have should be dealt with promptly.

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

It is our policy that the person or entity that we represent is the person or entity that is identified in our engagement letter, and absent an express agreement to the contrary does not include any affiliates of such person or entity (*e.g.*, if you are a corporation or partnership, any parents, subsidiaries, employees, officers, directors, shareholders or partners of the corporation or partnership, or commonly owned corporations or partnerships; or, if you are a trade association, any members of the trade association). If you believe this engagement includes additional entities or persons as our clients you should inform us immediately.

It is also our policy that the attorney-client relationship will be considered terminated upon our completion of any services that you have retained us to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be revived subject to the terms of engagement that we agree on at that time.

This engagement shall be subject to the Disciplinary Rules of Professional Conduct for the District of Columbia.

Who Will Provide the Legal Services

Customarily, each client of the firm is served by a principal attorney contact. The principal attorney should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal attorney at any time. Subject to the supervisory role of the principal attorney, your work or parts of it may be performed by other lawyers and legal assistants in the firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing

services on the most efficient and timely basis. Whenever practicable, we will advise you of the names of those attorneys and legal assistants who work on your matters.

How Our Fees Will Be Set

Generally, our fees are based on the time spent by the lawyers and paralegal personnel who work on the matter. We will charge for all time spent in representing your interests, including, by way of illustration, telephone and office conferences with you and your representatives, consultants (if any), opposing counsel, and others; conferences among our legal and paralegal personnel; factual investigation; legal research; responding to your requests for us to provide information to your auditors in connection with reviews or audits of financial statements; drafting letters and other documents; and travel. We will keep accurate records of the time we devote to your work in units of quarters of an hour.

The hourly rates of our lawyers and legal assistants are reviewed and adjusted annually on a Firm-wide basis to reflect current levels of legal experience, changes in overhead costs, and other factors. The fees for this engagement will be as set forth in the letter to which this document is attached, unless modified by subsequent amendment to such letter.

Although we may from time to time, at the client's request, furnish estimates of legal fees and other charges that we anticipate will be incurred, these estimates are by their nature inexact (due to unforeseeable circumstances) and, therefore, the actual fees and charges ultimately billed may vary from such estimates.

Additional Charges

In addition to our fees, there will be other charges for items incident to the performance of our legal services, such as photocopying, messengers, travel expenses, long-distance telephone calls, facsimile transmissions, postage, overtime for secretaries and other non-legal staff, specialized computer applications such as computerized legal research, and filing fees. The current basis for these charges is set forth below. The Firm will review this schedule of charges on an annual basis and adjust them to take into account changes in the Firm's costs and other factors.

Duplicating

The Firm charges $.15 per page.

Courier Services

The Firm charges an amount which generally represents cost including the distribution service provided by the Firm. Depending on the volume of work performed by a service provider, the Firm may receive a volume discount during a particular accounting period for which no adjustment is made on an individual client's bill.

Computer Aided Legal Research (CALR)

Third party providers of CALR services charge the Firm amounts each month based on the type, extent, and duration of the services provided. The Firm charges clients for client research only based on the computed cost to the Firm for the use of the services. This cost is monitored and revised periodically to achieve an average "at cost" rate for clients.

Telefax

The Firm charges $1.00 per page for outgoing telefaxes, which includes all telephone costs.

Telephone

The Firm does not charge for local calls. Due to the Firm-wide volume of long distance calls and multitude of rates for the various area codes and exchanges (over 65,000), the Firm does not bill each individual call based on the statements received from providers, but rather charges a flat rate of $.41 per minute for each long distance call made within the United States. This rate ($.41) is an approximation of third party provider charges and internal costs associated with this service. International calls are charged based on the rate in effect for the country being called.

Travel-Related Expenses

Airfare, meals, and related travel expenses charged to the client represent actual, out-of-pocket cost. Depending on the volume of both Firm and personal travel, the Firm may receive beneficial services, including airline tickets from its travel agent for which no adjustment is made on an individual client's account. In addition, credits earned under the Frequent Flyer Programs accrue to the individual traveler and not to the Firm.

All Other Costs

The Firm charges actual disbursements for third-party services like court reporters, expert witnesses, etc., and may recoup expenses reasonably incurred in connection with services performed in-house, such as mail services, secretarial overtime, file retrieval, etc.

Unless special arrangements are otherwise made, fees and expenses of others (such as experts, investigators, consultants and court reporters) will be the responsibility of, and billed directly to, the client. Further, all invoices in excess of $500 will be forwarded to the client for direct payment.

Billing Arrangements and Terms

Our billing rates are based on the assumption of prompt payment. Consequently, unless other arrangements are made, fees for services and other charges will be billed monthly and are payable within thirty days of receipt.

By engaging us, you acknowledge and agree that you are responsible for payment of fees, expenses and disbursements. In appropriate matters as an accommodation to you, we may agree to direct our bills to third-party payors (*e.g.*, an insurer), but you agree that you will remain fully responsible for timely payment of our bills if for any reason the third party does not timely pay such bills. Likewise, we agree that we owe our professional obligations to you, even when a third party pays our bills.

Confidentiality

We will preserve the confidentiality of information you provide us consistent with applicable law including the rules of professional conduct governing lawyers. This confirms your agreement that, with respect to firm brochures or other material or information regarding the firm and its practice, we may indicate the general nature of our representation of you and your identity as a firm client.

Client and Firm Documents

We will maintain any documents that you furnish to us in our client file (or files) for this matter. At your request, we will return your documents to you at the conclusion of the matter (or earlier, if appropriate). It is your obligation to tell us which, if any, of the documents that you furnish us that you want returned. We will return those documents to you promptly after our receipt of payment for outstanding fees and charges. Our own files pertaining to this matter, including the work performed by our attorneys, will be retained by the firm. Any documents retained by the firm will be kept for a certain period of time, and ultimately we will destroy them in accordance with our record retention program schedule then in effect.

Exhibit 4

April 13, 2004

Ms. Lisa Irvine
Director, Financial Management Department
The City of San Diego
202 C Street
San Diego, California 92101

Dear Ms. Irvine:

This letter will confirm KPMG LLP's ("KPMG") understanding of our engagement to report upon our audit of the financial statements of the City of San Diego (the "City") as of and for the year ended June 30, 2003.

Objectives and limitations of services

We will conduct the audit of the financial statements in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The objective of an audit carried out in accordance with such standards is the expression of an opinion as to whether the presentation of the financial statements conforms with accounting principles generally accepted in the United States of America. In conducting the audit, we will perform tests of the accounting records and such other procedures as we consider necessary in the circumstances to provide a reasonable basis for our opinion on the financial statements. We also will assess the accounting principles used and significant estimates made by management, as well as evaluate the overall financial statement presentation.

Our report will be addressed to the City Council of the City. We cannot provide assurance that an unqualified opinion will be rendered. Circumstances may arise in which it is necessary for us to modify our report or withdraw from the engagement. Our audit is planned and performed to obtain reasonable, but not absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, there is a risk that material errors, fraud (including fraud that may be an illegal act), and other illegal acts may exist and not be detected by an audit performed in accordance with auditing standards generally accepted in the United States of America. Also, an audit is not designed to detect matters that are immaterial to the financial statements.

In planning and performing our audit, we will consider the City's internal control in order to determine the nature, timing and extent of our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on internal control. The limited purpose of this consideration may not meet the needs of some users who require additional information about internal control. We can provide other services to provide you with additional information on internal control which we would be happy to discuss with you at your convenience.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants violations of which could have a direct and material affect on the financial statements. However, our objective is not to provide an opinion on overall compliance with such provisions.

Our responsibility to communicate with the City Council

In accordance with *Government Auditing Standards*, we will prepare a written report, *Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards* (GAS report), on our consideration of internal control and tests of compliance made as part of our audit of the financial statements. While the objective of our audit of the financial statement is not to report on the City's internal control and we are not obligated to search for reportable conditions as part of our audit this report will include any reportable conditions to the extent they come to our attention. Reportable conditions are significant deficiencies in the design or operation of internal control which could adversely affect the City's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements under audit. This report will also include all illegal acts and fraud and material violations of grants and contracts, and abuse. It will indicate that it is intended solely for the information and use of the City Council and management of the City and that it is not intended to be and should not be used by anyone other than these specified parties.

In accordance with *Government Auditing Standards* we will also issue a management letter to communicate other deficiencies in internal controls that are not reportable conditions and other violations of grants and contracts, and abuse that comes to our attention unless clearly inconsequential.

In accordance with *Government Auditing Standards*, we are also required in certain circumstances to report fraud or illegal acts directly to parties outside the auditee.

We will also communicate to you verbally disagreements with management or other serious difficulties encountered in performance of our audit or review services. We believe verbal

communication of matters such as those noted above is the appropriate forum to provide open and frank dialogue.

We will report to you, in writing, the following matters:

- Audit adjustments arising from the audit that could, in our judgment, either individually or in aggregate, have a significant effect on the City's financial reporting process. In this context, audit adjustments, whether or not recorded by the entity, are proposed corrections of the financial statements that, in our judgment, may not have been detected except through the auditing procedures performed.

- Uncorrected misstatements aggregated during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in aggregate.

- Other matters required to be communicated by Statement on Auditing Standards No. 61, *Communication with Audit Committees.*

We will also read minutes, if any, of audit committee meetings for consistency with our understanding of the communications made to you and determine that you have received copies of all material written communications between ourselves and management. We will also determine that you have been informed of i) the initial selection of, or the reasons for any change in, significant accounting policies or their application during the period under audit, ii) the methods used by management to account for significant unusual transactions and iii) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

If, in performance of our audit procedures, circumstances arise which make it necessary to modify our report or withdraw from the engagement, we will communicate to you our reasons for withdrawal.

Management responsibilities

The management of the City is responsible for the fair presentation, in accordance with generally accepted accounting standards, of the financial statements and all representations contained therein. Management also is responsible for preventing and detecting fraud, for adopting sound accounting policies and establishing and maintaining effective internal controls and procedures for financial reporting to maintain the reliability of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements. Management also is responsible for informing us of all reportable

conditions, of which it has knowledge, in the design or operation of such controls. Management also is responsible for identifying and ensuring that City complies with laws, regulations, contracts and grants applicable to its activities, and for informing us of any known material violations of such laws and regulations.

The City agrees that all records, documentation, and information we request in connection with our audit will be made available to us, that all material information will be disclosed to us, and that we will have the full cooperation of the City's personnel. As required by auditing standards generally accepted in the United States of America, we will make specific inquiries of management about the representations embodied in the financial statements and the effectiveness of internal control, and obtain a representation letter from management about these matters. The responses to our inquiries, the written representations, and the results of audit tests comprise the evidential matter we will rely upon in forming an opinion on the financial statements.

In accordance with *Government Auditing Standards,* as part of our planning of the audit we will consider the results of previous audits and follow up on known significant findings and recommendations that directly relate to the objectives of the audit. To assist us, management agrees to identify previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of the audit being undertaken and to identify corrective actions taken to address significant findings and recommendations prior to the date of our auditors' report.

Management is responsible for adjusting the financial statements to correct material misstatements and for affirming to us in the representation letter that the effects of any unrecorded misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements being reported upon. Because of the importance of management's representations to the effective performance of our services, the City agrees to release KPMG and its personnel from any claims, liabilities, costs and expenses relating to our services under this letter attributable to any misrepresentations in the representation letter referred to above.

Management is also responsible for providing us with written responses in accordance with *Government Auditing Standards* to the findings included in the GAS report within seven days of being provided with draft findings.

Management is responsible for the distribution of the reports issued by KPMG. In accordance with *Government Auditing Standards,* the reports issued citing *Government Auditing Standards* are to be made available for public inspection.

Offering documents

We understand that the City will, from time to time, wish to include these financial statements in a document offering securities and may request that we agree to include our report on these financial statements in the offering document. We will consider agreeing to the inclusion of our report by separate agreement.

Other engagement matters

The City has retained the law firm of Vinson & Elkins LLP ("Counsel") to conduct an independent investigation of the City's disclosures relating to pension matters in its municipal bond offering from 1996 to February 2004 and certain other matters (the "Investigation") and to prepare a written report with observations, conclusions and recommendations (the "Report"). The City agrees to provide complete and unrestricted access to the Investigation, including but not limited to the scope of the Investigation and the periods covered, procedures performed, people interviewed, interview notes or memoranda, other paper and electronic data collected, including responsive emails, email "search" terms used, findings, recommendations and remedial actions, if any. In addition, we will require a complete briefing as to the status of the Investigation as soon as possible after retaining KPMG and we will require weekly status updates.

We will not issue our auditors' report on the City's basic financial statements until such Investigation is complete. In the event that KPMG determines that the Investigation or any aspect thereof is insufficient to allow us complete our audit of the City's basic financial statements or any fund financial statements, KPMG may modify our report or withdraw from the engagement. KPMG requests and the City agrees that public announcements pertaining to KPMG's engagement as the City's auditors or its ongoing audit progress and findings will be subject to review and consent by KPMG prior to dissemination.

This letter shall serve as the City's authorization for the use of e-mail and other electronic methods to transmit and receive information, including confidential information, between KPMG and the City and between KPMG and outside specialists or other entities engaged by either KPMG or the City. The City acknowledges that e-mail travels over the public Internet, which is not a secure means of communication and, thus, confidentiality of the transmitted information could be compromised through no fault of KPMG.

Further, for purposes of the services described in this letter only, the City hereby grants to KPMG a limited, revocable, non-exclusive, non-transferable, paid up and royalty-free license, without right of sublicense, to use all names, logos, trademarks and service marks of the City solely for presentations or reports to the City or for internal KPMG presentations and intranet sites.

KPMG is a limited liability partnership comprising both certified public accountants and certain principals who are not licensed as certified public accountants. Such principals may participate in the engagements to provide the services described in this letter.

Work paper access by regulators and others

The work papers for this engagement are the property of KPMG. Pursuant to *Government Auditing Standards*, we are required to make certain work papers available in a full and timely manner to regulatory agencies upon request for their reviews of audit quality and for use by their auditors. In addition, we may be requested to make certain work papers available to regulators pursuant to authority given to it by law or regulation. Access to the requested work papers will be provided under supervision of KPMG personnel. Furthermore, upon request, we may provide photocopies of selected work papers to regulatory agencies. These regulatory agencies may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies. We agree to maintain the work papers for a period of not less than seven (7) years.

In the event KPMG is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement in judicial or administrative proceedings to which KPMG is not a party, the City shall reimburse KPMG at standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such request.

Additional reports

We expect to issue as part of this engagement independent auditors' reports on the following:

- Financial Statements of the Metropolitan Wastewater Utility Fund;
- Financial Statements of the Water Utility Fund.

Other *Government Auditing Standards* matters

As required by *Government Auditing Standards*, we have attached a copy of KPMG's most recent peer review report and letter of comments.

We may also assist management in drafting the financial statements and notes. In accordance with *Government Auditing Standards*, we are required to confirm that management accepts responsibility for the financial statements and notes and, therefore, has a responsibility to be in a position in fact and appearance to make an informed judgment about them and that management will:

- Designate a qualified management-level individual to be responsible and accountable for overseeing the drafting of the financial statements.
- Establish and monitor the performance of the engagement to ensure that it meets management's objectives.
- Make any decisions that involve management functions related to the engagement and accept full responsibility for such decisions.
- Evaluate the adequacy of the financial statements and notes.

Timing

The City requests, and KPMG agrees, that KPMG will commence its audit of the financial statements for the fiscal year ended June 30, 2003, for the City's basic financial statements, and the audits of the Metropolitan Wastewater Utility fund and Water Utility fund financial statements for the fiscal year ended June 30, 2003 at the same time. However, no assurance can be given as to the completion of our audits or the timing of the issuance of the auditors' reports on either the basic financial statements, the Metropolitan Wastewater Utility fund financial statements or the Water Utility fund financial statements.

Compensation

Our fees will be based on the following hourly rates:

Partner	$400
Senior Manager	$350
Senior Associate	$200

Associate	$150
Clerical	$ 60

In addition, expenses for items such as travel, telephone, postage, and typing, printing and reproduction of the financial statements will be billed for reimbursement as incurred.

KPMG estimates that the cost of all services pursuant to this engagement will be approximately $700,000 to $800,000. This is an estimate only, and the City acknowledges that additional expenditures may be required to complete the engagement. This agreement shall be supplemented as appropriate upon the further authorization of the City Council.

This agreement may be terminated at any time by the City or KPMG for convenience, but the City agrees that KPMG will be compensated for actual services rendered pursuant to this agreement at the hourly rates and expenses as set forth in the table set forth above, but in no event in an amount exceeding the amount authorized by the City Manager and, if applicable, by the City Council. KPMG shall provide weekly billings for its services; payment is due within ten (10) days of receipt. We understand that Lisa Irvine will be the contract administrator for our engagement.

We shall be pleased to discuss this letter with you at any time. For your convenience in confirming these arrangements, we enclose a copy of this letter. Please sign and return it to us.

Very truly yours,

KPMG LLP

Steven D. DeVetter

Steven DeVetter
Partner

Exhibit 5

KPMG LLP
Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

August 9, 2004

Mr. Leslie J. Girard
Assistant City Attorney
Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Re: Investigation

Dear Mr. Girard:

To date, we have had several discussions with Paul Maco of Vinson & Elkins (V&E) and have read the material provided by V&E with reference to their investigation and the formal inquiry and investigation being conducted by the Securities and Exchange Commission (SEC), the Department of Justice and US Attorney Office. Based on these discussions and our reading of the documents provided, we understand the following:

1. In September 2003, Ms. Diann Shipione, a San Diego City Employees' Retirement System (SDCERS) Board Member and Trustee, notified city officials and underwriters of errors and omissions in the City's financial statements dating back to 1996 and asserted the errors falsely improved the City's financial condition and were done intentionally to misstate and hide the real condition of the pension system.

2. Subsequent to the notification by Ms. Shipione, the City retracted the Preliminary Official Statement relating to a $505 million bond offering, filed a voluntary disclosure statement with the SEC acknowledging errors and omissions and engaged V&E to investigate and issue a report on the disclosure practices of the City.

3. The city has sold more than $2.3 billion in municipal bonds using financial statements believed to contain certain errors or omissions.

4. Ms. Shipione has alleged in various communications with the City Council, Mayor and other top city officials, that the steps taken to deliberately underfund the plan are illegal, violate the City Charter, and are at odds with statutes and court cases of the State of California.

5. Ms. Shipione has alleged that the decision to allow the underfunding was reached through a corrupt process in which the required funding was deferred to garner benefits for current employees.

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6. On June 11, 2004, the City reached a tentative settlement on the Gleason lawsuit. The Gleason lawsuit alleged that the underfunding of the pension plan was illegal and violated the City Charter, Municipal Code and California Constitution and that the SDCERS Board breached their fiduciary duties by allowing the City to underfund the plan. The settlement was reached without resolving the legal questions raised.

7. The SEC launched a formal inquiry in February 2004 under the anti-fraud provisions of section 17(a) 2&3 of the Securities Act of 1933 with reference the City's previous bond offerings. As part of that inquiry, we understand that the SEC may be considering allegations made in the press, and in particular allegations made by Ms. Shipione.

8. An e-mail provided to the SEC appears to indicate the SDCERS actuary may have worked with the City to change assumptions with the intent of lowering the calculated actuarial required contribution by the City.

AICPA Professional Standards state in section AU 317:

> .10 When the auditor becomes aware of information concerning a possible illegal act, the auditor should obtain an understanding of the nature of the act, the circumstances in which it occurred, and sufficient other information to evaluate the effect on the financial statements. In doing so, the auditor should inquire of management at a level above those involved, if possible. If management does not provide satisfactory information that there has been no illegal act, the auditor should—
>
> a. Consult with the client's legal counsel or other specialists about the application of relevant laws and regulations to the circumstances and the possible effects on the financial statements. Arrangements for such consultation with client's legal counsel should be made by the client.
>
> b. Apply additional procedures, if necessary, to obtain further understanding of the nature of the acts.

As indicated in our engagement letter dated April 13, 2004, we will not issue our auditors' report until a determination is made that the investigation being conducted by V&E is sufficient and complete. We acknowledge V&E's effort and cooperation in explaining the process they are undertaking to KPMG.

Based on discussions with you, V&E, and the reading of the documents provided and, consistent with our previous conversations, we are providing you the following

observations regarding our understanding of the scope of the investigation to help avoid surprises once we review the draft report.

We believe the investigation being conducted by V&E should address and resolve the following questions:

1. Whether or not the financial statements and or the disclosures in the financial statements were intentionally misleading and, if yes, what individuals were involved and what, if any, remedial action is recommended?

2. Did the City enter into any agreement, including the "Managers Two" agreement, or otherwise take any actions that resulted in the underfunding or misuse of pension funds that is a violation of State, City or other laws?

3. Did the SDCERS Board breach their fiduciary duty by allowing the City to underfund the plan in exchange for additional benefits for current employees and could this action have been in violation of any laws?

4. Is the use of surplus earnings to pay city obligations such as benefits outside of the plan illegal?

5. Did the City violate the City Charter by failing to fund its retirement plan as required by the City Charter?

6. Did the SDCERS Board and/or the City violate the California Constitution by allowing the City to intentionally underfund the plan?

7. Was undue influence placed on the actuary to change assumptions to reduce the shortfall of the City's contribution compared to the ARC, and, if yes, at whose direction and what action does the City plan to take to rectify this action, if applicable?

It is our understanding that the electronic evidence gathered by the investigation has been limited to documents identified by City employees in response to a SEC subpoena. In order to adequately address the allegations raised, we believe the investigation should consider conducting independent electronic discovery.

As the investigation progresses and we are provided access to information as outlined in our engagement letter, we may request that the investigation consider additional items.

We respectfully request your written response to these questions regarding the investigation.

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

Exhibit 6

AU Section 317

Illegal Acts by Clients

(Supersedes section 328)

Source: SAS No. 54.

See section 9317 for interpretations of this section.

Effective for audits of financial statements for periods beginning on or after January 1, 1989, unless otherwise indicated.

.01 This section prescribes the nature and extent of the consideration an independent auditor should give to the possibility of illegal acts by a client in an audit of financial statements in accordance with generally accepted auditing standards. The section also provides guidance on the auditor's responsibilities when a possible illegal act is detected.

Definition of Illegal Acts

.02 The term *illegal acts*, for purposes of this section, refers to violations of laws or governmental regulations. Illegal acts by clients are acts attributable to the entity whose financial statements are under audit or acts by management or employees acting on behalf of the entity. Illegal acts by clients do not include personal misconduct by the entity's personnel unrelated to their business activities.

Dependence on Legal Judgment

.03 Whether an act is, in fact, illegal is a determination that is normally beyond the auditor's professional competence. An auditor, in reporting on financial statements, presents himself as one who is proficient in accounting and auditing. The auditor's training, experience, and understanding of the client and its industry may provide a basis for recognition that some client acts coming to his attention may be illegal. However, the determination as to whether a particular act is illegal would generally be based on the advice of an informed expert qualified to practice law or may have to await final determination by a court of law.

Relation to Financial Statements

.04 Illegal acts vary considerably in their relation to the financial statements. Generally, the further removed an illegal act is from the events and transactions ordinarily reflected in financial statements, the less likely the auditor is to become aware of the act or to recognize its possible illegality.

.05 The auditor considers laws and regulations that are generally recognized by auditors to have a direct and material effect on the determination of financial statement amounts. For example, tax laws affect accruals and the amount recognized as expense in the accounting period; applicable laws and regulations may affect the amount of revenue accrued under government contracts. However, the auditor considers such laws or regulations from the

perspective of their known relation to audit objectives derived from financial statements assertions rather than from the perspective of legality *per se*. The auditor's responsibility to detect and report misstatements resulting from illegal acts having a direct and material effect on the determination of financial statement amounts is the same as that for misstatements caused by error or fraud as described in section 110, *Responsibilities and Functions of the Independent Auditor*.

.06 Entities may be affected by many other laws or regulations, including those related to securities trading, occupational safety and health, food and drug administration, environmental protection, equal employment, and price-fixing or other antitrust violations. Generally, these laws and regulations relate more to an entity's operating aspects than to its financial and accounting aspects, and their financial statement effect is indirect. An auditor ordinarily does not have sufficient basis for recognizing possible violations of such laws and regulations. Their indirect effect is normally the result of the need to disclose a contingent liability because of the allegation or determination of illegality. For example, securities may be purchased or sold based on inside information. While the direct effects of the purchase or sale may be recorded appropriately, their indirect effect, the possible contingent liability for violating securities laws, may not be appropriately disclosed. Even when violations of such laws and regulations can have consequences material to the financial statements, the auditor may not become aware of the existence of the illegal act unless he is informed by the client, or there is evidence of a governmental agency investigation or enforcement proceeding in the records, documents, or other information normally inspected in an audit of financial statements.

The Auditor's Consideration of the Possibility of Illegal Acts

.07 As explained in paragraph .05, certain illegal acts have a direct and material effect on the determination of financial statement amounts. Other illegal acts, such as those described in paragraph .06, may, in particular circumstances, be regarded as having material but indirect effects on financial statements. The auditor's responsibility with respect to detecting, considering the financial statement effects of, and reporting these other illegal acts is described in this section. These other illegal acts are hereinafter referred to simply as *illegal acts*. The auditor should be aware of the possibility that such illegal acts may have occurred. If specific information comes to the auditor's attention that provides evidence concerning the existence of possible illegal acts that could have a material indirect effect on the financial statements, the auditor should apply audit procedures specifically directed to ascertaining whether an illegal act has occurred. However, because of the characteristics of illegal acts explained above, an audit made in accordance with generally accepted auditing standards provides no assurance that illegal acts will be detected or that any contingent liabilities that may result will be disclosed.

Audit Procedures in the Absence of Evidence Concerning Possible Illegal Acts

.08 Normally, an audit in accordance with generally accepted auditing standards does not include audit procedures specifically designed to detect illegal acts. However, procedures applied for the purpose of forming an opinion

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on the financial statements may bring possible illegal acts to the auditor's attention. For example, such procedures include reading minutes; inquiring of the client's management and legal counsel concerning litigation, claims, and assessments; performing substantive tests of details of transactions or balances. The auditor should make inquiries of management concerning the client's compliance with laws and regulations. Where applicable, the auditor should also inquire of management concerning—

- The client's policies relative to the prevention of illegal acts.
- The use of directives issued by the client and periodic representations obtained by the client from management at appropriate levels of authority concerning compliance with laws and regulations.

The auditor also obtains written representations from management concerning the absence of violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency. (See section 333, *Management Representations*.) The auditor need perform no further procedures in this area absent specific information concerning possible illegal acts.

Specific Information Concerning Possible Illegal Acts

.09 In applying audit procedures and evaluating the results of those procedures, the auditor may encounter specific information that may raise a question concerning possible illegal acts, such as the following:

- Unauthorized transactions, improperly recorded transactions, or transactions not recorded in a complete or timely manner in order to maintain accountability for assets
- Investigation by a governmental agency, an enforcement proceeding, or payment of unusual fines or penalties
- Violations of laws or regulations cited in reports of examinations by regulatory agencies that have been made available to the auditor
- Large payments for unspecified services to consultants, affiliates, or employees
- Sales commissions or agents' fees that appear excessive in relation to those normally paid by the client or to the services actually received
- Unusually large payments in cash, purchases of bank cashiers' checks in large amounts payable to bearer, transfers to numbered bank accounts, or similar transactions
- Unexplained payments made to government officials or employees
- Failure to file tax returns or pay government duties or similar fees that are common to the entity's industry or the nature of its business

Audit Procedures in Response to Possible Illegal Acts

.10 When the auditor becomes aware of information concerning a possible illegal act, the auditor should obtain an understanding of the nature of the act, the circumstances in which it occurred, and sufficient other information to evaluate the effect on the financial statements. In doing so, the auditor should inquire of management at a level above those involved, if possible. If management

does not provide satisfactory information that there has been no illegal act, the auditor should—

a. Consult with the client's legal counsel or other specialists about the application of relevant laws and regulations to the circumstances and the possible effects on the financial statements. Arrangements for such consultation with client's legal counsel should be made by the client.

b. Apply additional procedures, if necessary, to obtain further understanding of the nature of the acts.

.11 The additional audit procedures considered necessary, if any, might include procedures such as the following:

a. Examine supporting documents, such as invoices, canceled checks, and agreements and compare with accounting records.

b. Confirm significant information concerning the matter with the other party to the transaction or with intermediaries, such as banks or lawyers.

c. Determine whether the transaction has been properly authorized.

d. Consider whether other similar transactions or events may have occurred, and apply procedures to identify them.

The Auditor's Response to Detected Illegal Acts

.12 When the auditor concludes, based on information obtained and, if necessary, consultation with legal counsel, that an illegal act has or is likely to have occurred, the auditor should consider the effect on the financial statements as well as the implications for other aspects of the audit.

The Auditor's Consideration of Financial Statement Effect

.13 In evaluating the materiality of an illegal act that comes to his attention, the auditor should consider both the quantitative and qualitative materiality of the act. For example, section 312, *Audit Risk and Materiality in Conducting an Audit*, paragraph .11, states that "an illegal payment of an otherwise immaterial amount could be material if there is a reasonable possibility that it could lead to a material contingent liability or a material loss of revenue."

.14 The auditor should consider the effect of an illegal act on the amounts presented in financial statements including contingent monetary effects, such as fines, penalties and damages. Loss contingencies resulting from illegal acts that may be required to be disclosed should be evaluated in the same manner as other loss contingencies. Examples of loss contingencies that may arise from an illegal act are: threat of expropriation of assets, enforced discontinuance of operations in another country, and litigation.

.15 The auditor should evaluate the adequacy of disclosure in the financial statements of the potential effects of an illegal act on the entity's operations. If material revenue or earnings are derived from transactions involving illegal acts, or if illegal acts create significant unusual risks associated with material revenue or earnings, such as loss of a significant business relationship, that information should be considered for disclosure.

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Implications for Audit

.16 The auditor should consider the implications of an illegal act in relation to other aspects of the audit, particularly the reliability of representations of management. The implications of particular illegal acts will depend on the relationship of the perpetration and concealment, if any, of the illegal act to specific control procedures and the level of management or employees involved.

Communication With the Audit Committee

.17 The auditor should assure himself that the audit committee, or others with equivalent authority and responsibility, is adequately informed with respect to illegal acts that come to the auditor's attention.[1] The auditor need not communicate matters that are clearly inconsequential and may reach agreement in advance with the audit committee on the nature of such matters to be communicated. The communication should describe the act, the circumstances of its occurrence, and the effect on the financial statements. Senior management may wish to have its remedial actions communicated to the audit committee simultaneously. Possible remedial actions include disciplinary action against involved personnel, seeking restitution, adoption of preventive or corrective company policies, and modifications of specific control activities. If senior management is involved in an illegal act, the auditor should communicate directly with the audit committee. The communication may be oral or written. If the communication is oral, the auditor should document it.

Effect on the Auditor's Report

.18 If the auditor concludes that an illegal act has a material effect on the financial statements, and the act has not been properly accounted for or disclosed, the auditor should express a qualified opinion or an adverse opinion on the financial statements taken as a whole, depending on the materiality of the effect on the financial statements.

.19 If the auditor is precluded by the client from obtaining sufficient competent evidential matter to evaluate whether an illegal act that could be material to the financial statements has, or is likely to have, occurred, the auditor generally should disclaim an opinion on the financial statements.

.20 If the client refuses to accept the auditor's report as modified for the circumstances described in paragraphs .18 and .19, the auditor should withdraw from the engagement and indicate the reasons for withdrawal in writing to the audit committee or board of directors.

.21 The auditor may be unable to determine whether an act is illegal because of limitations imposed by the circumstances rather than by the client or because of uncertainty associated with interpretation of applicable laws or regulations or surrounding facts. In these circumstances, the auditor should consider the effect on his report.[2]

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[1] For entities that do not have audit committees, the phrase "others with equivalent authority and responsibility" may include the board of directors, the board of trustees, or the owner in owner-managed entities.

[2] See section 508, *Reports on Audited Financial Statements*.

Other Considerations in an Audit in Accordance With Generally Accepted Auditing Standards

.22 In addition to the need to withdraw from the engagement, as described in paragraph .20, the auditor may conclude that withdrawal is necessary when the client does not take the remedial action that the auditor considers necessary in the circumstances even when the illegal act is not material to the financial statements. Factors that should affect the auditor's conclusion include the implications of the failure to take remedial action, which may affect the auditor's ability to rely on management representations, and the effects of continuing association with the client. In reaching a conclusion on such matters, the auditor may wish to consult with his own legal counsel.

.23 Disclosure of an illegal act to parties other than the client's senior management and its audit committee or board of directors is not ordinarily part of the auditor's responsibility, and such disclosure would be precluded by the auditor's ethical or legal obligation of confidentiality, unless the matter affects his opinion on the financial statements. The auditor should recognize, however, that in the following circumstances a duty to notify parties outside the client may exist:[3]

a. When the entity reports an auditor change under the appropriate securities law on Form 8-K[4]

b. To a successor auditor when the successor makes inquiries in accordance with section 315, *Communications Between Predecessor and Successor Auditors*[5]

c. In response to a subpoena

d. To a funding agency or other specified agency in accordance with requirements for the audits of entities that receive financial assistance from a government agency

Because potential conflicts with the auditor's ethical and legal obligations for confidentiality may be complex, the auditor may wish to consult with legal counsel before discussing illegal acts with parties outside the client.

Responsibilities in Other Circumstances

.24 An auditor may accept an engagement that entails a greater responsibility for detecting illegal acts than that specified in this section. For example, a governmental unit may engage an independent auditor to perform an audit in accordance with the Single Audit Act of 1984. In such an engagement,

---

[3] Auditors may be required, under certain circumstances, pursuant to the Private Securities Litigation Reform Act of 1995 (codified in section 10A(b)1 of the Securities Exchange Act of 1934) to make a report to the Securities and Exchange Commission relating to an illegal act that has a material effect on the financial statements. [Footnote added, July 1997, to reflect conforming changes necessary due to the issuance of the Private Securities Litigation Reform Act of 1995.]

[4] Disclosure to the Securities and Exchange Commission may be necessary if, among other matters, the auditor withdraws because the board of directors has not taken appropriate remedial action. Such failure may be a reportable disagreement on Form 8-K. [Footnote renumbered, July 1997, to reflect conforming changes necessary due to the issuance of the Private Securities Litigation Reform Act of 1995.]

[5] In accordance with section 315, communications between predecessor and successor auditors require the specific permission of the client. [Footnote renumbered, July 1997, to reflect conforming changes necessary due to the issuance of the Private Securities Litigation Reform Act of 1995.]

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the independent auditor is responsible for testing and reporting on the governmental unit's compliance with certain laws and regulations applicable to Federal financial assistance programs. Also, an independent auditor may undertake a variety of other special engagements. For example, a corporation's board of directors or its audit committee may engage an auditor to apply agreed-upon procedures and report on compliance with the corporation's code of conduct under the attestation standards.

Effective Date

.25 This section is effective for audits of financial statements for periods beginning on or after January 1, 1989. Early application of the provisions of this section is permissible.

[The next page is 315.]

Exhibit 7

Report on Investigation

The City of San Diego, California's

Disclosures of Obligation to Fund the

San Diego City Employees' Retirement System

and Related Disclosure Practices

1996-2004

with

Recommended Procedures and Changes to the Municipal Code

September 16, 2004

Paul S. Maco
Richard C. Sauer
Vinson & Elkins L.L.P.
Washington, D.C.

This agreement spawned a lawsuit on behalf of SDCERS members, claiming that both the 1996 and 2002 agreements violated applicable legal standards. Moreover, beginning in early 2003, projections of the System's unfunded liabilities for pension and healthcare benefits showed massive increases by 2011, absent remedial action. Mounting criticism from the local press and a dissident member of the SDCERS Board, as well as inquiries from a committee of the City Council, added impetus to confronting previously evaded problems, but not in an immediate expansion in the public disclosure provided by the City to the municipal debt markets.

Matters came to a head in the fall of 2003, when disclosure counsel on a scheduled offering for one of the City's enterprise funds became aware of the inclusion in the City's annual financial report of stale information concerning the views of the SDCERS actuary on the novel approach adopted for System funding. Counsel insisted on additional due diligence before approving the offering. In the resulting review, the City's internal and external auditors discovered errors throughout the footnotes to the City's financial statements for fiscal year 2002. Although there is no reason to believe that any of these largely random and (judged from their effect on the City's balance sheet) immaterial errors were intentional, the volume of mistakes raised serious questions about the efficacy of the City's internal controls for financial reporting. As noted above, on January 27, 2004, the City provided detailed public disclosure of these errors and an exposition on the funded status of SDCERS, correcting certain omissions in the City's previous disclosure.

Based upon our investigation, we conclude that the City's procedures, policies and practices for disclosure and financial reporting are inadequate in major respects. Undermining the reliability of its public disclosure have been, among other factors, the City's excessive reliance on outside professionals to generate its disclosure documents, its lack of procedures to verify the accuracy of those documents and the absence of high-level oversight to judge the clarity and completeness of information provided to the investment markets. More generally, City administration had adopted a minimalist approach to public disclosure, providing the public with negative information only when it has felt legally required to do so. The result has been a series of damaging revelations, made without advance warning and in a manner allowing the City to have limited control over the way in which the information is interpreted. This, in turn, has led to a decline in trust between the City and the investment markets that must be carefully addressed to restore to the City its former reputation as among the most financially solid and reliable of California municipalities.

Exhibit 8

KPMG LLP
Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

October 11, 2004

Leslie J. Girard, Esq.
Assistant City Attorney
Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101

RE: CITY OF SAN DIEGO FISCAL YEAR 2003 AUDIT

Dear Mr. Girard:

As shared in previous meetings and correspondence, including our letters dated August 9, 2004 and September 1, 2004, we do not believe that the City of San Diego ("City") has conducted an adequate investigation in order to conclude that likely illegal acts have not occurred, or that appropriate remedial action has been taken. Such an investigation is necessary in order for an auditor to complete an audit in accordance with generally accepted auditing standards and *Government Auditing Standards.*

The primary purpose of this letter is to express KPMG's position on what additional action KPMG believes the City should take relating to the investigation and remediation of potential illegal acts to enable KPMG to complete its audit of the City's basic and fund financial statements for the fiscal year ended June 30, 2003. KPMG has been concerned that the City was not undertaking an investigation specifically designed for the purpose of addressing audit responsibilities under generally accepted auditing standards and *Government Auditing Standards* relating to possible illegal acts. At the City's request, and as reflected in our September 1, 2004 letter, KPMG agreed to await the completion of the Vinson & Elkins ("V&E") report (the "Report"), to review the Report, and to advise the City as to what, if any, further information KPMG required in order to be in a position to complete its audit and issue its audit reports. As discussed, and as explained in more detail below, our overriding concern has been and remains, that an investigation must be of sufficient scope and thoroughness to provide a sound basis for concluding either that illegal acts with relevance to the City's financial reporting have not occurred or that appropriate remedial action has been taken with respect to any conduct which the City and its counsel cannot definitively conclude was legal.

At your request and to make our next meeting as constructive as possible, we have attempted in this letter to synthesize what additional action we believe the City needs to take to enable KPMG to complete its audit, and also to explain in general terms why this additional action is necessary.

KPMG LLP, KPMG LLP, a U.S. limited liability partnership, is a member of KPMG International, a Swiss association.

BACKGROUND

We understand that the SEC is conducting a formal investigation of the City of San Diego's public disclosures relating to the SDCERS in the City's bond offerings during the period 1996 through January 2004. This investigation was commenced following the City's filing of a Voluntary Report of Information on January 27, 2004 with the Municipal Securities Rulemaking Board and the Nationally Recognized Municipal Securities Information Repositories. That Voluntary Report made new disclosures regarding the City's obligations to fund the SDCERS and also disclosed that there had been errors in the City's 2002 CAFR.

We also understand that the U.S. Attorney and FBI are conducting a criminal investigation relating to the City's pension funding and disclosures. There have also been press reports of an additional investigation by the FBI relating to possible "public corruption" issues relating to the process by which the City and SDCERS have negotiated and approved various agreements in which the City's obligations to make payments to fund SDCERS were reduced and/or deferred in exchange for agreements to increase or expand benefits.

We understand that all of these investigations are focused on the conduct of individuals who either are currently employed by the City, were employed by the City during the period covered by KPMG's ongoing audit, or were acting in some manner on behalf of the City or SDCERS during the relevant time period.[1]

V&E was retained by the City and conducted an investigation into the City's disclosure practices and prepared a report. The V&E Report, which was made public on September 16, 2004, describes systemic failures in the City's financial reporting and disclosure processes related to the SDCERS pension plan. See e.g., Report at 170-171 (referring to "across the board failures of the City's internal disclosure processes.") It also reflects that, as late as the fall of 2003 the City's Disclosure Counsel thought information was being withheld from him and there were fundamental disagreements about whether acknowledged errors in the historical financial statements were material. Report at 114-120. The Report acknowledges that the City's prior SDCERS related disclosures were inadequate, and while it appears to stop short of concluding that there were material misstatements in the City's disclosures, it describes a dysfunctional disclosure system and also comments upon the City's "minimalist approach to public disclosure." Among the observations supporting this conclusion is the statement that "the City Auditor was disinclined to

[1] Potential illegal acts by SDCERS or its board are relevant to KPMG's audit. Your position (expressed in the September 20, 2004 letter), that SDCERS is an "entity independent of the City," does not address the fact that the financial condition of SDCERS is reported as a fiduciary fund in the City's CAFR.

include information in the City disclosure that reflected badly on the City and would sometimes excise negative statements from disclosure documents." Report at 117.

The V&E report includes two paragraphs under a heading "Conclusions Regarding Intent." Report at 164. These paragraphs state that because many of the "gaps" in the City's disclosures are "closed" when information in the SDCERS CAFRs is considered and because local press coverage of the pension plan highlighted many of the risks surrounding the more controversial City funding agreements (Managers 1 and 2) and the presence in the Municipal Code of the menu for distribution of surplus earnings, any attempt to conceal the SDCERS funding situation would have been an "exercise in futility."

While we understand that V&E has concluded that it has gathered sufficient evidence to support this conclusion, for purposes of our audit, we note that this conclusion does not address the questions we have posed as being important to our completion of our audit, and therefore, does not end our inquiry. Indeed at our meeting on August 27, 2004, Both the City and V&E have made it clear to KPMG that V&E was not retained to investigate issues relating to intent or whether any individual's conduct violated any law, rule or regulation, and that the scope of its investigative efforts were not designed to do so. At that meeting, we informed the City that, in the absence of conclusions on such issues, KPMG anticipated advising the City that additional investigative procedures may be necessary before KPMG would be in a position to complete its audit; and, in turn, we were advised that the City would perform any additional inquiries that KPMG believe were necessary for it to be able to conclude on issues that might affect its ability to issue an audit opinion.

Unfortunately, based upon the information we have been provided to date regarding the scope and method of the V&E investigation, we do not believe the statement in the report that "it is difficult to attribute the City's failure to fully and accurately describe [pension] matter[s] to intentional misconduct on the part of individual employees" is sufficient to resolve the issue of potential illegal acts for purposes of KPMG's audit because it is not based on an investigation that had a scope and methodology that would provide a reliable basis for reaching a conclusion as to whether City officials engaged in intentional misconduct or other conduct, which violated any law, rule or regulation having the force of law.

It is in this context and against these background facts, that KPMG's requirements, as outlined in this letter, must be understood. Most fundamentally, because there is evidence of possible illegal acts by the City or persons whose acts are attributed to it, under Generally Accepted Auditing Standards (GAAS) and Generally Accepted *Government Auditing Standards* (GAGAS), as well as other relevant professional guidance, to the extent the following questions are not directly

addressed in the V&E Report, additional investigative procedures are required in order to determine if illegal acts are likely to have occurred, to assess the direct or indirect effect of such acts on the City's financial statements as well as the implications for the reliability of representations being made by City employees to KPMG in the course of our audit, and to determine if any such illegal acts have been adequately remediated by the City.

The report based on such an investigation must include clear conclusions and be supported by a thorough investigation. However, as stated above, and as KPMG has been advised, the V&E investigation was not conducted as a forensic investigation, and did not result in a report that reached clear conclusions about whether federal securities laws (or any other relevant laws) had been violated, did not explore potential individual conduct that may be fraudulent or unlawful, and thus does not provide a basis for determining potential financial statement effects or determining KPMG's ability to rely on management representations from the City.

Further, the Report's discussion of certain evidence raises a concern that the investigation, for our purposes, did not adequately follow up on evidence which might suggest that certain of the deficiencies in financial reporting may have been the result of conscious efforts by one or more persons at the City. In the absence of an investigation and report that adequately explores these issues, it is not possible to determine if the City has taken appropriate remedial measures or if the representations made to us during our audit by certain individuals can be relied upon by us in reaching our opinion on the financial statements. [2]

In this regard it also bears noting that the remedial measures recommended in the Report are all prospective and entail structural reforms to address the City's process of disclosure in the future. These reforms are subject to approval by the City Council and, even if adopted, would have no impact on the manner in which the City will have prepared its 2003 audited financial statements.

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[2] See Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions Exchange Act Release No. 44969, 2001 SEC LEXIS 2210 (Oct. 23, 2001), arising out of an investigation into financial reporting by Seaboard Corporation.

OVERVIEW OF RELEVANT AUDITING AND ACCOUNTING REQUIREMENTS

AICPA State and Local Audit and Accounting Guide § 4.44.

(1) Illegal Acts with Direct and Material Effects on Financial Statement Amounts

GAAS requires an auditor to plan and perform an audit to obtain reasonable assurance about whether the financial statements are free of material misstatements arising from illegal acts that have a direct and material effect on the determination of financial statement amounts. The auditor's consideration of those potential misstatements is a matter of professional judgment and is influenced by his or her perceptions of the needs of a reasonable person who will rely on the financial statements.

The professional literature identifies the following types of legal compliance requirements as among those that may have a "direct and material" effect on the determination of financial statement amounts.

- GAAP Requirements. Governments often are subject to legal or contractual provisions that require them to prepare their financial statements in conformity with GAAP.

- Federal and State Taxes. Governments are subject to various federal tax requirements, including those relating to employment taxes, employee benefits, and tax-exempt debt (such as arbitrage rebate requirements). State-level tax requirements also may apply.

(2) Illegal Acts With Indirect Effects on Financial Statements

The auditing literature also recognizes that Governments often are affected by many other laws or regulations, which generally relate more to an entity's operating aspects than to its financial and accounting aspects, and that the financial statement effect of those laws and regulations is "indirect". Although an auditor is not required to plan the audit to detect noncompliance with such laws and regulations, the auditor does have certain detection, consideration, and reporting responsibilities relating to potential violations of such laws, which require the auditor to insist that when potential violations of such laws come to light, they must be investigated.

Moreover, GAAP requires a government entity, such as the City, to disclose in its financial statements material violations of finance-related legal and contractual provisions. Accordingly, the

auditor of a governmental entity is alert to the possible financial reporting effect of noncompliance with law that has a material indirect effect on financial statements. Because the government entity itself has financial statement reporting obligations related to violations of such laws, the government and the auditor both have a shared interest in assuring that when potential violations of such laws come to light, they are fully investigated so that the financial statements can include the GAAP[3] required disclosure.

In considering whether the financial statements are free of material misstatements arising from (1) illegal acts that have a direct and material effect on the determination of financial statement amounts, or (2) illegal acts that have an indirect material effect on financial statements, the auditor should consider both quantitative and qualitative factors. Qualitative factors that the auditor may consider relevant to that evaluation include the following:

- The potential effect of the noncompliance on the government's ability to raise resources (for example, through taxes, grants, contributions, or debt or loan financings) in the future.
- The potential effect of the noncompliance on the continuation of existing relationships with vendors, employees, and elected and appointed officials.
- Whether the noncompliance involves collusion or concealment.
- Whether the noncompliance involves an activity that often is scrutinized by elected or appointed officials, citizens, the press, creditors, or rating agencies.
- Whether the fact of the noncompliance is unambiguous rather than a matter of judgment.
- Whether the noncompliance is an isolated event or instead has occurred with some frequency.

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[3] GASB standards require governments to disclose certain violations of compliance requirements. NCGA Interpretation 6, Notes to the Financial Statements Disclosure, paragraph 4, states that the notes to the financial statements should disclose material violations of finance-related legal and contractual provisions. In addition, material violations, or potential violations, of finance-related legal and contractual provisions should be considered for recording a loss contingency. Id. at § 4.48.

- Whether the noncompliance results from management's continued unwillingness to correct internal control weaknesses.
- The likelihood that similar noncompliance will continue in the future.
- The cost-benefit of establishing internal control to prevent similar noncompliance in the future.

The risk that possible undetected noncompliance would affect the auditor's evaluation.[4]

Finally, an auditor is required by applicable auditing standards to "consider the implications of an illegal act in a relation to other aspects of the audit, particularly the reliability of representations of management." AU § 317.16. In considering such issues, the auditor must be provided with sufficient information relating to the potential illegal acts to exercise professional judgment concerning the implications of a particular illegal act for the audit. Id. ("The implications of particular illegal acts will depend on the relationship of the perpetration and concealment, if any, of the illegal act to specific control procedures and the level of management or employees involved.") Our April 13, 2004 engagement letter allows KPMG to make such a determination as to the sufficiency of the investigation for audit purposes.

INFORMATION AND REOCRDS REQUESTED, NOT YET PROVIDED

There are several open items which have been promised, but not yet provided to KPMG.

- KPMG has yet to receive all V&E interview notes, memoranda and supporting documents as requested. The basis for this request is outlined in our engagement letter.
- KPMG needs information concerning the scope and status of the criminal investigation(s), which we understand V&E is not handling. We will need to speak with the attorney representing the City in those matters.

ITEMS REQUIRING RESOLUTION BY THE CITY

Based on our review of the V&E investigation and Report, and in light of the auditing standards discussed above, KPMG has attempted to synthesize the issues that remain, which must be

[4] Id. at § 4.46

resolved before we are able to complete our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*. They are as follows:

- The City needs to determine whether the City's public disclosures, including its financial statements, likely violate the antifraud provisions of the securities laws (e.g., failure to disclose pension related matters) or any other Federal, State or local laws, and if so, what, if any, impact is there to the June 30, 2003 financial statement amounts and disclosures? The report from the investigation team should include clear conclusions (with adequate support for such conclusions) whether an illegal act has occurred and whether such illegal act has been timely and adequately remediated. The report and investigation must be in sufficient scope and detail to allow us to reach our own conclusions as to (i) whether it is likely that an illegal act has occurred and, if so (ii) whether any likely illegal act that is identified will have a material effect on the entity's financial statements and, if so (iii) whether timely and appropriate remedial action has been taken. Closely related to this set of issues is whether City employees or agents have engaged in fraudulent actions including concealment, related to the potential illegal acts. The City needs to investigate and determine, and report to us, the relationship of the perpetration and concealment, if any, of likely illegal acts to specific control objectives and the level of management, employees, or consultants involved.

- The scope of the investigation needs to extend to all possible illegal acts and needs to expand, as necessary, based on findings made during the investigation. In other words, the investigators should be able to pursue all evidence of possible illegal acts no matter where they may lead.

- According to the Report, retiree healthcare benefits were paid directly out of the pension system from 1983 until 1992 when a determination was made that this violated federal tax regulations. A new system was set up which was also determined to be legally flawed in 1995, which was addressed by making payments a SDCERS benefit. While the Report compiles facts relating to this violation, and concludes that the funding method was violative of federal regulations, it does not address the possible consequences of this violation. What has the city done to consider and address the financial statement impact of possible IRS sanctions, or other contingent liabilities or disclosure obligations arising from the conduct that could impact the June 30, 2003 financial statement amounts and disclosures?

- The issues from our August 9, 2004 letter must be addressed (see discussion in Exhibit I)

We look forward to meeting with the City to discuss further how the City can conduct an adequate investigation in order to conclude whether it is likely or not illegal acts have occurred, or that appropriate remedial action has been taken.

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

cc: Mr. Dick Murphy, Mayor
Mr. P. Lamont Ewell, City Manager
Ms. Terri Webster, Acting City Auditor and Comptroller

Exhibit I
Specific Comments Regarding September 20, 2004 City Response to KPMG's August 9, 2004 Letter

Attachments:
April 13, 2204 Engagement Letter
August 9, 2004 Letter from KPMG Re: Investigation
September 1, 2004 Letter from KPMG Re: Follow-up from meeting on August 27, 2004
September 20, 2004 letter from Les Girard Re: City of San Diego Fiscal Year 2003 Audit

SPECIFIC COMMENTS REGARDING SEPTEMBER 20, 2004 CITY RESPONSE TO KPMG'S AUGUST 9, 2004 LETTER

In your letter, you conclude by stating your view that the V&E Report "is sufficiently comprehensive to allow [KPMG] to reach the conclusions necessary for compliance with Section AU§317 of the AICPA Professional Standards and for the issuance of [KPMG's] audit report." For reasons previously articulated and expanded upon below, we are unable to agree with that conclusion.

As in many aspects of auditing, the conclusions involved in determining that potential illegal acts have been adequately investigated and remediated is one that entails an auditor's exercise of judgment. However, in the instant case, we believe that the issue is sufficiently clear that an informed and diligent auditor should not conclude that the V&E report adequately addresses the issues necessary for the completion of KPMG's audit. The Report may satisfy the City's needs (a conclusion we defer to the City to make); but, without more, it does not provide a sufficient basis for KPMG to conclude that all questions necessary to the completion of the audit have been sufficiently investigated and resolved in a manner that would permit KPMG to issue an audit report.

In response to your letter, we offer the following comments.

KPMG's Question 1

Whether or not the financial statements and or the disclosures in the financial statements were intentionally misleading and, if yes, what individuals were involved and what, if any, remedial action is recommended?

City's Comment on Question 1

Your comment seems to make two essentials points. First, that with the departure of the City's prior independent auditor and the departure of the City Auditor and Comptroller, there is no need for an investigation into whether there were any intentional illegal acts relating to the City's underfunding of the SDCERS pension plan and/or financial reporting related thereto. Secondly, your comment seems to imply that the comments in the V&E Report at page 159 concerning the possible intent of City officials to allow the City to issue misleading financial disclosures should be sufficient for KPMG in the absence of KPMG's ability to cite you to investigative reports for municipal issuers or other issuers that address the issue of intent in a manner that goes beyond the V&E Report.

Response to City's Comment on Question 1

The subsequent departure of Mr. Ryan does not change the fact that, for the entire period KPMG is auditing, he was ultimately responsible for supervising the preparation of the City's financial

statements. Moreover, numerous individuals were (and remain) involved in the financial reporting process at the City, including individuals who, according to the Report, may have been involved in the disclosure deficiencies criticized by the Report.

Under AU 317.16: "The auditor should consider the implications of an illegal act in relation to other aspects of the audit, particularly the reliability of representations of management. The implications of particular illegal acts will depend on the relationship of the perpetration and concealment, if any, of the illegal act to specific control procedures and the level of management or employees involved."

Both the City and V&E have made it clear to KPMG that V&E was not retained to investigate issues relating to intent and that the scope of its investigative efforts were not designed to do so. Based upon what we have been told about the investigation, we do not believe the statement in the report that "it is difficult to attribute the City's failure to fully and accurately describe [pension] matter[s] to intentional misconduct on the part of individual employees" is one that can be relied upon to resolve the issue of potential illegal acts for purposes of KPMG's audit because it is not based on an investigation that had a scope and methodology that would provide a reliable basis for making such a conclusion.

KPMG's Questions 2

Did the City enter into any agreement, including the "Managers Two" agreement, or otherwise take any actions that resulted in the underfunding or misuse of pension funds that is a violation of State, City or other laws?

City's Comment on Question 2

Your comment on question 2 makes essentially three points. First, that the City's potential liability for any violations of law from the alleged underfunding of the pension plan has been dealt with through the settlement of the Gleason case. Second, you state that there has never been any allegation that the City's net pension obligation reported in the City's balance sheet has been misstated. And third, that based on certain legal propositions discussed in the V&E Report at page 11, the motivations of individual members of the City Council in taking certain action are not a basis upon which that action may be voided by the courts.

Response to City's Comment on Question 2

On point 1,GASB standards require governments to disclose certain violations of compliance requirements. NCGA Interpretation 6, Notes to the Financial Statements Disclosure, paragraph 4, states that the notes to the financial statements should disclose material violations of finance-related legal and contractual provisions. In addition, material violations, or potential violations, of finance-related legal and contractual provisions should be considered for recording a loss contingency. Accordingly we do not believe that only considering the loss contingency is sufficient in these circumstances. Additionally, the considerations in AU § 317.16 need to be addressed in the context of this question.

On point 2, The reported June 30, 2002 $39 million net pension obligation was misstated due to the payment of retiree healthcare benefits from the pension plan. At KPMG's suggestion, The City has calculated the corrected June 30, 2002 net pension obligation to be $103 million. The considerations in AU § 317.16 need to be addressed in the context of this question. The City needs to investigate and determine the relationship of the perpetration and concealment, if any, of likely illegal acts to specific control objectives and the level of management, employees, or consultants involved. For example, V&E states that a letter from the Actuary to Mike Phillips in 1998 highlights knowledge of potential errors in the financial statements that were not changed/corrected until recommended by KPMG for the June 30, 2003 financial statements:

> "All these number presuppose that the 1996-97 is the first year in which the calculated actuarial contribution is greater than the actual contribution. You made an excellent point a year ago that this may not be the case. This issue may go back close to a decade after the use of 'bifurcated' rates was implemented. The case could be made that the City has a Net Pension obligation".

Finally, on point 3, while the legal proposition to which you refer, while may be relevant to whether a court will decline to question the motivation behind proper legislative action for reasons grounded in separation of powers, we do not believe that such a consideration alters the nature of the our responsibilities as the City's independent auditor, nor the need for the City to perform additional inquiry before determining whether an illegal act has (or has not) occurred, and if so, that it has been appropriately remediated.

KPMG's Questions 3

Did the SDCERS Board breach their fiduciary duty by allowing the City to underfund the plan in exchange for additional benefits for current employees and could this action have been in violation of any laws?

City's Comment on Question 3

Your comment on this item is essentially that the SDCERS board is independent of the City of San Diego and based on that you question why the actions of SDCERS or the members of its board "relate to" KPMG's audit.

Response to the City's Comment on Question 3

The basic financial statement of the City consist of (a) the primary government, (b) organizations for which the primary government is financially accountable, and (c) other organizations for which the nature and significance of their relationship with the primary government are such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

The definition of the reporting entity is based primarily on the notion of financial accountability. A primary government is financially accountable for the organizations that make up its legal entity. It is also financially accountable for legally separate organizations if its officials appoint a

voting majority of an organization's governing body and either it is able to impose its will on that organization or there is a potential for the organization to provide specific financial benefits to, or to impose specific financial burdens on, the primary government. A primary government may also be financially accountable for governmental organizations that are fiscally dependent on it.

The City's basic financial statements include SDCERS, and any audit opinion issued by KPMG reporting on the City's basic financial statements would, therefore, cover SDCERS. Accordingly, financial accounting and disclosure of activities occurring within SDCERS are relevant to our audit under GAAS and GAGAS.

KPMG's Question 4

Is the use of surplus earnings to pay city obligations such as benefits outside of the plan illegal?

City's Comment on Question 4

Your comment refers us to the history of the surplus earnings issue as discussed in the V&E Report.

Response to City's Comment on Question 4

According to the Report, retiree healthcare benefits were paid directly out of the pension system from 1983 until 1992 when a determination was made that this violated federal tax regulations. A new system was set up, which was also later determined to be legally flawed in 1995, which was addressed by making payments a SDCERS benefit. Report at 36. This underscores, rather than ameleorates our concerns. We must understand what the City has done to address possible IRS sanctions, and also learn what the possible impact is to the City's June 30, 2003 financial statement amounts and disclosures. Additionally, we believe that the considerations raised by AU § 317.16 need to be addressed in the context of this question.

KPMG's Question 5

Did the City violate the City Charter by failing to fund its retirement plan as required by the City Charter?

City's Comment on Question 5

Your comment on this question refers us to the fact, discussed above, that the City believes that the Gleason settlement "resolves the economic consequences" of the City's actions and thus, suggests that any issue with respect to whether that conduct was unlawful is irrelevant.

Response to City's Comment on Question 5

Potential liabilities are one reason violations of laws are relevant to an auditor. Because GAAP require governments to disclose material (whether quantitative or qualitative) violations of

finance-related legal and contractual provisions, the auditor of a governmental entity should be alert to the possible financial reporting effect of noncompliance that has a material indirect effect on financial statements. Additionally, KPMG believes that the considerations of AU 317.16 needs to be addressed in the context of this question.

KPMG's Question 6

Did the SDCERS Board and/or the City violate the California Constitution by allowing the City to intentionally underfund the plan?

City's Comment on Question 6

Your comments in this section refer to your earlier comments relating to Question 2 and Question 3.

Response to City's Comment on Question 6

Please see our comments above regarding these items.

KPMG's Question 7

Was undue influence placed on the actuary to change assumptions to reduce the shortfall of the City's contribution compared to the Actuarial Required Contribution (ARC), and, if yes, at whose direction and what action does the City plan to take to rectify this action, if applicable?

City's Comment on Question 7

Your comment on this item refers us to the discussion at page 91 of the V&E Report and asks for the details of any remaining concerns.

Response to City's Comment on Question 7

The auditor should consider the implications of an illegal act in relation to other aspects of the audit, including the reliability of representations to be obtained from members of management. The implications of particular illegal acts will depend on the relationship of the perpetration and concealment, if any, of the illegal act to specific control procedures and the level of management or employees involved.

The City needs to investigate and determine the relationship of the perpetration and concealment, if any, of likely illegal acts to specific control objectives and the level of management, employees, or consultants involved.

Other Issues Raised in the City's September 20, 2004 Letter

Your letter also commented on electronic discovery. With respect to electronic discovery, both the City and V&E have made it clear to KPMG on August 27, 2004 that V&E was not retained to investigate issues relating to intent and that the scope of its investigative efforts were not designed to do so. We believe that determining intent is required with respect to certain of the questions posed in our August 9 letter, and electronic discovery is an effective procedure in that regard, as it may provide relevant evidence for the City, its counsel, and KPMG to consider in determining whether there are unresolved questions which might affect the City's financial statements or disclosures.

Exhibit 9

Vinson&Elkins
ATTORNEYS AT LAW

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October 28, 2004

Leslie J. Girard
Assistant City Attorney
City of San Diego
Office of the City Attorney
1200 Third Avenue Suite 1620
San Diego, CA 92101

Re: Additional Investigation

Dear Mr. Girard:

We believe a constructive discussion between the City of San Diego (the "City") and its independent auditor, KPMG, will be greatly advanced by: (a) correction of numerous misimpressions and misunderstandings by KPMG regarding our Report of Investigation (the "Report") made in the October 11, 2004 letter to you and (b) clarification by KPMG of various statements made in their correspondence, as well as identification of the specific audit standards KPMG believes applicable to any issues delaying the completion of its audit of the City's 2003 financial statements. Such clarifications would, assuming KPMG's good faith cooperation, allow us to undertake additional procedures, beyond the scope of our initial investigation, addressing whatever remaining concerns KPMG may have. As always, we remain ready to assist the City in any manner appropriate for us.

KPMG has demanded broad and unspecified assurances that the City and its officials have not committed "illegal acts" before it will render its audit opinion. The effort to propose additional procedures that will satisfy KPMG has been complicated by KPMG's failure to articulate either the "possible illegal acts" it believes may have occurred or how the identification and analysis of any such acts should be addressed as audit issues. Further, its demands for additional information or procedures have been highly changeable within short periods of time. For example, in a meeting of October, 14, 2004, a KPMG officer stated to you and numerous others present that KPMG would not demand that City counsel provide a legal opinion as to all potential claims that might be asserted against the City, as KPMG has requested in the past. In its letter of October 27, 2004, however, KPMG reversed that position.

This point is of critical importance because KPMG's current position would require counsel to speculate on an unbounded universe of unasserted claims. This would go far beyond the established requirements of the auditing profession, and would violate a long-standing protocol agreed upon between the American Institute of Certified Public Accountants and the American Bar Association for the provision of information by client's counsel to auditors. For this reason, it would not be permissible under Vinson & Elkins' firm policies or, in all likeli-

hood, those of any other national law firm. The representations KPMG is now demanding also go beyond the categories presented in any independent report of investigation of which we are aware.[1]

In the KPMG letter to you of October 11, 2004, KPMG alternately expresses its concerns regarding "likely illegal acts" (page 1, paragraph 1, line 3), "potential illegal acts" (page 1, paragraph 2, line 2), "possible illegal acts" (page 1, paragraph 2, lines 6 & 7), and "illegal acts likely to have occurred" (page 4, carry-over paragraph, line 2). The October 11, 2004 letter also refers to "evidence of possible illegal acts by the City or persons whose acts are attributed to it" (page 3, last paragraph, lines 2 & 3). KPMG, however, has yet to identify *any* "likely," "possible," or "potential" illegal acts about which it seeks further information, despite numerous requests from the City that it do so.[2]

Because our Report addressed possible misstatements and omissions in the City's public disclosure as to the funding of its retirement system, we must assume, in the absence of a statement from KPMG to the contrary, that its concerns center around this area. In considering potential violations of the securities laws by the City, it is important to note that the provisions applicable to municipalities are much narrower that those that apply to public companies, being limited exclusively to the so-called "antifraud provisions." Municipal governments are expressly exempt by statute from the reporting, internal controls and recordkeeping provisions applicable to public companies, including those added by the Sarbanes-Oxley Act of 2002, and their auditors are not subject to Section 10A of the Securities Exchange Act of 1934, which requires auditors of public companies to establish procedures to detect fraud and to report possible illegal acts they detect in the course of an audit.

A finding of a violation of the anti-fraud provisions, on a very general level, requires proof of material misstatements and omissions in connection with securities transactions, made with an intent to defraud or a reckless indifference to the accuracy of statements made. Thus a finding that the City violated the anti-fraud provisions would require convincing proof that individuals acting on behalf of the City intentionally misrepresented aspects of its financial situation.[3]

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[1] We have requested an example from KPMG of a report of investigation that it would deem adequate in scope. To date, it has provided us with no such example.

[2] The one specific legal issue ever articulated as a concern by KPMG is, as stated in its October 11, 2004 letter, the possibility of IRS sanctions for the apparent failure of the San Diego City Employees Retirement System ("SDCERS") to segregate funding for it healthcare benefit from basic pension assets. The practice at issue ceased in 1997 and has not been the object of an IRS inquiry. Nevertheless, if KPMG is concerned that this matter represents a potential contingent claim against the City, we see no reason the City should not retain tax counsel to opine on the likelihood and potential magnitude of such a claim.

[3] However, negligent conduct under some circumstances would suffice for a finding of a violation of certain provisions of the federal securities laws applicable to municipalities. *See* Securities Act of 1933, § 17(a)(2) and (3).

Our Report found numerous misstatements and omissions in the City's public disclosure. We concluded that: "City disclosure since 1996 has failed to provide investors and other interested readers with adequate information to enable them to clearly understand the relationship between SDCERS and the City's General Fund and to fully evaluate the credit-worthiness of the City." We did not conclude, however, that the City's failures could be attributed, at least on the basis of information available to us, to intentional misconduct on the part of individual employees.[4] Factors compelling this conclusion included the complex and technical nature of the disclosure at issue and the extensive involvement in that disclosure of outside professionals with no motive to mislead.

Reports of investigation rarely, if ever, reach ultimate legal conclusions, and ours did not do so.[5] Reasons for this include:

- The factual record from a private inquiry is often unavoidably incomplete, contradictory or subject to more than one interpretation. Our investigation encountered such impediments to our ability to obtain relevant information as the refusal of certain key individuals to speak with us. Also, critical issues may turn on the undocumented, unexpressed intentions of particular individuals.

- Even when the factual record is clear, the legal implications of particular actions may be uncertain. Here, for example, it is hard to predict whether a court would determine that *any* of the misstatements and omissions detailed in our Report are material under the highly subjective standard of the federal securities laws. This is particularly the case given that the matters at issue had no significant effect on the City's balance sheet for any fiscal period, and the price of the City's bonds does not appear to have declined as a result of any of the negative information (not all accurate) that has been made public about the City's finances over the last year.

To date, KPMG has not, to our knowledge, challenged a single statement of fact in our Report, nor has it provided any information that would support a conclusion that any City employee engaged in fraudulent conduct. We have asked KPMG to direct us to anything in the Report that it believes might indicate intentional wrongdoing. The only incident its employees have mentioned concerns a February 1998 letter from SDCERS actuary Rick Roeder to former San Diego accountant Mike Phillips. In that letter, Mr. Roeder (not a City employee) suggested that the City could adopt a different amortization period for purposes of reporting its unfunded actuarially accrued liability than for calculating its contributions to SDCERS. Under governmental accounting rules, however, this practice is permissible. This has been confirmed to Vinson & Elkins by the actuarial firm Towers Perrin, the City's former auditors Caporicci & Larson and KPMG. Moreover, in our Report we concluded that the City's disclosure concerning

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[4] It is not correct, as stated in KPMG's letter of October 11, 2004, that the scope of our investigation excluded issues of intent.

[5] As mentioned, we have asked KPMG for examples to the contrary and it has provided none.

its amortization of its liability to its retirement system was incomplete and misleading until remedied by the City's January 27, 2004 voluntary disclosure.

Although KPMG has stated that it has concerns about leads not followed in our investigation and contradictions in witness statements not resolved in our Report, it has yet to specify any such instances.[6] Further, after an audit that has gone on for approximately eight months, and complete access to all the documents available to Vinson & Elkins and to government investigators, it has not brought to our attention any possible violations of law concerning any matter, whether inside or outside the scope of our Report.

At bottom, KPMG appears to seek assurances that there are no claims that may be asserted against the City with respect to matters considered in our Report or, for that matter, generally. It demands that the City establish to KPMG's satisfaction that "illegal acts with relevance to the City's financial reporting have not occurred or that appropriate remedial action has been taken with respect to any conduct which the City cannot definitively conclude was not illegal." The governing accounting and auditing standards recognize that such absolute assurances do not exist in the real world.[7] Realizing that KPMG was not following established auditing standards, a Vinson & Elkins attorney asked KPMG's William Haegele to explain the standards that KPMG believes appropriate to this situation. He responded to the effect that "there is no standard I can give or point you to. It's a work in progress."

Moreover, the accounting and legal professions have a well-established protocol for the type of representations that can and should be made by counsel for an issuer to its auditor.[8] These reflect, among other things, the practical impossibility of estimating the outcome of many unadjudicated claims, particularly those not yet asserted. KPMG's Mr. Haegele has stated to Vinson & Elkins, however, that KPMG will not be bound by those protocols.

It is worth noting that no claims against the City involving its financial disclosure have been asserted or, to our knowledge, even threatened. Litigation involving claims against SDCERS by certain classes of its members was resolved this August through a settled legal action. As KPMG knew at the time it accepted the audit engagement, the City's financial disclosure is under investigation by the SEC and the Office of the US Attorney for the Southern District of California. We do not represent the City in the US Attorney's investigation and have received no indications from the SEC staff what the result of its inquiry will be. We note,

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[6] Of course, there were occasional disparities in the way in which different witnesses remembered prior events, some many years in the past. To the extent the differences were significant and could be resolved through information available to us, we did so.

[7] The basic guidance is provided by Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 5* ("Accounting for Contingencies") and American Institute of Certified Public Accountants, *Codification of Statements on Auditing Standards*, § 337 ("Inquiry of a Client's Lawyer Concerning Litigation, Claims and Assessments").

[8] American Bar Association, "Statement of Policy Regarding Lawyers' Responses to Auditor's Requests for Information," 31 Business Lawyer 3109 (1976).

however, that the SEC in the past has not made a practice of assessing fines against governmental entities that it knows will ultimately be borne by taxpayers.

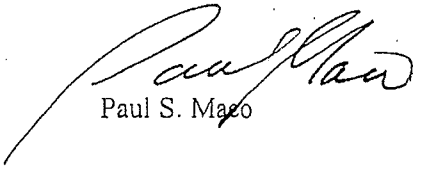
Moreover, should the SEC determine the City has violated any provisions of the federal securities laws, we believe it would consider the following facts in determining what remedies are appropriate:

- in January 2004, the City voluntarily disclosed it's footnote errors and factors relating to its obligation to fund its pension liability;
- the City commissioned an investigation of its disclosure practices (the Report), prior to any indication of an SEC or US Attorney inquiry, *the first instance of any US municipality making such an undertaking;*
- the City has, and continues to, cooperate with the SEC's investigation; and
- the City has adopted amendments to its Municipal Code of Sarbanes-Oxley type measures, *again, the first and to date only instance of a US municipal government having undertaken such measures.*

Equally as troubling as KPMG's inability to relate general concerns about unspecified "illegal acts" to specific audit issues is its failure to provide any practical guidance as to what additional investigative procedures it would find satisfactory. Its October 11, 2004 letter to you describes as inadequate (for its specific purposes) the scope of the Vinson & Elkins investigation but makes no proposals for expanding the matters examined. Subsequently, the City proposed a work plan for additional procedures responding to suggestions from KPMG. By letter dated October 27, 2004, KPMG rejected the draft plan without proposing an alternative approach. Further, as mentioned, KPMG has yet to state what auditing standards it intends to apply in determining when and if it has attained an acceptable comfort level to issue its audit report. Unless KPMG assists its audit client, the City, through clear identification of standards it will accept, the City cannot effectively tailor its efforts to meet those standards.

This firm has conducted a thorough and painstaking inquiry into the City's public disclosure concerning the funding of its retirement system. Our Report provides detailed findings of fact that assisted the City in reforming its disclosure controls. We stand ready to aid the City and KPMG in developing additional information to support KPMG's audit of the City's financial statements. For any such effort to be productive, however, KPMG must go beyond vague allusions to unspecified illegal acts and indicate particular audit concerns and the investigative procedures that would allay them.

Very truly yours,



Paul S. Mazo

Exhibit 10

Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

October 29, 2004

The Honorable Dick Murphy, Mayor
Mr. Lamont Ewell, City Manager
City of San Diego
1200 Third Avenue
San Diego, CA 92101

Gentlemen:

We write this letter in an earnest attempt to make progress with the City of San Diego towards addressing the issues that must be resolved before KPMG can complete its audit of the City's 2003 financial statements.

The immediate topic we must address is the letter dated October 28, 2004 from Paul Maco of Vinson & Elkins (V&E) addressed to Les Girard, Assistant City Attorney. That letter, which appears to have been posted immediately on the City's website, in our opinion seriously impairs, rather than advances, the prospects for a prompt resolution of the issues that currently stand in the way of KPMG completing its audit.

We will not in this letter seek to correct all of the statements in Mr. Maco's letter which we believe are inaccurate. However, we do wish to convey to you, as two individuals with significant responsibility for the City's affairs, several points, which are intended to be direct, but constructive:

First, KPMG cannot, and will not, complete an audit of the 2003 financial statements unless the City completes an independent investigation of potential illegal acts as we have outlined in our prior correspondence.

Second, KPMG does not seek, as Mr. Maco asserts, "broad and unspecified assurances that the City and its officials have not committed 'illegal acts.' " Nor do we request that the City retain counsel to "speculate on an unbounded universe of unasserted claims." We believe that our prior letters cannot reasonably be construed to have made such requests. To the contrary, we have laid out what our concerns are, and repeatedly advised the City's representatives that these concerns must be addressed through an investigation that was designed to develop facts that would enable the City and its counsel to address those concerns.

Third, while we believe it is somewhat unusual for an auditor to provide a detailed explanation to a client of the auditing standards that justify an auditor's request for information, we have done so here. In our correspondence, we not only discussed relevant auditing literature, but also explicated for the City some of the applicable accounting principles that require the City in its financial

KPMG, LLP. KPMG LLP, a limited liability partnership, is a member of KPMG International, a Swiss association.

statements to make disclosures of any violations of finance-related laws and regulations.[1] We believe that the City cannot comply with this requirement unless it conducts the kind of investigation we have requested and described in our October 11, 2004 letter. Accordingly, the investigation we are requesting is one that the City ought to desire to complete so that it can discharge its own financial reporting obligations and not solely because KPMG is insisting that it do so. The City, as the issuer of its financial statements, must conclude on the question of whether any of the issues discussed in our October 11, 2004 letter and its attachments and the conduct discussed in the V&E report was illegal and, if so, whether any violations must be disclosed, and have been adequately disclosed, in the financial statements in accordance with GAAP. We would further expect the City would also determine to its satisfaction that all necessary and appropriate remedial actions have been taken with respect to conduct that is investigated. It is because it is the City's obligation to reach these conclusions that KPMG has suggested that the City obtain from its investigators sufficiently clear legal conclusions to enable the City to make the necessary determinations; we have not, as Mr. Maco suggests requested that any law firm issue a legal opinion to KPMG on any subject and his allusion to the ABA protocol for FAS 5 (Contingent Liability) attorney letters is completely off subject. It is, thus, extremely disappointing and surprising that Mr. Maco's letter so ardently contends that KPMG has not explained the auditing standards motivating its request. It is equally troubling that his letter erroneously asserts that KPMG "was not following established auditing standards."[2]

In light of the foregoing, and considering both that Mr. Maco may not speak for the City on these matters and that (at least according to certain press reports) there may not have been adequate communication within the City about our position, we believe that a key element of our meeting on Monday November 1, 2004 will be to secure the authoritative position of the City on these important issues. Our fundamental goal for this meeting is the same one we expressed in our letter dated October 27, 2004: "to discuss how the City plans to conduct an adequately detailed investigation that will permit KPMG to conclude its audit."

If the City is prepared to proceed with an appropriate investigation, then we urge you to consider retaining counsel other than V&E to do so. The positions asserted in, and oppositional tone of, Mr. Maco's letter raises questions about V&E's willingness or ability in these circumstances to complete the investigation of, and reach conclusions on, the audit-critical questions posed in our prior oral and written communications and to do so in an objective and independent manner. Our

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[1] In light of these requirements, the fact that the City may be exempt from Section 10A of the Securities Exchange Act of 1934 as Mr. Maco asserts, does not eliminate the City's obligations under Generally Accepted Accounting Principles ("GAAP") applicable to governments.

[2] Again, in the interest of assisting the City in understanding its obligations and explaining the professional guidance that KPMG believes is applicable here, we are enclosing a copy of a very recent Practice Alert published by the American Institute of Certified Public Accountants on "Illegal Acts".

reading of the letter suggests to us that, at this point, conducting the kind of investigation that is necessary may be in tension with V&E's ongoing representation of the City in the pending SEC investigation.

KPMG's ability to complete its audit of the City's financial statements is dependent on resolution of these outstanding issues. We have been, and will continue, to perform the service we understood the City wanted us to perform (i.e. to objectively exercise our professional judgment in the application of professional standards). We stand ready to do so in the independent manner we believe the City, the investing public and the taxpayers expect.

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

cc: Mr. Leslie Girard, Assistant City Attorney, City of San Diego

Exhibit 11

San Diego City Attorney
MICHAEL J. AGUIRRE

NEWS RELEASE

FOR IMMEDIATE RELEASE: December 9, 2004

Contact: Maria Velasquez, Press Secretary: (619) 235-5725 (pager & voicemail) mvelasquez@sandiego.gov

STATEMENT FROM CITY ATTORNEY MICHAEL J. AGUIRRE
FINANCIAL DISCLOSURE PRACTICES INVESTIGATION, AND DECISION NOT TO JOIN SAN DIEGO'S RETIREMENT SYSTEM
Action Taken to Ensure Public Confidence

The City Attorney's Office is undertaking a separate and independent investigation into issues raised in the *Report on Investigation of the City of San Diego's Disclosures of Obligations to Fund the San Diego City Employee's Retirement System and Related Disclosure Practices 1996-2004,* dated 16 September 2004. After the investigation is completed, a decision will be made whether to refer any matters to the City Attorney's new Public Integrity Unit in the Criminal Division.

The City Attorney has also announced that he will not become a member of the San Diego Retirement System until the conclusion of the San Diego City Attorney's investigation of the outstanding legal issues addressed, arising out of, or related to the *Report on Investigation of the San Diego Disclosures of Obligations to Fund the San Diego City Employee's Retirement System and Related Disclosure Practices 1996-2004*, dated 16 September 2004. He is taking this action to ensure public confidence in the resolution of any investigations undertaken by the San Diego City Attorney's office.

Please note the City Attorney is permitted to not become a member of the retirement system under Municipal Code § 24.1702 which provides:

§24.1702 Membership by Elected Officers Permissive
Every Elected Officer in office at the time this section becomes effective, or elected after the effective date of this section, may become a Member of this System if he files with the Board a written election to become a Member.
(Retitled from "Membership by Legislative Officers Permissive" and amended 10-8-2001 by O-18994 N.S.)

Thus, City Attorney Aguirre will not be filing a written election to become a member of the San Diego City retirement system at this time.

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Exhibit 12

INTERIM REPORT NO. 1

REGARDING POSSIBLE ABUSE,

FRAUD, AND ILLEGAL ACTS BY

SAN DIEGO CITY OFFICIALS AND EMPLOYEES

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE: (619) 236-6220

14 JANUARY 2005

Exhibit 13

INTERIM REPORT NO. 2

REGARDING POSSIBLE ABUSE,

ILLEGAL ACTS OR FRAUD BY

CITY OF SAN DIEGO OFFICIALS

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE: (619) 236-6220

9 FEBRUARY 2005

Exhibit 14

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

February 10, 2005

Hon. Richard Murphy,
Mayor of San Diego
San Diego City Council
212 C Street
San Diego, CA 92101

Re: Independent Services for the City of San Diego

Dear Mr. Mayor & Council Members:

This letter confirms our understanding of the scope and terms of the engagement of Kroll Associates, Inc. ("Kroll") by the San Diego City Council ("the Council"). It is understood that although we are being hired by the Council, we will perform our services with complete independence from the Council, the Mayor, the City of San Diego ("the City"), the City's departments, the City's agencies including the San Diego Employees' Retirement System ("SDCERS"), all elected City officials or any other party that is involved with this matter.

Background

On January 27th, 2004, the City of San Diego California made a voluntary disclosure filing with the four Nationally Recognized Municipal Securities Information Repositories recognized by the Securities and Exchange Commission ("SEC"). The first provided a description of the unfunded accrued actuarial liability of the Sand Diego City Employees' Retirement System together with projections anticipating the growth in the liability, an estimate of the accrued liability for post retirement health care benefits conferred on the City's retired workers, as well as a description of the mechanics by which the City funded the system. The second described numerous errors discovered in the footnotes of the City's audited annual financial statements. Subsequently, rating agencies have downgraded the rating of the City's debt and investigations have been commenced by the SEC and U.S. Attorney.

We understand the City has engaged KPMG to perform an independent audit of its 2003 annual financial statements. We also understand Vinson & Elkins ("V&E") issued an investigative report dated September 16, 2004 entitled "The City of San Diego, California's Disclosures of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure practices 1996-2004 with Recommended Procedures and Changes to the Municipal Code." Subsequent to the issuance of this report we understand that KPMG has requested additional

competent evidential matter it deems necessary to complete its audit in accordance with applicable accounting, auditing and professional standards and that further investigation be made into certain matters. We also understand V&E has been engaged to perform additional work. It is our understanding KPMG has requested the results of the V&E investigations, as well as the results of an ongoing investigation by the City Attorney, be received, reviewed and evaluated by an independent third party,

Scope of Project

The City has requested that Kroll (1) receive, review and evaluate the findings of the investigations by V&E and the City Attorney. The City has also requested Kroll provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports.

The scope of this engagement will be in two phases. The first phase of the engagement will be for Kroll to serve as an Independent Investigator for matters relating to (1) the unfunded liability of the SDCERS and (2) errors discovered in the footnotes of the City's audited annual financial statements. We expect this phase of the project will include:

- Working with KPMG to understand their concerns and attempt to reach a satisfactory work program that will assist them in obtaining the necessary evidence and documentation required by applicable accounting, auditing and professional standards.
- Receive, review and evaluate the reports of investigations of this matter that we currently understand will be issued by V&E and the City Attorney. We understand that the Council will direct V&E and the City Attorney to provide us access to whatever information they have related to their investigations. This shall include (a) reading and reviewing these reports, (b) recommending changes in scope of the work performed that will meet the needs of KPMG and where we deem necessary (c) performing additional procedures we consider necessary to reach conclusions or obtain evidential matter that is required by KPMG. In doing so, we will require unconditional access to all information gathered, by the personnel and documents of the City, SDCERS, V&E, the City Attorney and any other parties involved with this matter. We also may direct V&E to perform additional investigative procedures we deem necessary. Should we deem it necessary we may also retain legal counsel. We will attempt not to duplicate work that has already been performed, unless we believe that additional work needs to be done to complete our investigation and provide KPMG with evidence they require in order to issue an opinion on the financial statements. A lack of cooperation by the parties involved with this matter or a lack of access to the information or personnel we require may impact our ability to complete our investigation and ability to complete this project.
- We will report our findings to the Council.

Our work will be based on the investigation reports and any additional procedures we deem necessary. However, we are not responsible for the work performed by V&E or the City Attorney. We are also not responsible for the issuance of audited statements by KPMG or any other external accounting firm the City has hired to audit its' financial statements.

You have also requested a second phase to our engagement, which we will not be prepared to commence until the first phase is complete. In the second phase, we may be engaged to consult with personnel of the City to establish internal controls that if implemented and operated properly by the City could provide reasonable assurance that the transactions identified in the reports in phase one are properly reported and disclosed in the financial statements of the City. We could coordinate our work with the City Auditor and Comptroller, the head of the internal audit department and the City's outside independent auditors as to the scope and nature of the internal controls that the City would need to assess, document, implement and test.

The City's internal control over financial reporting includes those policies and procedures that pertain to its ability to initiate, record, process and report financial data consistent with the assertions embodied in either its annual or interim financial statements and accompanying disclosures. Management of the City is responsible for evaluating the effectiveness of the Company's internal control over financial reporting using suitable control criteria and supporting its assessment with sufficient evidence including documentations. Management will also be responsible for presenting a written assessment of the effectiveness of the City's internal controls.

The work performed in connection with phase one and two of this project will be completed in accordance with the applicable professional standards, for consultants, set forth by the American Institute of Certified Public Accountants.

The Council agrees that any written reports, schedules, other materials, or documents prepared or provided by Kroll are to be used only for this matter and will not be disclosed, published, or used by the Council or any representatives of the City for any other purpose without Kroll's prior written permission.

Kroll agrees that all working papers and other documents prepared or received by us pursuant to this engagement will be maintained by us as confidential material and we agree not to disclose our work or work product hereunder to third parties without the Council's consent, except as may be required by law, regulation, or judicial or administrative process, or in connection with litigation arising hereunder. We also agree to abide by any court orders provided to us in writing and signed by us regarding confidentiality. We will, at your request, transmit information to you by facsimile, e-mail, or over the Internet. If any confidentiality breaches occur because of data

transmission, you agree that this will not constitute a breach of any obligation of confidentiality. If you wish to limit such transmission to information that is not highly confidential, or seek more secure means of communication for highly confidential information, you will need to inform us. If access to any of the materials in our possession relating to this engagement is sought by a third party, we will promptly notify you of such action, tender to you our defense responding to such request and cooperate with you concerning our response thereto. In the event that we are subpoenaed as the result of any work performed for you in connection with this engagement, the City will compensate us for our time involved in responding to such subpoenas.

Our fees are based on the actual hours plus expenses incurred and are not contingent on the completion or outcome of the investigation. We will bill you at the rates for the professionals that work on this mater. Our rates currently range from $125 to $750 per hour. Our engagement team will be lead by Mr. Lynn Turner and Mr. Troy Dahlberg and under the oversight of Arthur Levitt. Their rates are $750, $450 and $900 per hour, respectively. Our hourly rates are periodically revised. You will pay us for expenses that we incur for this matter, including but not limited to travel costs, lodging, outside research, copy costs, telephone and messengers. We shall be paid for our time and our expenses, including any legal expenses that we may incur, associated with any subsequent testimony or response to any process that is required of us as a result of our services related to this engagement.

We will be pleased to start work upon receiving a $75,000 retainer that will be applied to the last invoice. We understand that the Council will initially approve $250,000 for our engagement, but will consider approving additional funds on an as needed basis in order to complete the engagement. We bill at a summary level, generally on a monthly basis, based on the fees and expenses incurred. Payment is due upon invoicing without regard to the current status of this matter, and a late payment fee of 1 ½ percent per month may be charged for any indebtedness. We require full payment of any indebtedness prior to the issuance of any report. We may stop work at any time in the event of any delinquency of indebtedness. We may resign this engagement at our sole discretion at any time..

The scope of this engagement does not constitute a rendering by Kroll or its employees of any legal advice, and because our engagement is limited in nature and scope it cannot be relied upon to discover all documents and other information or provide all analyses which may have importance to this matter. This engagement does not anticipate the compilation, review, or audit of financial records or financial statements. No representative of the City will hold us responsible for any loss or liability, which may result from the nondiscovery of any matters which may otherwise have an influence on this matter.

We have undertaken a limited inquiry of Kroll's records to determine if there are any conflicts with this engagement, and currently we are aware not found any. However, the very nature,

Kroll

diversity, magnitude, and volume of Kroll and its past and present clients and professional relationships does not allow us to be certain that each and every possible relationship or potential conflict has come to our attention. In the event that additional relationships or potential conflicts come to our attention, we will promptly notify you. The Counsel agrees that it will inform Kroll of additional parties to the matter. Kroll is a separately operated wholly owned company of the Marsh & McLennan Companies.

The Council and City agree that the City or any other party or affiliate acting on their behalf will not hold Kroll, its affiliates, its representatives or its employees legally responsible for any loss or liability to the City or any of its representative or personnel for any claims, liabilities, or expenses relating to this engagement. Additionally, the City agrees to indemnify and hold harmless, Kroll, its affiliates, its representatives and its employees from any and all claims, liabilities, or expenses arise as a result of Kroll performing services pursuant to this Agreement. This provision and other provisions in this Agreement will survive the completion or termination of this engagement.

If any portion of this Agreement is held to be void, or otherwise unenforceable, in whole or part, the remaining portions of this Agreement shall remain in effect.

We appreciate the opportunity to assist you on this matter. If this Agreement meets with your approval and your client's approval, please sign below. Please return the signed letter to Troy Dahlberg at the above address, retaining a copy for yourself and your client.

Very truly yours,

Troy Dahlberg

Mr. Troy Dahlberg
Managing Director
Kroll Associates, Inc.

Kroll

Acknowledged by: _____ Date: 14 FEB 05
Hon. Richard Murphy,
Mayor

Acknowledged by: _____ Date: Feb 14, 2005
Mr. P. Lamont Ewell,
City Manager

Acknowledged by: _____ Date: Feb 18, 2005
Michael Aguirre, Esq.,
City Attorney

Exhibit 15

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, FEBRUARY 14, 2005
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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MOTION BY ATKINS TO ADOPT, APPROVING THE APPOINTMENTS. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea (nay on appointment of Robert S. Griswold), Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S403: Retention of Kroll, Inc. and Mr. Lynn E. Turner to Provide Expert Services in Connection with Current Investigations Relating to the City's Financial Condition.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-820 Cor. Copy) ADOPTED AS RESOLUTION R-300139

Authorizing and directing the Mayor, City Manager, and City Attorney, to execute the agreement with Kroll, Inc., attached hereto as Exhibit B;

Authorizing the initial amount of $250,000 from the Public Liability Fund No. 81140, for the above entitled purpose on the condition that the City Auditor and Comptroller first certify that the funds are in the treasury and available for these purposes, although additional sums may be necessary to be authorized from time to time by the City Council;

Authorizing and directing the City Auditor and Comptroller, upon consultation with the City Attorney, to allocate the above described expenditure between the General Fund, the Sewer Fund (No. 41506) and the Water Fund (No. 41500) based upon an appropriate and lawful allocation method.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2004, the Securities and Exchange Commission (SEC) and the U. S. Attorney's Office, informed the City that they were undertaking investigations into certain financial disclosure practices by the City. Those investigations are on-going. Early in 2004 the City retained the services of the law firm Vinson & Elkins LLP (V&E) to conduct an investigation and provide a report on disclosure practices of the City from 1996 to the present. V&E completed its investigation and in September of 2004 issued its report. Also, in the spring of 2004 the City retained the services of the accounting firm KPMG to perform the outside audit of the City's FY 2003 financial statements. Pursuant to its obligations with respect to the conduct of

the FY 2003 audit, the City has undertaken two separate further investigations; one by V&E and one by the City Attorney. It is expected that reports will be issued following these investigations (an interim report was issued by the City Attorney on January 14, 2005). It is necessary and appropriate for the City to designate the person or body to receive the additional investigative reports, assess them, reconcile any discrepancies, and make appropriate recommendations to the City Council. In addition, it is necessary for the City to provide for a review of the City's internal controls related to reporting and disclosure pursuant to applicable securities laws. Recently, it came to the attention of the City that Mr. Lynn E. Turner is available for this important assignment. Mr. Turner is currently a senior advisor to Kroll Zolofo Cooper, a company specializing in corporate advisory and restructuring issues, and forensic accounting and litigation; and is the managing director of research at Glass Lewis & Co., a company that provides objective evaluation of corporate integrity and financial transparency for public companies.

Most importantly, Mr. Turner is the former Chief Accountant of the SEC, serving in that position from 1998 to 2001. In that capacity, he was the principal advisor to the SEC Chairman and the full Commission on financial reporting and disclosure by public companies. A copy of Mr. Turner's resume is attached to the proposed resolution, as is the proposed engagement letter.

The City Manager recommends that the City Council retain Mr. Turner to perform the important functions described above, and be available to provide such further advice and recommendations as may be appropriate. Mr. Turner presents a unique blend of talent and experience that will be invaluable to the City in responding to the conclusions in the V&E and City Attorney investigations and reports, and in moving forward towards obtaining the audit of the City's FY 2003 financial statements. An initial expenditure of $250,000 is recommended, subject to the City Auditor and Comptroller first certifying that the necessary funds are in the treasury and available for this purpose. The Mayor, City Manager and City Attorney would be authorized to execute the proposed engagement letter, providing for the full cooperation of the City and the independence of Mr. Turner in the performance of the scope of work.

Ewell

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:24 p.m. – 2:58 p.m.)

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

Exhibit 16

THAT VINSON AND ELKIN IS NOW UNDERTAKING AND IN THE INTERIM WE HAVE ASKED SUSSMAN AND GODFREED AND PARTNERS TO HOLD OFF ON ANY ADDITIONAL WORK UNTIL AFTER WE HOPEFULLY GET THROUGH THIS PROCESS.

FRYE:
AND SO MR. TURNER IS TO LOOK AT THE REPORT THAT HAS NOT BEEN RELEASED YET BY V AND E OR THE FIRST REPORT THAT WAS NOT ACCEPTED BY KPMG OR BOTH?

EWELL:
HE WILL LOOK AT ALL REQUESTS.

TURNER:
LET ME TELL YOU WHAT MY TAKE IS ON WHAT IS GOING ON HERE. HAVING BEEN AN AUDIT PARTNER, I'VE BEEN IN ONE OF THESE AUDITS MYSELF, ALTHOUGH QUITE FRANKLY NONE LIKE THIS ONE.

FRYE:
THIS ONE IS VERY SPECIAL.

[LAUGHTER]

TURNER:
YES. YOU HAVE A NUMBER OF ALLEGATIONS PUT ON THE TABLE FROM DIFFERENT PARTIES. IF YOU ARE A PARTNER INSIDE KPMG, GIVEN THAT RUNS TO ALL DIFFERENT CORNERS OF THE CITY AND EVERYONE, KPMG IS LOOKING FOR SOMEONE INDEPENDENT OF ALL THOSE DIFFERENT PARTIES TO COME IN AND STEP IN JUST LIKE AN AUDIT COMMITTEE IN A PUBLIC COMPANY LIKE QUALCOM OR WHOEVER TODAY, TO TURN AROUND AND TAKE THOSE REPORTS AND SAY, BASED UPON THOSE, DOES THIS INFORMATION ALL MAKE SENSE AND HOW DOES THAT RELATE, THEN, TO WHAT KPMG IS GOING TO HAVE TO MAKE THOSE DECISIONS? THEY ARE LOOKING OF SOMEONE INDEPENDENT OF ALL THE PEOPLE WHO HAVE BEEN DRAWN IN TO THE INVESTIGATIONS AND ALLEGATIONS TO COME BACK AND IN AN ESSENCE ACT AS A COMMITTEE TO SAY RIGHT OR WRONG, WE

NEED TO BE WITH THE FINANCIAL STATEMENTS ONE MIGHT SAY IT IS IN ESSENCE PROVIDING THEM SOME COVER SO THEY CAN DO THAT AND GET ON WITH IT. THAT IS NOT THEIR WORDS, THEY ARE MY WORDS. IT HELPS THEM TO BE ABLE TO SAY WE'VE HAD AN INDEPENDENT VOICE LOOK AT THAT AND IT LOOKS REASONABLE. I THINK THAT IS THE ROLE WE ARE GOING TO PLAY. THE KEY IS GETTING KPMG COMFORTABLE WITH THE INFORMATION THEY GOT AND THE CONCLUSIONS THAT HAVE BEEN REACHED AND WHETHER OR NOT THAT DOES BRING IT TO AN END FROM THE PERSPECTIVE OF FINANCIAL STATEMENTS AND CAFR. AND THEY NEED THAT INDEPENDENT SOURCE TO BE ABLE TO DO THAT. IF I WAS IN THEIR SHOES I'D BE DOING THE SAME THING QUITE FRANKLY.

FRYE:
SO THE ROLE OF V AND E WAS NOT TO DO AN INDEPENDENT REPORT THEN, WHEN WE HIRED V AND E. SO THERE COULD BE AN INDEPENDENT INVESTIGATION?

EWELL:
I CAN RESPOND TO THAT THEY WERE TO DO AN INDEPENDENT INVESTIGATION, YES. BUT KPMG ALL ALONG HAS ASKED THE QUESTION, WHO WILL RECEIVE THESE REPORTS, WHO WILL BE THE INDEPENDENT ENTITY TO RECEIVE IT ,ANALYZE IT, DRAW CONCLUSION MAKE REPRESENTATIONS ON IT. SO THIS IS NOT SOMETHING THAT WE WERE NOT AWARE OF. WE INITIALLY HAD HOPED TO PUT FORTH THE FINANCIAL OVERSIGHT BOARD AND GIVE THEM THE OPPORTUNITY TO RECEIVE IT AS THIS AUDIT COMMITTEE WOULD IN THE PRIVATE CORPORATION. THE MAYOR HAS BEEN WORKING DILIGENTLY WITH RESPECT TO IDENTIFYING PEOPLE TO BRING TO THE COUNCIL. WE THOUGHT WE NEEDED TO MOVE MORE AGGRESSIVELY IN CONVERSATIONS WITH HE WE LOOKED FOR OTHER ALTERNATIVES AND THAT IS WHAT BROUGHT US TO BRINGING MR. RECOMMENDING THAT MR. TURNER COME ON BOARD FOR THAT PURPOSE.

FRYE:
SO, HOW DO YOU PLAN TO MAINTAIN OR RETAIN YOUR INDEPENDENCE FROM ALL OF THIS BECAUSE MY UNDERSTANDING

Exhibit 17

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, MARCH 8, 2005
AT 9:00 A.M.
SAN DIEGO CONCOURSE
AT GOLDEN HALL

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ITEM-S404: Audit Committee of the City of San Diego

(Citywide)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-933) ADOPTED AS RESOLUTION R-300203

In order for the City to achieve the full benefit of the work of Kroll Associates, Inc. under an agreement with the City dated February 10, 2005, the City Council affirms to the City's outside Auditor, KPMG, and all interested parties that, for the purposes described in such agreement, Mr. Lynn Turner, Mr. Troy Dahlberg, and Mr. Arthur Levitt are serving as the Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745).

Subitem-B: (R-2005-933) ADOPTED AND INCORPORATED IN RESOLUTION R-300203 (SUBITEM-A)

In order for the City to expedite the work of the Audit Committee and facilitate the release of the audit letter by the City's independent auditor as well as to demonstrate the continued cooperation by the City of San Diego with the inquiries of the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City Council approves of the execution of a letter of cooperation.

FILE LOCATION: Subitems A & B: MEET

COUNCIL ACTION: (Time duration: 10:38 a.m. – 11:30 a.m.)

MOTION BY PETERS TO ADOPT THE RESOLUTION TO CREATE THE AUDIT COMMITTEE, AND AS PART OF THAT ACTION TO AGREE TO THE EXECUTION OF THE LETTER OF COOPERATION. Second by Madaffer.

Vote taken to appoint the Audit Committee: Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

Vote taken to sign the Letter of Cooperation proposed by Mr. Turner: Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 7:13 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 7:13 p.m.)

(R-2005-933)

RESOLUTION NUMBER R- 300203

ADOPTED ON MAR 0 8 2005

WHEREAS, in February of 2004, the Securities and Exchange Commission [SEC] and the U. S. Attorney's Office, informed the City that they were undertaking investigations into certain financial disclosure practices by the City, which investigations are on-going; and

WHEREAS, early in 2004 the City retained the services of the law firm Vinson & Elkins LLP [V&E] to conduct an investigation and provide a report on disclosure practices of the City from 1996 to the present, and V&E completed its investigation and issued its report in September of 2004; and

WHEREAS, in the spring of 2004 the City retained the services of the accounting firm KPMG to perform the outside audit of the City's FY 2003 financial statements; and

WHEREAS, in furtherance of the FY 2003 audit, the City has undertaken two separate further investigations; one by V&E and one by the City Attorney; and

WHEREAS, the City Attorney issued a First Interim Report on January 14, 2005, and a Second Interim Report on February 9, 2005, and V&E is expected to issue a report on its further investigation; and

WHEREAS, KPMG has not yet issued its audit opinion for the City's FY 2003 financial statements; and

WHEREAS, the SEC is continuing its investigation; and

WHEREAS, on February 14, 2005, the City retained the services of Mr. Lynn Turner and Kroll Associates, Inc. to perform certain services in connection with these matters; and

WHEREAS, it is now necessary and appropriate for the City to take additional steps in furtherance of obtaining the audit opinion for the FY 2003 financial statements and in furtherance or resolving the SEC's investigation; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that in order for the City to achieve the full benefit of the work of Kroll Associates, Inc. under an agreement with the City dated February 10, 2005, the City Council affirms to the City's outside auditor, KPMG, and all interested parties that, for the purposes described in such agreement, Mr. Lynn Turner, Mr. Troy Dahlberg, and Mr. Arthur Levitt are serving as the Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745).

BE IT FURTHER RESOLVED, that in order for the City to expedite the work of the Audit Committee and facilitate the release of the audit letter by KPMG, the City's independent auditor, as well as to demonstrate the continued cooperation by the City of San Diego with the inquiries of the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City Council approves of the execution of the letter attached hereto.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Leslie J. Girard
Assistant City Attorney

LJG:km
3/04/05
Or.Dept:City Manager
R-2005-933

[Letterhead of the City of San Diego]

March 7, 2005

An Open Letter to the Citizens of San Diego:

We, the undersigned Mayor, City Attorney, City Manager and Members of the City Council recognize the importance to the welfare of the City of the issuance of opinions on the City's Combined Audited Financial Statements for 2003 and 2004 by the City's independent auditors.

In order to expedite the satisfactory conclusion of independent investigations intended to address concerns of the City's independent auditor and to demonstrate the City's intention to fully cooperate with ongoing investigations by the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City has entered into an agreement with Kroll Associates, Inc. Pursuant to that agreement, Mr. Arthur Levitt, former Chairman of the Securities and Exchange Commission, Mr. Lynn Turner, former Chief Accountant of the Securities and Exchange Commission, and Mr. Troy Dahlberg are serving as the independent *de facto* Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002. The Audit Committee will conduct a process through which it will receive and review all investigative work relating to the issuance of opinions for the City's Combined Audited Financial Statements for 2003 and 2004 and present conclusions thereon to the City's independent auditors, the City Council, and the City Attorney.

Accordingly, we agree with each other and pledge to you, our full cooperation and non-interference with the investigation and work of the Audit Committee until its final completion.

We understand that this means that the appropriate means of making any accusation of illegal conduct relating to the City's disclosure obligations, conduct of pension matters, or the City's financial condition is through the Audit Committee, which will appropriately evaluate and promptly report such matters to the regulators.

We recognize this process as one that is well understood by financial markets, the auditing profession, the SEC and the Department of Justice. We also understand that, in order for this process to be effective, we must assure its complete independence and our non-interference, allowing it to run its course.

We understand that our commitment and pledge requires us to refrain from the personal criticism and accusation that prompted the San Diego Union Tribune Editorial "City Hall Conflict," published on February 24, 2005, whether it be in this Chamber, the press conferences referred to in the editorial, or elsewhere.

And we understand the importance that our honoring of our commitment and pledge made to you in this letter has to the restoration of the City of San Diego's well being, financial reputation, and position of "best in the class."

We agree to support a 120-day stay of the litigation involving SDCERS v. AGUIRRE ET AL and SAN DIEGO COUNTY TAXPAYERS ASSOCIATION v. CITY of SAN DIEGO, ET AL., subject to satisfactory language being agreed to by the Parties no later than 12:00 noon, March 14, 2005.

Sincerely,

Dick Murphy, Mayor	**Michael Aguirre, City Attorney**
Scott Peters, District 1	**Brian Maienschein, District 5**
Michael Zucchet, District 2	**Donna Frye, District 6**
Toni Atkins, District 3	**Jim Madaffer, District 7**
Tony Young, District 4	**Ralph Inzunza, District 8**

P. Lamont Ewell, City Manager

Passed and adopted by the Council of The City of San Diego on MAR 0 8 2005, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	☑	☐	☐	☐
Michael Zucchet	☑	☐	☐	☐
Toni Atkins	☑	☐	☐	☐
Anthony Young	☐	☐	☑	☐
Brian Maienschein	☑	☐	☐	☐
Donna Frye	☐	☑	☐	☐
Jim Madaffer	☑	☐	☐	☐
Ralph Inzunza	☑	☐	☐	☐
Mayor Dick Murphy	☑	☐	☐	☐

AUTHENTICATED BY:

DICK MURPHY,
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

(Seal)

By Maxwell E. Kittleson, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-300203 Adopted MAR 0 8 2005

Exhibit 18

FILE COPY

WILLKIE FARR & GALLAGHER LLP

MICHAEL R. YOUNG
212 728 8280
myoung@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 9280

April 19, 2005

Audit Committee of the City of San Diego
c/o Mr. Troy A. Dahlberg
Kroll Inc.
660 South Figueroa Street – 9th Floor
Los Angeles, CA 90017

Re: *Terms of Engagement as Counsel to the Audit Committee of the City of San Diego*

Members of the Audit Committee:

This letter confirms the terms of our engagement by the Audit Committee of the City of San Diego (the "Audit Committee").

The purpose of our engagement is to assist the Audit Committee in connection with financial reporting and other issues that have arisen concerning the San Diego City Employees' Retirement System ("SDCERS"). The scope of our engagement will include counsel and assistance to the Audit Committee in connection with its independent investigation into SDCERS finances and disclosure. It will also include other matters that, in the judgment of the Audit Committee, may require inquiry or investigation. In our capacity as counsel to the Audit Committee, we are being engaged by, and will report exclusively to, the Audit Committee. Accordingly, we will serve with complete independence from the Mayor of San Diego, the San Diego City Council, the City, and the City's departments, agencies, and elected city officials.

We will follow the convention of charging for services based on hourly rates (subject to revision on an annual basis on October 1) which, at present, range from $560 to $825 for partners, $240 to $555 for associates, and $110 to $200 for legal assistants and others. We will also follow the convention of including with our bill a statement for disbursements, costs, and other charges incurred which normally include such things as duplicating, long distance telephone, computerized legal research, travel, and other such expenses. The Audit Committee will be entitled, in the event of a fee dispute involving amounts from $1,000 to $50,000, to seek arbitration in accordance with Part 137 of the Rules of the Chief Administrator of the New York courts. We do not construe this engagement as creating an attorney-client relationship with any persons or entities other than the Audit Committee.

Although we are serving as counsel to the Audit Committee, payment of our bills is to be the responsibility of the City and, by signing and thereby acknowledging its payment obligations under this engagement letter, the City through a duly authorized representative agrees to fulfill that

Audit Committee of the City of San Diego
c/o Mr. Troy A. Dahlberg
Kroll Inc.
April 19, 2005
Page 2

responsibility. We will transmit bills monthly, or more frequently depending upon the level of activity, by sending them to P. Lamont Ewell, City Manager. A copy will be transmitted to the Audit Committee as well. Payment will be due no later than 15 days after the date upon which a bill is transmitted. We shall require the full payment of any indebtedness prior to the issuance of any report and we may stop work at any time in the event of a payment delinquency. We may also resign this engagement for any reason in our sole discretion within five business days after prior written notice.

Should any effort be made (a) either by subpoena, discovery demand or otherwise to gain access to information, materials, documents, work product or information of any kind in the possession of Wilkie Farr & Gallagher LLP ("WF&G") that has been generated, obtained or learned as a result of the work performed by WF&G under the engagement, or (b) to otherwise prevent, interrupt or interfere with the performance of WF&G's work in connection with the engagement, whether by judicial action or other means, then in such event, subject to the other provisions of this letter, to the extent feasible and permissible by law we shall promptly notify you and follow lawful directions from you with respect to our response to any such effort. The City agrees to pay, reimburse, indemnify and hold harmless WF&G for all costs and expenses (including time charges, fees, disbursements, and reasonable attorney fees) that may be incurred or generated by the firm in connection with, or that may arise out of or relate to, any effort undertaken in response to any such effort or judicial action or pursuant to any direction from you.

The City agrees to indemnify and hold harmless WF&G for any claims or judgments against WF&G arising out of this engagement, including monthly reimbursement for all WF&G time charges, fees, costs, attorney fees and disbursements and defense or other costs, unless and until it were to be finally adjudicated that WF&G's actions were negligent, tortious or beyond the scope of the engagement.

We are prepared to commence work immediately upon receipt of a $250,000 retainer which we will hold until the conclusion of the engagement and thereupon either return to the City or apply to the final invoice(s).

We look forward to being of service to the Audit Committee.

Very truly yours,

Michael R. Young

283128v.2

Audit Committee of the City of San Diego
c/o Mr. Troy A. Dahlberg
Kroll Inc.
April 19, 2005
Page 3

AGREED:

Troy Dahlberg

For the Audit Committee of the City of San Diego

ACKNOWLEDGED:

P. Lamont Ewell, City Manager
For the City of San Diego

2831280.2

Exhibit 19

RECOMMENDED PRACTICE

Audit Committees (1997, 2002, and 2006) (CAAFR)

Background. Three main groups are responsible for the quality of financial reporting: the governing body,[1] financial management, and the independent auditors. Of these three, the governing body must be seen as "first among equals" because of its unique position as the ultimate monitor of the financial reporting process.[2] An audit committee is a practical means for a governing body to provide much needed independent review and oversight of the government's financial reporting processes, internal controls, and independent auditors. An audit committee also provides a forum separate form management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, an audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices, and that the independent auditors, through their own review, objectively assess the government's financial reporting practices.[3]

Recommendation. The Government Finance Officers Association (GFOA) makes the following recommendations regarding the establishment of audit committees by state and local governments:

- The governing body[4] of every state and local government should establish an audit committee or its equivalent;

- The audit committee should be formally established by charter, enabling resolution, or other appropriate legal means and made directly responsible[5] for the appointment, compensation, retention, and oversight of the work of any independent accountants engaged for the purpose of preparing or issuing an independent audit report or performing other independent audit, review, or attest services.[6] Likewise, the audit committee should be established in such a manner that all accountants thus engaged report directly to the audit committee. The written documentation establishing the audit committee should prescribe the scope of the committee's responsibilities, as well as its structure, processes, and membership requirements. The audit committee should itself periodically review such documentation, no less than once every five years, to assess its continued adequacy;[7]

---

[1] For the purposes of this recommended practice, the term "governing body" should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control, and auditing, provided they do *not* exercise managerial responsibilities within the scope of the audit. The term "governing body" also is intended to encompass appointed bodies such as pension boards.

[2] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees*, "Overview and Recommendations."

[3] Securities and Exchange Commission (SEC) Regulation 33-8220, "Background and Overview of the New Rule and Amendments."

[4] For the purposes of this recommended practice, the term "governing body" should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control, and auditing, provided they do *not* exercise managerial responsibilities within the scope of the audit. The term "governing body" also is intended to encompass appointed bodies such as pension boards.

[5] Nothing in this recommended practice should be interpreted so as to limit the full governing body from exercising ultimate authority.

[6] Sarbanes Oxley Act, Section 301.

[7] *Report and Recommendations of the Blue Ribbon committee on Improving the effectiveness of Corporate Audit Committees*, Recommendation 4.

- Ideally, all members of the audit committee should possess or obtain a basic understanding of governmental financial reporting and auditing.[8] The audit committee also should have access to the services of at least one financial expert, either a committee member or an outside party engaged by the committee for this purpose. Such a financial expert should through both education and experience, and in a manner specifically relevant to the government sector, possess an understanding of generally accepted accounting principles and financial statements, as well as experience in 1) the preparation or auditing of financial statements of comparable entities, 2) the application of such principles in connection with the accounting for estimates, accruals, and reserves, 3) experience with internal accounting controls, and an understanding of audit committee functions;[9]

- All members of the audit committee should be members of the governing body. To ensure the committee's independence and effectiveness, no governing body member who exercises managerial responsibilities that fall within the scope of the audit should serve as a member of the audit committee;

- An audit committee should have sufficient members for meaningful discussion and deliberation, but not so many as to impede its efficient operation. As a general rule, the minimum membership of the committee should be no fewer than three;[10]

- Members of the audit committee should be educated regarding both the role of the audit committee and their personal responsibility as members, including their duty to exercise an appropriate degree of professional skepticism;

- It is the responsibility of the audit committee to provide independent review and oversight of a government's financial reporting processes, internal controls and independent auditors;[11]

- The audit committee should have access to the reports of internal auditors, as well as access to annual internal audit work plans;

- The audit committee should present annually to the full governing body a written report of how it has discharged its duties and met its responsibilities. It is further recommended that this report be made public and be accompanied by the audit committee's charter or other establishing documentation;

- The audit committee should establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters. Such procedures should specifically provide for the confidential, anonymous submission by employees of the government of concerns regarding questionable accounting or auditing matters[12];

- The audit committee should be adequately funded and should be authorized to engage the services of financial experts, legal counsel, and other appropriate specialist, as necessary to fulfill its responsibilities[13]; and

- In its report to the governing body, the audit committee should specifically state that it has discussed the financial statements with management, with the independent auditors in private,[14] and privately among

---

[8] *Report and Recommendations of the Blue Ribbon committee on Improving the effectiveness of Corporate Audit Committees*, Recommendation 3. Continuity typically is a positive fractor4 in achieving this goal, a fact that should be kept in mind when considering the appropriate lengthy of service for audit committee members.

[9] Sarbanes Oxley Act, Section 407.

[10] In certain limited instances, as noted later, the audit committee will need to meet privately to achieve its goals. If the audit committee constitutes a majority o the governing body, such private meetings may be hampered by "sunshine" laws and similar "open meetings" legislation.

[11] SEC Regulation 330-8220, "Background and Overview."

[12] Sarbanes Oxley Act, Section 301.

[13] Nothing in this recommended practice should be interpreted so as to limit the full governing body from exercising ultimate authority.

committee members,[15] and believes that they are fairly presented, to the extent such a determination can be made solely on the basis of such conversations.

Approved by the GFOA's Executive Board, February 24, 2006.

---

[14] It is important that the audit committee be able to meet privately with the independent auditors, as needed, to ensure a full and candid discussion. Governments are urged to amend "sunshine" laws and similar "open meetings" legislation to permit such encounters in these limited circumstances.

[15] It is important that audit committee members be able to meet privately among themselves, as needed, to ensure a full and candid discussion. Governments are urged to amend "sunshine" laws and similar "open meetings" legislation to permit such an encounter in these limited circumstances.

Exhibit 20

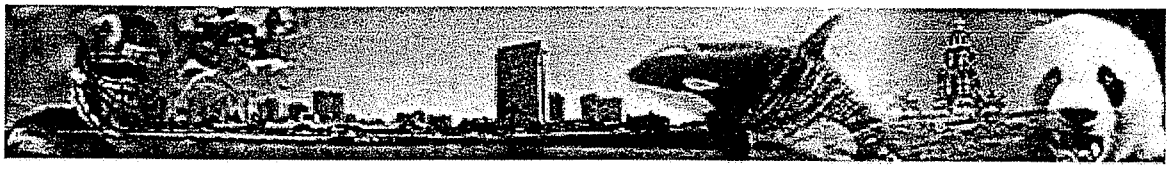
SAN DIEGO CITY

EMPLOYEES' RETIREMENT SYSTEM

ANNUAL ACTUARIAL VALUATION

June 30, 2001

CITY OF SAN DIEGO



Submitted to

THE RETIREMENT BOARD

San Diego City Employees' Retirement System

San Diego, California

San Diego City Employees' Retirement System

June 30, 2001 Actuarial Valuation

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February 12, 2002

Retirement Board
San Diego City Employees' Retirement System
401 "B" Street, Suite 400
San Diego, CA 92101

Dear Members of the Board:

Submitted in this report are results of the regular Annual Actuarial Valuation as of June 30, 2001 of the San Diego City Employees' Retirement System. The valuation is intended to provide a measure of the funding status of the retirement system and actuarially computed contribution rates. These rates are higher than rates specified by the Manager's Proposal, and will be superceded by Manager's Proposal Rates, as long as certain parameters are met. This valuation forms part of the basis for the employer contribution rates for the year beginning July 1, 2002.

Beginning of Year Contributions	June 30, 2000	June 30, 2001
General Members	8.62%	11.03%
Safety Members	19.83%	24.48%
Weighted City Total	12.58%	15.59%

The member statistical data on which the valuation was based was furnished by the Retirement Office, together with pertinent data on financial operations. Data was reviewed for reasonableness, but was not audited by the actuary.

Valuation results indicate that there was a large experience loss of $193.2 million. This loss represents 7.6% of actuarial accrued liabilities as of the previous valuation date of June 30, 2000. Losses were primarily due to lower investment returns and higher pay increases than projected.

The cooperation of the Retirement Office in furnishing materials requested for this valuation is deeply acknowledged with appreciation.

Respectfully submitted,

GABRIEL, ROEDER, SMITH & COMPANY

Rick A. Roeder, E.A., F.S.A., M.A.A.A.

FINANCIAL PRINCIPLES
AND
OPERATIONAL TECHNIQUES

San Diego City Employees' Retirement System

Financial Principles and Operational Techniques

of the Retirement System

Promises Made, and To Be Paid For. As each year is completed, the Retirement System, in effect, hands an "IOU" to each member then acquiring a year of service credit -- the "IOU" says: "The San Diego City Employees' Retirement System owes you one year's worth of retirement benefits, payments in cash commencing when you qualify for retirement."

The related key financial questions are:

Which generation of taxpayers contributes the money to cover the IOU?

The present taxpayers, who receive the benefit of the member's present year of service?

Or the future taxpayers, who happen to be in San Diego at the time the IOU becomes a cash demand, years and decades later?

The principle of level percent of payroll financing intends that this year's taxpayers contribute the money to cover the IOUs being handed out this year. By following this principle, the employer contribution rate will remain approximately level from generation to generation -- our children and our grandchildren will contribute the same percents of active payroll we contribute now.

(There are systems which have a design for deferring contributions to future taxpayers, lured by a lower contribution rate now and putting aside the consequence that the contribution rate must then relentlessly grow much greater over decades of time.)

An inevitable by-product of the level-cost design is the accumulation of reserve assets, for decades, and income produced when the assets are invested. Invested assets are a by-product and not the objective. Investment income becomes the 3rd contributor for benefits to employees, and is interlocked with the contribution amounts required from employees and employer.

(Concluded on next page)

(Concluded)

Translated to actuarial terminology, this level-cost objective means that the contribution rates must total at least the following:

Current Cost (the cost of members' service being rendered this year)

. . . plus. . .

Interest on Unfunded Accrued Liabilities (unfunded accrued liabilities are the difference between liabilities for service already rendered, and the accrued assets of the Retirement System).

Computing Contributions To Support System Benefits. From a given schedule of benefits and from the employee data and asset data furnished, the actuary determines the contribution rates to support the benefits, by means of an actuarial valuation and a funding method.

An actuarial valuation has a number of ingredients such as: the rate of investment return which p. assets will earn; rates of withdrawal of active members who leave covered employment; rates of mortality; rates of disability; rates of pay increases; and the assumed age or ages at actual retirement.

In an actuarial valuation the actuary must assume what the above rates will be for the next year and for decades in the future. Only the subsequent actual experience of the plan can indicate the degree of accuracy of the assumptions.

Reconciling Differences Between Assumed Experience and Actual Experience. Once actual experience has occurred and been observed, it will not coincide exactly with assumed experience, regardless of the skill of the actuary and the many calculations made. Most retirement systems cope with such differences by having annual actuarial valuations. Each actuarial valuation is a complete recalculation of assumed future experience, taking into account all past differences between assumed and actual experience. The result is continuing adjustments in financial position.

THE ACTUARIAL VALUATION PROCESS

The financing diagram on the opposite page shows the relationship between the two fundamentally different philosophies of paying for retirement benefits: the method where contributions match cash benefit payments (or barely exceed cash benefit payments, as in the Federal Social Security program) which is an increasing contribution method; and the level contribution method which equalizes contributions between the generations.

~ ~ ~ ~ ~ ~

The actuarial valuation is the mathematical process by which the level contribution rate is determined. The flow of activity constituting the valuation may be summarized as follows:

A. Covered people data, furnished by plan administrator, including:

   Retired lives now receiving benefits

   Former employees with vested benefits not yet payable

   Active employees

B. + Asset data (cash & investments), furnished by plan administrator

C. + Assumptions concerning future experience in various risk areas, which are established by the Retirement Board after consulting with the actuary

D. + The funding method for employer contributions (the long-term, planned pattern for employer contributions)

E. + Mathematically combining the assumptions, the funding method, and the data

F. = Determination of:

   Plan Financial Position and/or

   New Employer Contribution Rate

VALUATION RESULTS

&

COMMENTS

FUNDING OBJECTIVE

The funding objective of the Retirement System is to establish and receive contributions, expressed as percents of active member payroll, which will remain approximately level from year to year and will not have to be increased for future generations of citizens.

CONTRIBUTION RATES

The Retirement System is supported by member contributions, City contributions, and investment income from Retirement System assets.

Contributions which satisfy the funding objective are determined by the annual actuarial valuation and are sufficient to:

(1) cover the actuarial present value of benefits allocated to the current year by the actuarial cost method (the normal cost); and

(2) finance over a period of future years the actuarial present value of benefits not covered by valuation assets and anticipated future normal costs (unfunded actuarial accrued liability).

Computed contributions as of June 30, 2001 apply to fiscal year beginning July 1, 2002.

San Diego City Employees' Retirement System

Computed City Contribution Rates

(Expressed as Percents of Active Payroll)

June 30, 2001

GENERAL

General Contributions Based on Valuation of	June 30, 2001 General	June 30, 2001 Legislative	June 30, 2001 Weighted Totals	June 30, 2000 General	June 30, 2000 Legislative	June 30, 2000 Weighted Totals
Normal Cost *	9.12%	21.65%	9.14%	8.92%	28.86%	8.94%
Amortization Payment *	2.25%	44.95%	2.32%	(0.02)%	25.42%	0.02%
SUBTOTAL	11.37%	66.60%	11.46%	8.90%	54.28%	8.96%
Adjusted for payment at beginning of year	10.94%	64.09%	11.03%	8.56%	52.23%	8.62%

SAFETY

Safety Contributions Based on Valuation of	June 30, 2001 Weighted Totals	June 30, 2000 Weighted Totals
Normal Cost *	17.61%	17.66%
Amortization Payment *	7.83%	2.95%
SUBTOTAL	25.44%	20.61%
Adjusted for payment at beginning of year	24.48%	19.83%

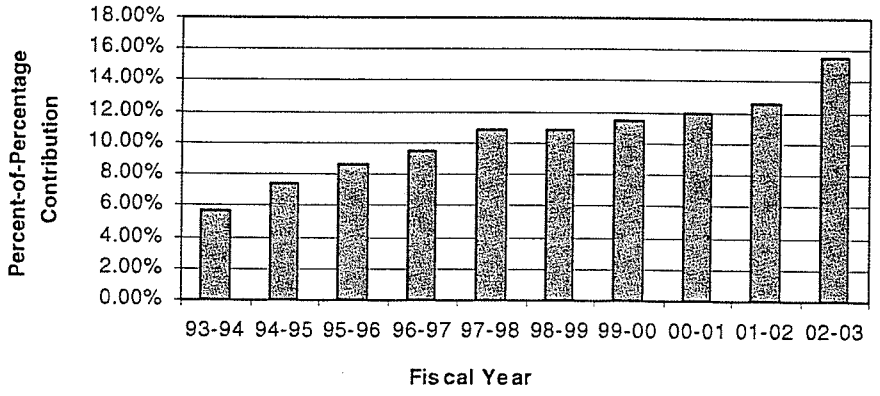
* Rates assume that contributions are made uniformly during the plan year.

San Diego City Employees' Retirement System

Computed City Contributions - Historic Comparison

Expressed as Percents of Payroll[1]

Fiscal Year	Valuation Date	General Members	Safety Members	Weighted Total	Valuation Payroll
93-94	6/30/92[2]	2.08%	11.37%	5.67%	$313,176,024
94-95	6/30/93[3]	3.15%	14.19%	7.39%	$320,623,685
95-96	6/30/94[4]	4.34%	15.42%	8.60%	$338,440,247
96-97	6/30/95	5.28%	16.42%	9.55%	$350,583,835
97-98	6/30/96	4.81%	15.20%	8.71%	$365,088,750
97-98	6/30/96[5]	7.35%	16.74%	10.87%	$365,088,750
98-99	6/30/97	7.52%	16.46%	10.86%	$382,715,084
99-00	6/30/98[4]	7.87%	17.75%	11.48%	$399,035,094
00-01	6/30/99	8.06%	19.05%	11.96%	$424,515,968
01-02	6/30/00	5.65%	13.30%	8.35%	$448,501,827
01-02[6]	6/30/00	8.62%	19.83%	12.58%	$448,501,827
02-03	6/30/01	11.03%	24.48%	15.59%	$481,863,318



[1] Rates shown are adjusted for payment at the beginning of the year and exclude negotiated "pick ups"

[2] Reflects change in benefits for certain member groups

[3] Reflects changes in member contribution rates for certain member groups, early retirement incentive program activity, and methodology with regard to member refunds and employer pickup

[4] Reflects revised actuarial and economic assumptions

[5] After Manager's Proposal

[6] Reflects non-contingent benefit increases

San Diego City Employees' Retirement System

June 30, 2001

Elements of Normal Cost

(Expressed as Percents of Active Payroll)

	General	Safety	Total
Service Retirement	14.80%	23.44%	17.75%
Vested Deferred Retirement	1.43%	0.63%	1.16%
Death-in-Service	0.24%	0.49%	0.32%
Disability	2.16%	5.64%	3.34%
Contribution Refunds	0.49%	0.25%	0.41%
Total Normal Costs	19.15%	30.45%	22.98%
Employee Contributions	10.01%	12.84%	10.97%
Normal Costs	9.14%	17.61%	12.01%

(Mid-year contributions assumed for this illustration)

NOTES: In this presentation, Disability costs could be viewed as "overstated" and Service Retirement costs "understated" since ALL costs for accrued benefit service are included and encompass those eligible to service retire at date of disability grant.

Member Contributions as of June 30, 2001

In addition to City contributions, the system is also funded by employee contributions. The rate at which members contribute is expressed as a percent of pay and varies according to age of entry into the system. Please refer to Appendix A for a detailed list of these rates by member group.

Average, long-term employee contribution rates for each member group are shown below, and reflect Corbett increases.

	June 30, 2000	June 30, 2001
General Members	9.97%	10.01%
Safety Members	12.83%	12.84%

All or part of the employee rate is subject to potential "offset" ("pick up") by the employer. The rates above are shown prior to any applicable offset. Please refer to page 50 for other relevant assumptions. Assumed offset amounts by member group are shown for information purposes ONLY and will be updated effective as of December 2001.

Estimated Average Offsets

Group	Offset
General	
Represented	5.0%
Non-Represented	6.0
Legislative	6.9
Safety	
Lifeguards	6.5
Police/Fire	7.3

Such offset and related accumulated interest are not to be refunded to employees at termination. The City pick up, contributed to the System, is reduced by anticipated savings for reduced employee refunds prior to being contributed. See Comment J in this regard.

San Diego City Employees' Retirement System
Unfunded Actuarial Accrued Liability
June 30, 2001

(City Only)

Derivation of Experience Gain (Loss)

The actuarial gains or losses realized in the operation of the Retirement Association provide an experience test. Gains and losses are expected to cancel each other over a period of years (in the absence of double-digit inflation) and sizable year-to-year fluctuations are common. Detail on the derivation of the actuarial gain(loss) is shown below.

1)	UAAL* at beginning of year	$68,959,110
2)	Expected beginning of year accrued liability payment	(11,298,121)
3)	Interest accrual ((1) - (2)) x .08	6,420,578
4)	Increase in STAR COLA and 401(h) Reserves	4,045,944
5)	Expected UAAL at end of year (1) - (2) + (3) + (4)	90,723,753
6)	Actual UAAL at end of year	283,892,737
7)	Gain(loss): (5) - (6)	(193,168,984)
8)	Gain(loss) as percentage of actuarial accrued Liabilities at beginning of year ($2,528,773,900)	(7.6)%

* Unfunded Actuarial Accrued Liability

San Diego City Employees' Retirement System

Unfunded Actuarial Accrued Liability

June 30, 2001

Unfunded Actuarial Accrued Liability

Total actuarial liabilities	$2,809,537,745
Assets allocated to funding	$2,525,645,008
Unfunded Actuarial Accrued Liability	$283,892,737

Elements of Experience Gain (Loss)

Estimated Gain(Loss) attributed to pay increases	($37,000,000)
Estimated Gain(Loss) attributed to investment experience	(95,647,385)
Estimated Gain(Loss) attributed to post-retirement mortality	1,867,000
Estimated Gain(Loss) attributed to retirement incidence	(9,000,000)
Estimated Gain(Loss) attributed to combination of vested deferred data refinements and "rehires" who were previously classified as vested deferreds	(32,162,000)
Estimated Gain(Loss) from employee turnover, pre-retirement mortality and miscellaneous factors	(21,226,599)
Total Estimated Experience Gain(Loss)	($193,168,984)

Experience Gain(Loss) - Comparative Schedule

Valuation Date	Gain (Loss)	Previous Year Accrued Liability	Gain (Loss) Percentage
6/30/92	$57,952,320	$1,006,299,729	5.8%
6/30/93	(42,605,778)	1,057,238,917	(4.0)
6/30/94	(6,744,850)	1,220,830,059	(0.6)
6/30/95	(11,370,990)	1,338,279,541	(0.8)
6/30/96	59,592,960	1,476,710,662	4.0
6/30/97	38,473,993	1,682,604,532	2.3
6/30/98	31,086,010	1,822,432,018	1.7
6/30/99*	29,750,299	1,979,668,038	1.5
6/30/00	286,639,160	2,181,547,453	13.1
6/30/01	(193,168,984)	2,528,773,900	(7.6)

* Beginning with June 30, 1999 valuation, experience schedule is City only.

San Diego City Employees' Retirement System
Actuarial Balance Sheet – June 30, 2001

($ in Millions)

PRESENT VALUE AND EXPECTED FUTURE RESOURCES

	General	Safety	Total
A. Actuarial value of system assets	1,172.6	1,353.0	2,525.6
B. Present value of expected future contributions			
1. For normal costs	338.4	211.7	550.1
2. For unfunded actuarial accrued liability	103.8	180.1	283.9
3. Totals	442.2	391.8	834.0
C. Present value of expected future member contributions	325.6	204.8	530.4
D. Total Present and Expected Future Resources	1,940.4	1,949.6	3,890.0

PRESENT VALUE OF EXPECTED FUTURE BENEFIT PAYMENTS AND RESERVE

	General	Safety	Total
A. To retirants and beneficiaries	447.6	722.5	1,170.1
B. To vested and terminated members	42.6	16.0	58.6
C. To present active members			
1. Allocated to service rendered prior to valuation date	729.0	684.2	1,413.2
2. Allocated to service likely to be rendered after valuation date	721.2	526.9	1,248.1
3. Totals	1,450.2	1,211.1	2,661.3
D. Total Present Value of Expected Future Benefit Payments	1,940.4	1,949.6	3,890.0

San Diego City Employees' Retirement System

Funding Progress Indicators

June 30, 2001

There is no single all-encompassing indicator which measures a retirement system's funding progress and current funded status. A traditional measure has been the relationship of valuation assets to unfunded actuarial accrued liability -- a measure that is influenced by the choice of actuarial cost method.

We believe a better understanding of funding progress and status can be achieved using the following indicators which are independent of the actuarial cost method.

(1) The ratio of assets to the actuarial present value of credited projected benefits allocated in the proportion accrued service is to projected total service -- a plan continuation indicator. The ratio is expected to increase in the absence of benefit improvements or strengthening of actuarial assumptions.

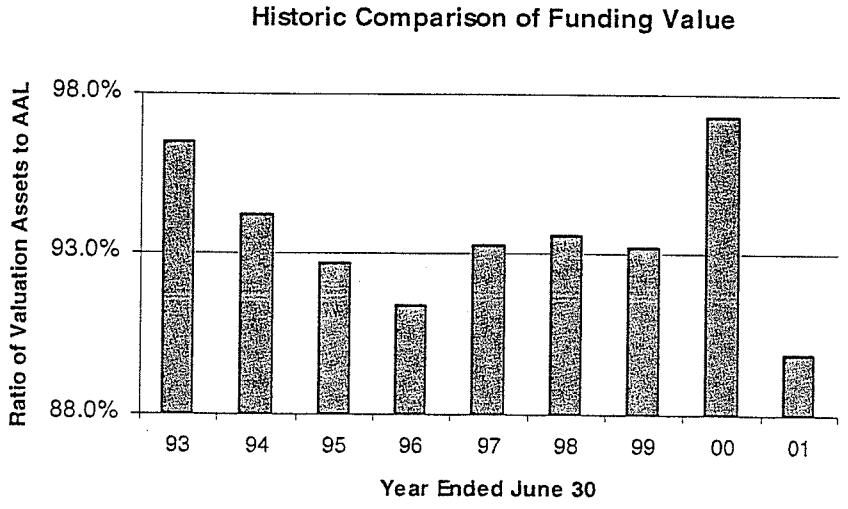
(2) The ratio of the unfunded actuarial present value of credited projected benefits to member payroll -- a plan continuation indicator. In a soundly financed retirement system, the amount of the unfunded actuarial present value of credited projected benefits will be controlled and prevented from increasing in the absence of benefit improvements or strengthening of actuarial assumptions. However, in an inflationary environment, it is seldom practical to impose this control on dollar amounts which are depreciating in value. The ratio is a relative index of condition where inflation is present in both items. The ratio is expected to decrease in the absence of benefit improvements or strengthening of actuarial assumptions.

San Diego City Employees' Retirement System
Funding Process Indicators - Historic Comparison

($ in Thousands)

Valuation Date	Valuation Assets	Continuation Indicators				
		AAL	Funded Ratio	UAAL	Member Payroll	Ratio to Payroll
6/30/93	$1,137,019	$1,178,311	96.5%	$41,292	$320,624	12.9%
6/30/94[1]	$1,216,063	$1,290,927	94.2%	$74,864	$338,440	22.1%
6/30/95	$1,316,903	$1,421,150	92.7%	$104,247	$350,584	29.7%
6/30/96[2]	$1,480,772	$1,620,373	91.4%	$139,602	$365,089	38.2%
6/30/97	$1,632,361	$1,748,868	93.3%	$116,507	$382,715	30.4%
6/30/98[1]	$1,852,151	$1,979,668	93.6%	$127,517	$399,035	32.0%
6/30/99	$2,033,153	$2,181,547	93.2%	$148,394	$424,516	35.0%
6/30/00	$2,459,815	$2,343,400	105.0%	($116,414)	$448,502	(26.0)%
6/30/00[3]	$2,459,815	$2,528,774	97.3%	$68,959	$448,502	15.4%
6/30/01	$2,525,645	$2,809,538	89.9%	$283,893	$481,864	58.9%

AAL - Actuarial Accrued Liability
UAAL - Unfunded Actuarial Accrued Liability



[1] Reflects revised actuarial and economic assumptions
[2] Reflects Manager's Proposal
[3] Reflects Corbett non-contingent benefit increases

COMMENT A: The computed actuarial rate increased from 12.58% to 15.59% due to adverse actuarial experience in numerous areas. The aggregate actuarial loss was $193.2 million dollars. The funded ratio decreased from 97.3% to 89.9%.

COMMENT B: There is a sizable new contingency reserve of $105 million. We were unsure as to whether this should be counted in valuation assets. If the purpose of this reserve is to pay valued benefits, then this reserve should be counted. If not, and the primary focus of this reserve is to pay potential Corbett, contingent benefits, then this asset should be excluded. At staff request, we have included this as an asset. However, we want all parties to FULLY understand that we would not view this money as primarily available for Corbett contingencies since we do not include such contingency in our liabilities.

If this asset is not included in valuation assets, the funded ratio would have dropped all the way to 85.6%.

COMMENT C: Half the experience loss can be attributable to investment losses of $95.6 million. To give some flavor for the precipitous change in investment return, the return on the actuarial value of assets was 21.4% for the year ended June 30, 2000. The rate dropped all the way to 4.1% in 2001, well below the 8% assumption. The System was well served by the 5-year smoothing of the actuarial value of assets due to the terrific performance in the previous four years.

However, there will be larger investment losses on an actuarial basis next year unless the markets improve over the next five months. Evidence of the brewing financial storm cloud: the City's actuarial value of assets exceeds the City's apportioned share of market value (assets are commingled with Unified Port District) by $225 million dollars.

The average compensation increase of 7.7% is the highest in the past decade. While this is an excellent development for employees, an actuarial loss of $37 million dollars is attributable to higher pay increases than expected.

We would have expected that the heavy retirement incidence would have muted pay increases more since older active members often have above average pay levels. There was also a heavy retirement incidence. There were 386 retirees with an average annual allowance of $40,436. The impact was so significant that the average new retirant allowance went up by over 10%, from $35,054 to $40,436. We estimate that earlier retirement incidence than anticipated created a loss of roughly $9 million dollars.

(continued)

COMMENT D: In the upcoming experience study, we will likely be recommending some changes in retirement assumptions to reflect earlier retirement incidence to more accurately measure liabilities. We will definitely make a strong recommendation that all Safety members be assumed to retire after 30 years of service. We initially made this recommendation three years ago and will be again doing so with even more vigor.

COMMENT E: We have NOT included any Corbett contingent liabilities in the valuation. If we had included the value of such liabilities, estimated to be in the $70-76 million range, the funded ratio would drop in the 2-2.5% range.

We offer a comment related to disposition of Surplus Undistributed Earnings. Suppose that your System earns 0% in the current fiscal year and 16% next year. Our understanding is that a contribution to Surplus Undistributed Earnings will be made for the 16% year even though there will be no net gain from investments over the two-year period. If extra benefits are conferred during the "good" years, then the median, "after the fact" investment return to finance all other benefits should theoretically be correspondingly lower. We will revisit this issue in the experience investigation.

COMMENT F: The popularity of the DROP program continues unabated. City membership rose from 4 to 547. There are also 2 UPD members in DROP. The DROP reserves soared from $38.2 million to 66.4 million. After mid-year 2002, this reserve may level off. The DROP program was instituted in mid-1997 with a five-year maximum DROP period. Thus, the 1997 DROPpers, who have not yet unDROPped, will be reaching their maximum in 2002. The annual amounts credited to the 170 new City DROP members AVERAGED $48,443, a marked increase from the $37,751 average in the 2000 valuation.

Advocates of the 1996 Manager's Proposal felt that there would be cost savings due to an anticipated reduction of the average age of the non-DROP active member work force. For funding, DROPs have been treated as retirants at the date they initiate their DROP period. This has clearly not come to pass. The average age of actives was 41.3 years as of the 1996 valuation. In this valuation, the average age of the non-DROP actives is 42.1 years. This is evidence of low employee turnover in the past five years, not surprising in view of the high level of offered pension benefits.

(continued)

COMMENT G: Pursuant to the Manager's Proposal, the City has agreed to pay the following rates (exclusive of pick up):

Fiscal Year End	City-Paid Rate
2002	9.83%
2003	10.33%
2004	10.83%
2005	11.33%
2006	11.83%
2007	12.18%
2008	13.00%

Part of the Manager's Proposal stipulates that the full actuarial rate would be paid if the funded ratio falls below 82.3%.

We note that there was no adjustment to this agreement in light of the significant 2001 Corbett benefit increases.

COMMENT H: One of the many complexities of the System is that there is a reserve for an Employee Contribution Rate Increase pursuant to the Manager's Proposal, currently $40.5 million. As such, a small part of this reserve account should be transferred into the Member Deposit Reserve each year to pay for such increase. Our calculations reflect the entire employee contribution amount and are also reflected in the member rates included in the back of the report. As such, we add the following amounts to the rates on data provided us, based on our understanding as to negotiations, pursuant to the Manager's Proposal and Corbett:

	Manager's Proposal	Corbett	Total
General	+0.45%	+0.16%	+0.61%
Police	+0.51%	+0.16%	+0.67%
Lifeguard	+0.55%	+0.16%	+0.71%
Fire	+0.47%	+0.16%	+0.63%
Legislative	-0-	+0.16%	+0.16%

(continued)

Also, for both the 2000 and 2001 valuations, we have added the July 1, 2001 Corbett increase in employee rate that will not be funded from this reserve since these amounts are not reflected on the data tape. These amounts are:

General	+0.49%
Police	+0.53%
Fire	+0.53%
Lifeguards	+1.23%
Legislative	+0.49%

COMMENT I: As in recent years, we continue to work with Retirement Staff to help resolve certain data issues. We understand that staff resources have been diverted to some extent to the long, always maddening process of system conversion. We are recommending that we receive service credit data for service purchases. Currently, valued liabilities for active members are understated to the extent that they have purchased service. There also needs to be ongoing refinement to data received for current vested deferreds, including identification of reciprocal members. One of the reasons that the vested deferred liability and number count went up significantly (from 1,016 to 1,438) relates to data issues. We have also raised the issue of the appropriateness of 2% COLA payments on supplemental COLA payments.

COMMENT J: Our understanding is that the City is phasing in, over a four-year period, a reduction in the discounts applied to offsets for anticipated saved refunds. Over the four years, the discount will be reduced from 22% to 5% for General members and 7% to 1% for Safety members.

COMMENT K: The Legislative contribution rates have soared from 39.10% to 64.09% in the past two valuations. This is attributable to a benefit increase and a doubling of the retiree group.

COMMENT L: We have been requested to complete an Entry Age Normal valuation annually. In the Manager's Proposal, it was contemplated that City rate increases would eventually be enough to support an Entry Age rate. This prospect seems more unlikely in view of subsequent benefit increases. This year's Entry Age rate is 17.75%.

COMMENT M: Overall, the financial condition of the retirement system continues to be in sound condition in accordance with actuarial principles of level-cost financing. However, we want all parties to be acutely aware that the current practice of paying less than the computed rate of contribution or pickup will help foster an environment of additional declines in the funding ratios in absence of healthy investment returns.

Exhibit 21

CITY OF SAN DIEGO
MEMORANDUM

DATE: March 15, 2002

TO: Honorable Mayor and City Council

FROM: Daniel E. Kelley, Labor Relations Manager

SUBJECT: Closed Session Meet and Confer Materials for March 18, 2002

Attached is the Closed Session meet and confer Powerpoint outline for the extended 9 a.m. to 12 p.m. meeting on Monday, March 18, 2002.

Daniel E. Kelley

Attachment

EXHIBIT # 42

Meet & Confer 2002

Employer Contribution Rate Stabilization Plan

Period	PUC Rate	Actual Rate	City Paid Rate	Difference %	Difference $	Earnings
FY96	8.60%	8.60%	7.08%	1.52%	$5.33m	$150.4m
FY97	10.87%	9.55%	7.33%	3.79%	$13.88m	$137.4m
FY98	12.18%*Est	10.87%	7.83%	4.35%	$16.67m	$247.4m
FY99	12.18%*Est	10.86%	8.33%	3.85%	$15.40m	$189.1m
FY2000	12.18%*Est	11.48%	8.83%	3.35%	$14.00m	$415.9m
FY2001	12.18%*Est	11.96%	9.33%	2.85%	$12.45m	$168.0m
FY2002	12.18%*Est	12.58%	9.83%	2.35%	$10.72m	$ 52.0m est
FY2003	12.18%*Est	15.59%	10.33%	1.85%	$8.82m	
FY2004	12.18%*Est		10.83%	1.35%	$6.73m	
FY2005	12.18%*Est		11.33%	.85%	$4.43m	
FY2006	12.18%*Est		11.83%	.35%	$1.91m	
FY2007	12.18%*Est		12.18%	-0-	-0-	
FY2008	13.00%*		13.00%	-0-	-0-	
TOTAL					$110.35	

65

Meet & Confer 2002

Retirement System and Meet & Confer

The "Manager's Proposal" effective 1/97:

Earnings Compared with Funding Ratio

FY96	$150.4 m	91.4%
FY97	$137.4 m	93.3%
FY98	$247.4 m	93.6%
FY99	$189.1 m	93.2%
FY00	$415.9 m	97.3%
FY01	$168.0 m	89.9%
FY02 Est.	$50 to $60 m	?

- $105 m reserve would drop to = 85.6%
- Corbett, if amortized = 83.1%
- "Trigger" in Manager's Proposal requiring City to pay full rate = 82.3%
  (a potential $40m annual impact)

66

Exhibit 22

CLOSED SESSION REPORT [X] CITY OF SAN DIEGO [] OTHER (See below)

TITLE Labor negotiations - meet and confer
labor negotiations HDCA Heap

DATE OF CLOSED SESSION: 3/18, 2002

NOT A PUBLIC RECORD
until the information in this box is completed, signed by an authorized representative of the City Attorney's Office and stamped in the space below

Date Litigation Concluded: _____, 200__

By: _____

Title: _____
[STAMP HERE]

[] REAL PROPERTY NEGOTIATIONS G.C. § 54956.8
[] Ongoing/Status Report
[] Final Approval of Agreement (D)
Substance of Agreement: _____
[] Final approval dependent on other party

[] LITIGATION G.C. § 54956.9
[](a) Pending [](b)(1) Significant Exposure [](b)(2) Authorizing Session [](c) Initiating
[] Defend Litigation (D)
[] Seek Appellate Review (D)
[] Amicus Participation
[] Settlement Offer To Be Conveyed
[] Initiate Litigation or Intervene (D)
[] Status Report
[] Refrain from Seeking Appellate Review (D)
[] Other (see below)
[] Acceptance of Signed Settlement Offer (D)
[] Contingent Acceptance of Signed Offer
[] Non-Disclosure of Litigation Recommended (check if yes): [] See Report.
[] Interfere with service of process [] Impair ability to settle

[] CLAIMS DISPOSITION G.C. § 54956.95
[] Offer Made [] Offer Accepted [] See Report

[] DECISION ON EMPLOYMENT STATUS G.C. § 54957
[] Appoint (D) [] Employ (D) [] Accept Resignation (D) [] Discipline (D)
[] Dismissal or Nonrenewal (disclose after exhaustion of administrative remedies) [] Performance Evaluation
Title: _____
Change in Compensation: _____

[X] LABOR NEGOTIATIONS G.C. § 54957.6
[X] Ongoing/Status Report
[] Final Approval of Agreement (D) Other Party to Negotiation: _____
Item Approved: _____

[] PUBLIC SECURITY THREAT G.C. § 54957

ATTENDEES:
[X] City Mgr [X] Asst City Mgr [X] Sr Dep City Mgr (Loveland)
[X] City Atty [X] Exec Asst City Atty [] Asst City Atty (Girard)
[X] City Auditor
[X] Other Bruce Herring, Terri Webster, Pat Frazier, Rich Snapper, Elmer Heap, Sharon Marhsall, Dan Kelley, Bill McGhee, Cathy Lexin, Val Van deweghe

[X] VOTE [] NO VOTE NECESSARY

Economic proposal:

Name	Yea	No	Absent
District 1	X		
District 2 S	X		
District 3	X		
District 4	X		
District 5	X		
District 6	X		
District 7			X
District 8 M	X		
Mayor	X		
Voting Tally	8	0	1

COMMENTS: 1) Health Plan: staff recommendation ($10 office, $5 generic/ $10 Brand Rx, $50 ER visit) 8-0-1; 2) Retiree Health: staff recommendation (same as above) 8-0-1; 3) Economic Proposal: staff recommendation: _____

a) POA/Fire/Lifeguards - FY03 1% mid-year + $100 flex each year; 2 yr agree. 2% FY04 mid-year; b) MEA/127 - FY03-1% mid year, + $100 flex, 2 yr agree, 2% FY04 mid-year + willingness to discuss retirement + trigger if we lose VTL fees.

APPROVED: [signature]

NOTE: (D) DISCLOSE FOLLOWING CLOSED SESSION

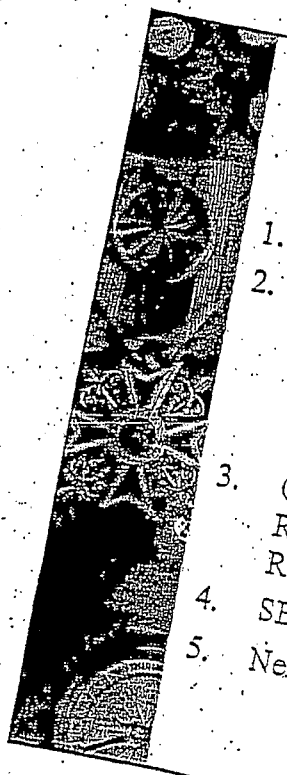
EXHIBIT # 43

Exhibit 23

City of San Diego

Meet & Confer 2002
Closed Session

April 29, 2002



Meet & Confer 2002 Agenda

1. Status of Negotiations (Information)
2. Management Team Recommendations (Action)
   - Special Salary Adjustments
   - Other/Miscellaneous Items
   - Retirement Issues
3. Civil Service Commission Recommendations: Report back on three Classes (Information)
4. SB 402 – Binding Arbitration (Information)
5. Next Steps (Information)

Meet & Confer 2002

Funding the General Member
Retirement Formula Improvement
Modifications to Previous Authority:

Approve General Member retirement benefit enhancement of 2.5% @ 55, with contingencies that Unions support and CERS Board of Administration agrees to:

A. Eliminate *or Reduce* the "trigger" established in the 1997 Manager's Proposal *to 75%*

B. If funding ratio "triggers" an increase in City's contribution rate, *phase in over 5 year period*

C. Absorb Past Liability of the 2.50% at 55 benefit into CERS assets as an unfunded liability (this will reduce funding ratio 1% to 1.5%)

35

Meet & Confer 2002 Agenda

Retirement Issues:

- Funding Ratio Impact on City Contribution (Info)
- 2.5% at 55 General Member Formula (Action)
- *Increases in Employee Pick-ups* (Info)
- Retiree Health Trust Funding Authority (Action)
- Authority to Pay "13th" Check to Retirees (Action)
- Presidential Leave and Retirement Benefits (Action)

36

EXHIBIT # 51

Exhibit 24

CLOSED SESSION REPORT [X] CITY OF SAN DIEGO [ ] WATER (SAN DIEGO)

TITLE: Labor negotiations - meet and confer
labor negotiations DCA Rivo

DATE OF CLOSED SESSION: 4/29, 2002

NOT A PUBLIC RECORD until the information in this box is completed, signed by an authorized representative of the City Attorney's Office and stamped in the space below

Date Litigation Concluded: _____, 200__

By: _____

Title: _____

[ ] REAL PROPERTY NEGOTIATIONS G.C. § 54956.8
[ ] Ongoing/Status Report
[ ] Final Approval of Agreement (D)
Substance of Agreement _____
[ ] Final approval dependent on other party

[ ] LITIGATION G.C. § 54956.9
[ ](a) Pending [ ](b)(1) Significant Exposure [ ](b)(2) Authorizing Session [ ](c) Initiating
[ ] Defend Litigation (D)
[ ] Seek Appellate Review (D)
[ ] Amicus Participation
[ ] Settlement Offer To Be Conveyed
[ ] Initiate Litigation or Intervene (D)
[ ] Status Report
[ ] Refrain from Seeking Appellate Review (D)
[ ] Other (see below)
[ ] Acceptance of Signed Settlement Offer (D)
[ ] Contingent Acceptance of Signed Offer
[ ] Non-Disclosure of Litigation Recommended (check if yes): [ ] See Report
[ ] Interfere with service of process [ ] Impair ability to settle

[ ] CLAIMS DISPOSITION G.C. § 54956.95
[ ] Offer Made [ ] Offer Accepted [ ] See Report

[ ] DECISION ON EMPLOYMENT STATUS G.C. § 54957
[ ] Appoint (D) [ ] Employ (D) [ ] Accept Resignation (D) [ ] Discipline (D)
[ ] Dismissal or Nonrenewal (disclose after exhaustion of administrative remedies) [ ] Performance Evaluation
Title: _____
Change in Compensation: _____

[X] LABOR NEGOTIATIONS G.C. § 54957.6
[X] Ongoing/Status Report
[ ] Final Approval of Agreement (D) Other Party to Negotiation: _____
Item Approved: _____

[ ] PUBLIC SECURITY THREAT G.C. § 54957

ATTENDEES:
[X] City Mgr [X] Asst City Mgr [ ] Sr Dep City Mgr (Loveland)
[X] City Atty [X] Exec Asst City Atty [ ] Asst City Atty (Girard)
[X] City Auditor
[ ] Other: Jerri Webster, Pat Frazier, Bruce Herring, Stan Hulls, Dan Kelley, Rich Snapp, Mike Rivo, Sharon Marshall, Elmer Heap

[ ] VOTE [ ] NO VOTE NECESSARY

Name	Yea	No	Absent
District 1			
District 2			
District 3			
District 4			
District 5			
District 6			
District 7			
District 8			
Mayor			
Voting Tally			

COMMENTS:
SSA - Int Program 9-0
MEA Pound Admin
Pay Negotiations
TOP 3
SSA Mgr's Rec. 9-0
127
POA Harbor Unit (4% increase) 9-0
POA Safety Retirement Status 9-0
Local 145 Heavy Equip Unit 9-0
MEA Due Team, Retirees Team Bu, P.E., Stockton Pay, Lect. Pay, Uniforms - Nurse Policy Collect, Supervisor, Uniforms - Park 9-0
APPROVED: Pension
MEA Page 12 9-0
127 Class A & B licenses
Supervisor Main. Equipment 9-0
Pol. St. 8-1
- 2.5 & 55 (Ch. Frye-opposed)
- Retiree Health Trust Funding 9-0
Authorize 1 Page

NOTE: (D) DISCLOSE FOLLOWING CLOSED SESSION

L:\LDEVANEY\CLSDSESS\Meet_ConferSpc\042902.frm

EXHIBIT # 50

Exhibit 25

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, APRIL 29, 2002
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Table of Contents

CHRONOLOGY OF THE MEETING: 3

ATTENDANCE DURING THE MEETING: 3

ITEM-1: ROLL CALL 4

ITEM-10: INVOCATION 4

ITEM-20: PLEDGE OF ALLEGIANCE 4

ITEM-30: Take Our Sons to Work Day. 4

COUNCIL COMMENT: 5

* ITEM-50: City of San Diego Youth Commission. 6

* ITEM-51: Lifeguard and Fire Facility Improvements. 6

ITEM-52: Proposed City of San Diego Ethics Ordinance. 7

* ITEM-53: Lease Agreement - Park It on Market North - Sabrina's Deli. 9

* ITEM-100: Otay Valley Athletic Complex - Grant Application to the State of California. 11

* ITEM-101: Grant Application for Peñasquitos Creek Restoration. 12

* ITEM-102: California NOW Day. 14

* ITEM-103: Holy Spirit Church Day. 15

The volunteer command post does need donations of orange vests, gloves, flashlights, batteries, communication equipment, office supplies and a refrigerator. To donate, call Ms. Atkins' office at 236-6633 or call the Moose Lodge directly.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A107-156.)

* ITEM-50: City of San Diego Youth Commission.

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced as amended on 4/15/2002. (Council voted 9-0):

(O-2002-122 Rev.) ADOPTED AS ORDINANCE O-19053 (New Series)

Amending Chapter 2, Article 6, of the San Diego Municipal Code by adding Division 16, Titled City of San Diego Youth Commission, and adding Sections 26.1601, 26.1602, 26.1603, 26.1604, and 26.1605, all relating to the City of San Diego Youth Commission.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A159-184.)

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

* ITEM-51: Lifeguard and Fire Facility Improvements.

(Districts-1, 2, 3, 4, 6, 7 and 8.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 4/16/2002.
(Council voted 9-0.)

(O-2002-116) ADOPTED AS ORDINANCE O-19054 (New Series)

Approving proceedings to finance the costs of certain capital improvements of the City; approving issuance of lease revenue bonds by the Public Facility Financing Authority of the City of San Diego of an amount not to exceed $30,000,000 aggregate principal; approving the forms of and authorizing the execution and delivery of a site lease, a lease, and an official statement; authorizing the procurement of a municipal bond insurance policy (and debt service reserve fund surety bond); and approving and authorizing related documents, official actions and matters in connection therewith.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A159-184.)

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

ITEM-52: Proposed City of San Diego Ethics Ordinance.

CITY COUNCIL'S RECOMMENDATION:

Adopt the ordinance which was introduced as amended on 4/16/2002:

(O-2002-88 Rev.) ADOPTED AS ORDINANCE O-19055 (New Series)

(Council voted as follows: 1-Motion to modify Section 27.3571 to delete the prohibition of solicitation of campaign contribution. Councilmembers Peters, Wear, Atkins, Stevens, Madaffer, Inzunza and Mayor Murphy voted yea.

Exhibit 26

CLOSED SESSION REPORT [X] CITY OF SAN DIEGO [] OTHER (See below)

NOT A PUBLIC RECORD
until the information in this box is completed, signed by an authorized representative of the City Attorney's Office and stamped in the space below

Date Litigation Concluded: _____, 200____

By: _____

Title: _____

TITLE Labor negotiations - meet and confer
labor negotiations DCA Rivo

DATE OF CLOSED SESSION: 5/6, 2002

[] REAL PROPERTY NEGOTIATIONS G.C. § 54956.8
[] Ongoing/Status Report
[] Final Approval of Agreement (D)
Substance of Agreement: _____
[] Final approval dependent on other party

[] LITIGATION G.C. § 54956.9
[](a) Pending [](b)(1) Significant Exposure [](b)(2) Authorizing Session [](c) Initiating
[] Defend Litigation (D) [] Status Report
[] Seek Appellate Review (D) [] Refrain from Seeking Appellate Review (D)
[] Amicus Participation [] Other (see below)
[] Settlement Offer To Be Conveyed [] Acceptance of Signed Settlement Offer (D)
[] Initiate Litigation or Intervene (D) [] Contingent Acceptance of Signed Offer
[] Non-Disclosure of Litigation Recommended (check if yes): [] See Report
[] Interfere with service of process [] Impair ability to settle

[] CLAIMS DISPOSITION G.C. § 54956.95
[] Offer Made [] Offer Accepted [] See Report

[] DECISION ON EMPLOYMENT STATUS G.C. § 54957
[] Appoint (D) [] Employ (D) [] Accept Resignation (D) [] Discipline (D)
[] Dismissal or Nonrenewal (disclose after exhaustion of administrative remedies) [] Performance Evaluation
Title: _____
Change in Compensation: _____

[X] LABOR NEGOTIATIONS G.C. § 54957.6
[X] Ongoing/Status Report
[] Final Approval of Agreement (D) Other Party to Negotiation: _____
Item Approved: _____

[] PUBLIC SECURITY THREAT G.C. § 54957

ATTENDEES:
[X] City Mgr [X] Asst City Mgr [] Sr Dep City Mgr (Loveland)
[X] City Atty [X] Exec Asst City Atty [X] Asst City Atty (Girard)
[X] City Auditor
[X] Other Mike Rivo, Elmer Heap, Sharon Marshall, Cathy Lexin, Bruce Herring

[X] VOTE [] NO VOTE NECESSARY

COMMENTS: _____

Name	Yea	No	Absent
District 1 M	X		
District 2	X		
District 3	X		
District 4	X		
District 5	X		
District 6	X		
District 7 S	X		
District 8	X		
Mayor	X		
Voting Tally	9	0	0

APPROVED: _____

NOTE: (D) DISCLOSE FOLLOWING CLOSED SESSION

EXHIBIT # 57

L:\LDEVANEY\CLSDSESS\Meet_ConferSpcl\050602.frm

Exhibit 27

SAN DIEGO CITY ATTORNEY
CASEY GWINN

LESLIE E. DEVANEY
Executive Assistant City Attorney
(619) 236-6220 • (619) 236-7215 (FAX)

MEMO

Overall Economic Proposal — Slide 17

CD1 moves Mgr's Recommendation
CD7 2nd

~~450~~ '04 } plus } 9-0
~~450~~ '05 }

MEA
Change salary increase '03 to back in 7/02 Y- N-

~~MEA~~

* Presidential Leave
CD 7 - mtn - Mgr's recommendation
9-0

MEA SSA except Labor Mgr. 9-0
127 — 9-0
1145 9-0

DIVERSITY

Exhibit 28

ATTORNEY TO CLIENT
CORRESPONDENCE

FOR CONFIDENTIAL USE ONLY

CITY OF SAN DIEGO
MEMORANDUM

DATE: June 14, 2002

TO: Honorable Mayor and City Council

FROM: Cathy Lexin, Human Resources Director
Elmer Heap, Head Deputy City Attorney

SUBJECT: Meet and Confer:
Contingent Retirement Benefits – Modified Proposal to San Diego City Employees Retirement System Board of Administration

---

BACKGROUND

During the recently concluded meet and confer, the City Council approved a number of retirement benefit enhancements with a contingency feature. The contingency was tied to an affirmative vote by the San Diego City Employees Retirement System (SDCERS) Board oft Administration related to (1) committing $25 million from FY2000 SDCERS investment earnings to pay for retiree health insurance, (2) using an existing SDCERS reserve to pay for negotiated increases in the amount the City "picks up" of employee's retirement contributions, and (3) the City's contribution rates and funding status. We expect that the SDCERS Board will approve the first two items. The third item regarding the City's contribution rates and funding status of the system is the most complex of the issues and is currently under critical review by the SDCERS Board's outside fiduciary counsel and outside actuary.

DISCUSSION

The City Manager made a conceptual presentation before the SDCERS Board at a special meeting held on May 29, 2002. This was the first meeting of the Board after the close of meet and confer. (SDCERS meets regularly once a month on the 3rd Friday.) The Manager indicated that a detailed written proposal would be presented at the next regular meeting of the Board on June 21, 2002 (see attached). The Board's outside fiduciary counsel and actuary were at the May 29, 2002 meeting and have been requested by the Board's Administrator to prepare written opinions from their respective areas of responsibility prior to the June 21, 2002 meeting.

EXHIBIT # 2

Based upon conversations with the Retirement Administrator this week, it appears that the Board's outside fiduciary counsel is "uncomfortable" expressing an opinion that approval of this proposal is within the Board's reasonable discretion as fiduciaries of the system. The current "rate stabilization plan" stipulates that the City's contribution rates, beginning FY97 would increase a fixed 0.50% per year, which is less than the actuarially determined rate necessary to ensure stable funding of the system. The basis for prior fiduciary counsel condoning the original agreement to accept less than full actuarial contributions from the City, was the establishment of a reasonable funding ratio floor (82.3%), and the expectation of progress toward full funding pursuant to this plan. Currently fiduciary counsel is concerned that the City is requesting a further reduction to the funding ratio floor (from 82.3% to 75%) with no balancing aspect to the proposal, no quid pro quo.

RECOMMENDATION

As we discussed in closed session earlier, implementation of the "rate stabilization plan" in the 1997 Manager's Proposal did not have any significant impact on the funding of the retirement system prior to FY01's actuarial valuation wherein the funding ratio dropped from 97.7% to 89.9%. In the past two years, several significant and unpredictable events impacted the funding status of the system. The settlement of the Corbett litigation resulted in approximately $150 million in additional unfunded liability, and the drastic decline in investment earnings to the system (from $415.9 million in FY00 to less than $50 million estimated by year end FY02).

As you know, the Mayor's Blue Ribbon Committee on City Finances also made findings and recommendations regarding the retirement system liabilities and funding status. It is clear that the current arrangement whereby the City's contribution rate increases by a fixed 0.50% per year will not accomplish full funding as contemplated in the plan. A thorough analysis needs to occur and a funding policy developed that is acceptable to the SDCERS Board as Trustees and the City as Plan Sponsor. We had hoped the SDCERS Board would accept our proposal to lower the funding ratio floor to 75% with a commitment from the City to bring forward a long term solution within the next year. It does not appear that the fiduciary counsel will support this request.

Therefore, it is recommended that the City Council authorize the City manager to amend the proposal to be presented on June 21, 2002, by increasing the annual increase in City contribution from 0.50% per year to 1.00% per year beginning in FY05 (an approximate $2.5 million increase). The City Auditor concurs with this recommendation as a necessary step toward the long term solution, and is a means to avoid the potential triggering of the fully actuarial rate in FY04 (a $25 impact).

A	B	C	D	E	F	G	H
Fiscal Year	Agreed to City Rate	Projected Actuarial City Rate	Actual Actuarial City Rates	Proposed New City Rates	Amended New City Rates	City Rates If 75% Ratio is triggered	Actual Funding Ratio
FY96	7.08%	8.60%					91.4%*
FY97	7.33%	10.87%	9.55%				93.3%
FY98	7.83%	12.18%	10.87%				93.6%
FY99	8.33%	12.18%	10.86%				93.2%
FY00	8.83%	12.18%	11.48%				97.3%
FY01	9.33%	12.18%	11.96%				89.9%**
FY02	9.83%	12.18%	12.58%				
FY03	*10.33%*	*12.18%*	*15.59%*				
FY04	10.83%	12.18%	16.65%	11.89%	11.89%	12.84%	
FY05	11.33%	12.18%	16.65%	12.39%	12.89%	13.79%	
FY06	11.83%	12.18%	16.65%	12.89%	13.89%	14.74%	
FY07	12.18%	12.18%-	16.65%	13.39%	14.89%	15.69%	
FY08	13.00%	13.00%	16.65%	13.89%	15.89%	16.64%	
FY09					16.65%		

Column A: Fiscal Year
Column B: City's "Agreed-To" Contribution Rate Based on 1996/97 Manager's Proposal
Column C: Actuarial Rate Projections from FY1996/97 Manager's Proposal
Column D: City Rates based on actuarial valuations for respective fiscal years through FY03 and projected actuarial rates through FY08
Column E: Adding 1.52% to General Member rates (resulting in a blended rate increase of 1.06%) beginning in FY04 to pay the cost of the 2.50% at age 55 formula improvement
Column F: Increasing the +0.50% per year "agreed-to" rate in1996/97 Manager's Proposal to +1.00% per year beginning in FY05
Column G: Increases the City contribution to full actuarial rate over five (5) years if the proposed 75% funding ratio is triggered in FY04
Column H: Funding Ratio of the Retirement Systems (projected assets compared to liabilities) effective fiscal year end (e.g. 89.9% as of 6/30/01)

* The actuary report for 6/30/96 reflected a funding ratio of 92.3% for combined City and Port assets. The 92.3% is the ratio used in the 1996/97 Manager's Proposal. That funding ratio 6/30/96 for only the City's portion of the system assets was 91.4%. A more accurate floor which would trigger the full actuarial rate under the 1996/97 Manager's Proposal.would is 81.4 %. Beginning with the 6/30/99 actuarial valuation, the actuary identified separate City and Port funding ratios, and the ratios in Column H above reflects the City-only funding ratio beginning with the FY00 ratio.

** FY01 *Draft* Actuarial Valuation is docketed for adoption by SDCERS on June 21, 2002

Exhibit 29

CLOSED SESSION REPORT [X] CITY OF SAN DIEGO [] OTHER (See below)

NOT A PUBLIC RECORD
until the information in this box is completed, signed by an authorized representative of the City Attorney's Office and stamped in the space below

Date Litigation Concluded: _____, 200____

By: _____

Title: _____

(STAMP HERE)

TITLE Meet and Confer Negotiations
labor negotiations (HDCA Heap)

DATE OF CLOSED SESSION: 6/18, 2002

[] REAL PROPERTY NEGOTIATIONS G.C. § 54956.8
[] Ongoing/Status Report
[] Final Approval of Agreement (D)
Substance of Agreement: _____
[] Final approval dependent on other party

[] LITIGATION G.C. § 54956.9
[](a) Pending [](b)(1) Significant Exposure [](b)(2) Authorizing Session [](c) Initiating
[] Defend Litigation (D)
[] Seek Appellate Review (D)
[] Amicus Participation
[] Settlement Offer To Be Conveyed
[] Initiate Litigation or Intervene (D)
[] Status Report
[] Refrain from Seeking Appellate Review (D)
[] Other (see below)
[] Acceptance of Signed Settlement Offer (D)
[] Contingent Acceptance of Signed Offer
[] Non-Disclosure of Litigation Recommended (check if yes): [] See Report
[] Interfere with service of process [] Impair ability to settle

[] CLAIMS DISPOSITION G.C. § 54956.95
[] Offer Made [] Offer Accepted [] See Report

[] DECISION ON EMPLOYMENT STATUS G.C. § 54957
[] Appoint (D) [] Employ (D) [] Accept Resignation (D) [] Discipline (D)
[] Dismissal or Nonrenewal (disclose after exhaustion of administrative remedies) [] Performance Evaluation
Title: _____
Change in Compensation: _____

[X] LABOR NEGOTIATIONS G.C. § 54957.6
[X] Ongoing/Status Report
[] Final Approval of Agreement (D) Other Party to Negotiation: _____
Item Approved: _____

[] PUBLIC SECURITY THREAT G.C. § 54957

ATTENDEES:
[ ] City Mgr [X] Asst City Mgr [ ] Sr Dep City Mgr (Loveland)
[ ] City Atty [ ] Exec Asst City Atty [ ] Asst City Atty (Girard)
[X] City Auditor
[X] Other _Bruce Herring, Pat Frazier, Elmer Heap, Rich Snapper,___
Cathy Lexin, Mike Rivo, Dan Kelley

[X] VOTE [] NO VOTE NECESSARY

COMMENTS: Authorize change in City contribution rate per report

Name	Yea	No	Absent
District 1	X		
District 2 M	X		
District 3	X		
District 4	X		
District 5	X		
District 6	X		
District 7 S	X		
District 8	X		
Mayor	X		
Voting Tally	9	0	0

APPROVED: _____

NOTE: (D) DISCLOSE FOLLOWING CLOSED SESSION

L:\LDEVANEY\CLSDSESS\06_18_02\mtncfr.wpd

Exhibit 30

Mail

Close

Previous Next

From: Byron Wear
To: Lexin, Cathy; Maienschein, Brian; Frye, Donna; Stevens, George; Madaffer, Jim; Inzunza, Ralph; Peters, Scott; Atkins, Councilmember; Murphy, Dick
CC: Gwinn, Casey; Heap, Elmer; Devaney, Leslie; Girard, Les; Uberuaga, Michael; Ewell, Lamont
Date: 6/23/2002 8:21 PM
Subject: Re: Retirement Board Action

Ms. Lexin,

Please be prepared to answer this question:

Why did you advise the City Council to go down this policy path if you did not have some degree of assurance and the timing of the decision making process from the Retiremont Board in advance?

BYRON WEAR
Councilmember

- City Councilmembers

- Cathy Lexin 6/23 11:46a >>>
On Friday, June 21, the Retirement Board considered the City's Proposal regarding City Contribution rates and the 75unding ratio "trigger". The Board spend 3 hours discussing this proposal, and eventually trailed the matter to a special meeting to be scheduled by the middle of July. The Board's outside fiduciary counsel focused on the importance of "process" and adequate time for Trustees to obtain all the information they felt they needed from their actuary and fiduciary counsel, to fully evaluate risk to the Board as fiduciary trustees associated with this proposal. MEA scheduled their ratification vote for next week, anticipating the Board's action on June 21. We have scheduled closed session for meet and confer for Tuesday, June 25 to discuss the implications of this deferral on the City's MOU's with MEA, Local 127 and Local 145 ech of which included benefits contingent upon this action.

EXHIBIT 268
WIT. GIRARD
DATE 6-13-2006
Kramm&Associates, Inc.

Ex. 97

GOVERNMENT EXHIBIT 506

Exhibit 31

HOTSHEET

July 1, 2002

EXHIBIT 357
WIT: Italiano
DATE 8-17-2006
Kramm&Associates, Inc.

UPDATE: Members Ratify Contract Contingent on Retirement Board Decision

Ballots were counted Friday June 28th at the MEA office by retirees. About 900 members cast their vote on the proposed contract improvements with 96% of them voting yes!

This vote will be valid **only** if the 3-year contract includes the retirement benefit improvements slated for July 1, 2002. **The availability of these benefit improvements depends on a favorable vote of the Retirement Board of Trustees on the City's request for a payment plan, which would lower the current "trigger" from 82.3% to 75%.**

The Retirement Board of Trustees will meet July 11th at 9:00am at 401 B Street, Suite 400. Please attend this meeting - we need your support.

MEA 5608

San Diego Municipal Employees Association
(619) 264-6632 FAX (619) 264-0405 www.sdmea.org

Exhibit 32

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ATTORNEY TO CLIENT
CORRESPONDENCE

FOR CONFIDENTIAL USE ONLY

CITY OF SAN DIEGO
MEMORANDUM

7/09/02
ITEM #4

DATE: July 8, 2002

TO: Honorable Mayor and City Council

FROM: Cathy Lexin, Human Resources Director
Elmer Heap, Head Deputy City Attorney

SUBJECT: Meet and Confer:
Contingent Retirement Benefits and Proposal to SDCERS

BACKGROUND

Attached is the modified proposal to SDCERS approved in closed session on June 14, 2002 and presented to the SDCERS Board at their meeting of Friday, June 21, 2002.

DISCUSSION

On Friday, June 21, the SDCERS Board considered the City's modified proposal regarding City contribution rates and the 75% funded ratio "trigger." The Board spent three hours discussing this proposal, and eventually trailed the matter to a special meeting to be scheduled for mid July. A meeting is scheduled exclusively for this matter on Thursday, July 11, 2002.

Of major concern to the SDCERS Board contributing to the continuance of this matter was the lack of a final written report from their outside fiduciary counsel. The "draft" report from fiduciary counsel published for the June 21, 2002 meeting was quite negative, clearly erring on the side of caution due to the fact that counsel, from his perspective, did not have time to evaluate the proposal sufficiently to render final advice. This was exacerbated by the delivery of a letter from Michael Aguirre threatening to litigate if the Board approved the proposal.

The Manager's Office has been in ongoing discussions with the Retirement Administrator attempting to provide answers and clarification to questions from SDCERS Board Members, the fiduciary counsel and actuary.

A final written report from fiduciary counsel was anticipated last Wednesday, then Friday, then Monday. It was our intent to brief you today on the contents of fiduciary counsel report, and if necessary seek any further modification necessary to achieve approval from SDCERS regarding the City's retirement contribution rates.

RECOMMENDATION

While we still have not seen the fiduciary counsel's final report, conversations with the Retirement Administrator lead us to be optimistic about a favorable report. The Manager's Office intends to present the modified proposal at the SDCERS meeting of July 11, and respond to any additional questions which may arise.

Based on our conversations with the Retirement Administrator, we anticipate a motion from a Board member which would further modify the proposal before the Board, by eliminating the request to lower the funded ratio floor, and including the five year phase-in if the trigger (82.3% funded ratio) is effectuated.

Given the importance of avoiding a immediate full rate implementation (versus five year phase in), it is recommended that the Council authorize staff to agree to this modification should the proposal currently before SDCERS not prevail. If this additional modification is necessary, staff would ask that if the funded ratio trigger occurs in the upcoming June 30, 2002 valuation, that the phase in of full actuarial rates not begin until FY05.

If this modification is acceptable to the Board and Fiduciary Counsel, the practical impact on the City would be no different than the previously authorized City position. Under either scenario, there would not be any increase to the City contribution rate until FY05.

Attachment

Exhibit 33

CLOSED SESSION REPORT [X] CITY OF SAN DIEGO [ ] OTHER (See below)

NOT A PUBLIC RECORD
until the information in this box is completed, signed by an authorized representative of the City Attorney's Office and stamped in the space below

Date Litigation Concluded: _____, 200____

By: _____

Title: _____

[STAMP HERE]

TITLE Labor negotiations - Meet and Confer
retirement matters (HDCA HEAP)

DATE OF CLOSED SESSION: 7/9, 2002

[ ] REAL PROPERTY NEGOTIATIONS G.C. § 54956.8
[ ] Ongoing/Status Report
[ ] Final Approval of Agreement (D)
Substance of Agreement: _____
[ ] Final approval dependent on other party

[ ] LITIGATION G.C. § 54956.9
[ ](a) Pending [ ](b)(1) Significant Exposure [ ](b)(2) Authorizing Session [ ](c) Initiating
[ ] Defend Litigation (D) [ ] Status Report
[ ] Seek Appellate Review (D) [ ] Refrain from Seeking Appellate Review (D)
[ ] Amicus Participation [ ] Other (see below)
[ ] Settlement Offer To Be Conveyed [ ] Acceptance of Signed Settlement Offer (D)
[ ] Initiate Litigation or Intervene (D) [ ] Contingent Acceptance of Signed Offer
[ ] Non-Disclosure of Litigation Recommended (check if yes): [ ] See Report
[ ] Interfere with service of process [ ] Impair ability to settle

[ ] CLAIMS DISPOSITION G.C. § 54956.95
[ ] Offer Made [ ] Offer Accepted [ ] See Report

[ ] DECISION ON EMPLOYMENT STATUS G.C. § 54957
[ ] Appoint (D) [ ] Employ (D) [ ] Accept Resignation (D) [ ] Discipline (D)
[ ] Dismissal or Nonrenewal (disclose after exhaustion of administrative remedies) [ ] Performance Evaluation
Title: _____
Change in Compensation: _____

[X] LABOR NEGOTIATIONS G.C. § 54957.6
[X] Ongoing/Status Report
[ ] Final Approval of Agreement (D) Other Party to Negotiation: _____
Item Approved: _____

ATTENDEES:
[X] City Mgr [X] Asst City Mgr [ ] Sr Dep City Mgr (Loveland)
[ ] City Atty [X] Exec Asst City Atty [X] Asst City Atty (Noone)
[X] City Auditor
[X] Other Bruce Herring, Rich Snapper, Sharon Marshall, Cathy Lexin, Dan Kelley

[ ] PUBLIC SECURITY THREAT G.C. § 54957

[X] VOTE [ ] NO VOTE NECESSARY

COMMENTS: Authorize modification of proposal - leave trigger at 82% of funding but 1 year grace period to pay (retirement formula), but only as back-up if original proposal (75% trigger) fails at Retirement Board

Name	Yea	No	Absent
District 1 M	X		
District 2	X		
District 3	X		
District 4	X		
District 5	X		
District 6	X		
District 7 S	X		
District 8	X		
Mayor	X		
Voting Tally	9	0	0

APPROVED: [signature]

NOTE: (D) DISCLOSE FOLLOWING CLOSED SESSION

278.113

L:\LDEVANEY\CLSDSESS\07_09_02\mtncfr.wpd

Exhibit 34

CERTIFIED COPY

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

BOARD MEETING

JULY 11, 2002

TRANSCRIBED BY LAURA J. BOLLSCHWEILER, RPR, CSR NO. 10500

Peterson & Associates
REPORTING · VIDEO · LITIGATION SERVICES

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Toll Free: 800.649.6353 · Phone: 619.260.1069 · Fax: 619.688.1733 · 530 B Street, Suite 350, San Diego, CA 92101 · www.bookadepo.com
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1 MR. CASEY: I want to speak to that, too.
2 MR. PIERCE: The floor is yours, Mr. Casey.
3 MR. CASEY: Reasonable people can look at the
4 same facts and come to different conclusions. And I guess
5 I'm in that ball game because I come to a different
6 conclusion than the actuary and our fiduciary counsel.
7 (inaudible) been around a long time and in the past, when
8 the city has had problems, they've come to this Board and
9 the Board has been accommodating. So the idea that the 8
10 percent chart that shows a giant jump in contributions from
11 the city under the original proposal in my opinion is not
12 realistic. It will not happen. We will not subject the
13 city to a budget-busting contribution when we've crashed
14 through the floor. I don't believe that will happen;
15 therefore, I don't think it's legitimate to make charts and
16 compare to the red bar that the city has proposed.
17 I think we're going to get more money, that's
18 what I see, and get to 2009 with a better chance of having
19 projected unit credit fulfilled than if we stick with the
20 original plan. Because I don't think the original payments
21 will accommodate that. I don't believe the city will have
22 to pay a huge increase immediately. So I don't see that as
23 we make more money sticking with the original one. I think
24 we'd make more money with the new proposal by the city.
25 It pains me to say it, but in the past, I've
26 criticized the city for being on a one-year budget cycle.
27 And lo and behold, they've come in a year early, 18 months
28 early, and say we're going to have a problem, let's see

11 July 2002 SDCERS EX 48

what we can do about it. That's a big improvement, from my point of view.

(End of Tape 6)

MR. SAATHOFF: Thank you, Mr. Chairman.

I'm going to offer a substitute. I'm just very concerned what we do is appropriate (inaudible) and I believe based on what I've heard today (inaudible) what I'm going to recommend is that in lieu of a substitute motion that we make a modification of the '96 proposal to allow that when the trigger is hit, in other words, I'm not changing the trigger. What I'm changing and proposing a change is the payment schedule upon that trigger being hit and that proposal is that the difference between the rate at that time and the PUC rate (inaudible) actuarial assumptions will be phased in between that point and 2009 incrementally per year.

In other words, if it's five years it would be 20 percent the first year, 20 percent the second, 20 percent the third, and so forth. Or as Mr. Blum, I think put it into his proposal, you take the difference each year, you divide it out by the remaining years, and that's the increase that would be necessary. That modification based on our current projections that are in the documentation with the city's offer to make a one percent rate increase a year, they're going to get there any way or very close to it. I mean, obviously, none of us can project what the market is going to do.

But the reality of it is what that will do is

Devotion to City, inference might interfere Party

reasonably foreseeable Hong time effect

Contingent possibility of benefits

Lex IN: Practical impact no different than City's prevar position

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"Not changing the trigger - a change in the payment schedule."

CSD REPLY TO MSJ
01016

Exhibit 35

MISSION STATEMENT

We pledge to continually deliver accurate and timely benefits through prudent administration and safeguarding of the San Diego City Employees' Retirement System, while ensuring the Fund's maximum safety, integrity and growth.

SDCERS RETIREMENT BOARD MINUTES
THURSDAY, JULY 11, 2002

The Retirement Board of Administration held a Special meeting in the System's Boardroom. Location: 401 "B" Street, Suite 400, San Diego, CA 92101. Fred Pierce called the meeting to order at 9:30 a.m.

IN ATTENDANCE:

Trustees: Frederick Pierce, Chair; John Casey, David Crow, Ray Garnica, Cathy Lexin, Mary Vattimo, Tom Rhodes, Ron Saathoff, Diann Shipione, John Torres, Terri Webster, Richard Vortmann, Sharon Wilkinson

Staff: Lawrence Grissom, Lori Chapin, Paul Barnett, Roxanne Parks, Sally Zumalt, Delia Lencioni, Dawne Clark, Jean Struiksma, Merlita Hilario

Public: Robert Blum, Constance Hiatt, Rick Roeder, Bruce Herring, Charles Feland, Michael Aguirre, Ann Smith, Judy Folsom, Judy Italiano, Stan Elmore, Garry Collins, Mary Bush, Bud Simpson, Stan Elmore, Pamela Hightower, Conny Jamison, John Swanson, Nancy Acevedo, Ed Lehman, Jorge Montegue, Pamela Hightower, Judie Italiano, Charles Feland & numerous other City employees.

I. DISPENSE WITH THE READING AND APPROVAL OF THE SPECIAL MAY 29, 2002 EARNINGS MINUTES

MOTION TO DISPENSE WITH THE READING AND APPROVE THE 05/29/02 MINUTES: D. CROW
SECOND: T. RHODES
DISCUSSION:
Ms. Shipione asked that the last paragraph of Page 32 be amended to state that she had asked for clarification about the Board's authority; and, that the second paragraph on Page 33 be deleted.

CALL FOR THE QUESTION ON THE MINUTES AS AMENDED.
BOARD: UNANIMOUS
MOTION TO APPROVE PASSED UNANIMOUSLY.

II. REPORT ON ACTION TAKEN AT THE 8:30 CLOSED SESSION MEETING

Mr. Pierce reported that the Board met in closed session at 8:30 a.m. regarding one matter of pending litigation.

Once the Board takes action, Mr. Herring said Management would meet with the Mayor and City Council.

Before voting on this, Mr. Torres asked if Mr. Roeder or Mr. Blum had changed their opinions.

Mr. Blum said it is somewhat hard to provide an "on the fly" opinion. However, he is much more comfortable that the Board would not be at a material risk by adopting the substitute motion. Absent having all of the facts and the language in front of him, he's not sure how far he could go with this opinion.

Ms. Hiatt said in reviewing the numbers, a faster repayment schedule is better because the incremental earnings paid to the fund would reduce the Board's risk down the road. She asked when the 1.0% rate increase would become effective. Under the 97 MP, Mr. Pierce said it becomes effective 07/01/04.

CALL FOR THE QUESTION ON THE SUBSTITUTE MOTION TO MODIFY THE 97 MP: 1) TO ALLOW THE CITY'S REPAYMENT SCHEDULE TO BE THE DIFFERENCE BETWEEN THE RATE AT THAT TIME AND THE ACTUARIAL PUC RATE IF THE 82.3% TRIGGER IS HIT; 2) THAT THIS AMOUNT WOULD BE PHASED IN INCREMENTALLY ON AN ANNUAL BASIS BETWEEN THAT POINT AND 2009; 3) THAT THIS BE BASED ON THE CURRENT ACTUARIAL PROJECTIONS WITH THE CITY TO INCREASE ITS PAYMENT 1.0% PER YEAR; 4) THAT THE CITY WOULD REACH THE PUC RATE IN 2009 AS INCLUDED IN THE 97 MP SUNSENT LANGUAGE; AND, 5) TO FUND $25 MILLION FOR PURPOSES OF PAYING RETIREE HEALTH CARE BENEFITS. ADDITIONALLY, THIS MOTION DOES NOT INCLUDE LOWERING THE FUNDING FLOOR FROM 82.3% AND IS CONTINGENT UPON A WRITTEN AGREEMENT BETWEEN THE CITY AND RETIREMENT BOARD.

BOARD: 8 IN FAVOR: CASEY, VATTIMO, PIERCE, SAATHOFF, WILKINSON, TORRES, WEBSTER, LEXIN
2 OPPOSED: RHODES, CROW
1 ABSTAINED: GARNICA

MOTION PASSED 8 TO 3.

(Mr. Vortmann and Ms. Shipione had departed the meeting prior to the vote.)

IV. NEXT MEETING: FRIDAY, JULY 19, 2002 – 12:30 PM
401 "B" STREET, SUITE 400
SAN DIEGO, CA 92101

Exhibit 36

HOTSHEET

July 12, 2002

NEWS FLASH!!

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Thursday July 11th the San Diego Retirement Board of Trustees approved the City Manager's request to allow the City to ramp up their contributions over the next 7 years. This will give the City some relief in an already tight budget year and it will allow them to work with the Retirement Board in preparing for increases in employer contributions.

This arrangement will be voted on in closed session by the City Council but City Manager Mike Uberuaga has informed MEA that the "motion approved by the Retirement Board was within the authority the Council had given him" and therefore he felt the contingencies of our ratified agreement had been met and we had an agreement. This means the negotiated retirement benefit improvements will be approved retroactive to July 1, 2002.

Congratulations to all City employees in MEA's bargaining units on a contract that over the next three years will greatly enhance their City benefits!

A big thank you goes out to all of you who took the time to come out and ratify the contract.

MEA 5609

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Exhibit 37

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October 29, 2001

Leslie J. Girard, Esq.
Assistant City Attorney
City of San Diego
Civil Division - Special Projects
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Privileged and Confidential
Attorney-Client Communication

Re: Review of Disclosure Documents as to Lease Revenue Bonds 2001

Dear Les:

We are writing this letter to provide an overview of the applicable federal securities laws and to provide a framework against which the City Council for the City of San Diego ("City Council") and the Board of Commissioners of the Public Facility Financing Authority of the City of San Diego ("Board of Commissioners") must review and evaluate the Preliminary Official Statement ("POS"), and the Official Statement when completed, prepared in anticipation of the offering of the Lease Revenue Bonds 2001 ("2001 Bonds"). As noted in the POS, the purpose of the bond offering is to finance the construction of a major league baseball park in San Diego, as well as other uses (as described in the POS) relating to the ballpark project (the "Ballpark Project"). In this letter we will not recount the lengthy history relating to the Ballpark Project and the numerous related legal challenges and actions, except to note, however, that in a letter dated September 20, 2001, to the City Attorney, the lawyer who has been the driving force behind various pieces of litigation relating to the Ballpark Project has contended that, because of various changes and alterations, the Ballpark Project should be re-submitted to the voters of San Diego for approval (the "September Letter").

In light of the application of provisions of the federal securities laws, and in particular the obligations imposed on issuers in connection the offering and sale of securities (as described below), and the allegations made in the September Letter, each member of the City Council and the Board of Commissioners must read the POS (and when completed the Official Statement), ask questions as to any area or matter that may seem unclear or need clarification, actively seek

information from the officials of the City or Authority and professionals retained in connection with the proposed offering, and conduct follow-up as to the information supplied.

Overview of the Applicable Federal Securities Laws

While Congress exempted offerings of municipal securities, such as the 2001 Bonds, from the registration requirements of the Securities Act of 1933, and the system of periodic reporting under the Securities Exchange Act of 1934, it did not exempt transactions in municipal securities from the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder. These provisions prohibit any person, including municipal issuers, from making a false or misleading statement of material fact, or omitting any material facts necessary to make statements made by that person not misleading, in connection with the offer, purchase or sale of any security. In the event of a violation of the securities provisions, the SEC has a range of remedies at its disposal, including the authority to seek injunctive relief to stop (in extraordinary circumstances) the offer or sale of securities and the imposition of penalties (which include monetary fines and the placement of limitations on securities related activities). In addition, there is typically a substantial amount of negative publicity that arises in connection with an SEC proceeding.

Although as to certain antifraud provisions, the SEC must show that the person acted with "scienter" -- that is recklessness or an intent to deceive, manipulate, or defraud -- the SEC need only demonstrate that the person acted negligently to establish a violation of other antifraud provisions. To establish negligence, the SEC must show that the defendants failed to conform with the standard of care that a reasonable person would have exercised in like circumstances and position. Of course, there must first be a misstatement or omission of a material fact; however, the lower threshold of negligence provides greater enforcement flexibility to the SEC.

In light of the foregoing, it is critical that the City Council and the Board of Commissioners exercise all due care in reviewing and evaluating the information contained in the POS. As to that information, the statements in the POS "must be viewed as part of a 'mosaic' to see if those statements, in the aggregate, created a misleading impression. . . . The proper test is not the literal truth or the materiality of each positive statement, but the overall misleading impression that it combines to create." *In re Genentech, Inc., Securities Litigation*, 1989, Fed. Sec. L. Rep. (CCH) ¶94, 544 (N.D. Cal. 1989). Moreover, a fact is deemed "material" if there is a " ... substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable [investor]. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

Unfortunately, in the event that there is a challenge to the adequacy of a disclosure document, such challenge occurs with the benefit of hindsight. While it is not appropriate to apply hindsight, as a practical matter it is sometimes difficult to disregard subsequent events, and the impact of those events, in placing the disclosure in the proper context of what had occurred as of the time that the document was created.

The importance of the review of municipal securities disclosure documents was highlighted in connection with an SEC report that was critical of the supervisors of Orange County, California for shortcomings relating to their review of such documents. *Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors*, Exchange Act Release No. 36761 (January 24, 1996). As stated by the SEC in the Orange County matter:

> In authorizing the issuance of securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may a public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading. When, for example, a public official has knowledge of facts bringing into question the issuer's ability to repay the securities, it is reckless for that official to approve disclosure to investors without taking steps appropriate under the circumstances to prevent the dissemination of materially false or misleading information regarding those facts. **In this matter, such steps could have included becoming familiar with the disclosure documents and questioning the issuer's officials, employees or other agents about the disclosure of those facts.**

Id. (emphasis added).

The message communicated by the statements of the SEC in the foregoing report is that members of the body approving disclosure documents cannot simply "rubber-stamp" the document. Rather, each member has the responsibility to demonstrate that he or she was actively involved in the process -- that is, each person must review the disclosure document, inquire as to the source of the information, ask questions of the City officials and other professionals who provided information (as well as ask if there are other sources of information that should be reviewed), and follow-up to ascertain whether the information makes sense in the circumstances. In short, the members of the City Council and the Board of Commissioners must demonstrate that they have satisfied themselves, after diligent inquiry that all material facts have been accurately disclosed, that the POS is not misleading.

Application of the Provisions of Federal Securities Laws to the POS

As discussed above, the primary consideration in regard to the POS is that it not contain a misstatement as to a material fact or omit to state any fact that is necessary so as to make the

statements contained therein not misleading. This standard does not mean that the members of the City Council and the Board of Commissioners cannot rely on the professionals and City officials who have supplied information to be included in the POS. What it does mean, however, is that the members of the City Council and the Board of Commissioners act with reasonable care. This includes, at a minimum: (1) reviewing the entire POS; (2) asking for clarification as to material parts of the POS that a member may need additional guidance; (3) seeking information and asking questions of the officials, employees, and professionals who supplied information to be included in the POS; and (4) asking follow up questions to determine the reasonableness of any assumptions or estimates that were used in the POS. Although significant efforts have been expended to make the information in the POS accurate and understandable, the members of the City Council and the Board of Commissioners should not be hesitant to inquire as to any area that might not be entirely clear.

Also, in light of prior challenges to the Ballpark Project, it is prudent that the City Council make certain that there are no additional disclosure issues that need to be addressed. In particular, the City Council should document whether there is any potential conflict of interest -- whether through a business or financial relationship or transaction -- that might need to be disclosed. In this regard, we recommend that the City Council document that each member has not received anything of value from the Padres, any affiliate of the Padres, or any other person or entity that has a material interest in either the Ballpark Project or the proposed offering of the 2001 Bonds. (Such persons include: Padres, L.P.; Padres Construction, L.P.; Mr. John Moores; JMI Realty, Inc.; JMIR - Downtown Acquisition, LLC; San Diego Ballpark Builders; Clark Construction Group, Inc.; Nielsen Dillingham Builders; Douglas E. Barnhart, Inc.; Hines Interests Limited Partnership; Major League Baseball; Ambac Assurance Corporation; Wells Fargo Corporate Trust; HOK Sports; Merrill Lynch & Co., Inc.; Morgan Stanley & Co., Inc.; I.C. Rideau Lyons & Co.; Redwood Securities Group.)

From the perspective of the securities laws, no precise criteria can be established as to the level or range of financial and business relationships, arrangements and practices that might be problematic. The better practice is to ensure that there is no potential conflict in the first instance by requesting and obtaining written confirmation from each member that he or she did not have any business or financial dealings with any person who might be interested in the Ballpark Project or the 2001 Bond offering.

Finally, the City Council should, as part of its review, address the allegations made in the September Letter. In particular, in the September Letter, the lawyer asserts that changes in the financing and revenue assumptions relating to the Ballpark Project and the ancillary development; the increase in the financial participation by the Redevelopment Agency, the reliance by the City on other revenue sources for the Ballpark Project, any amendments to the MOU, and the change in the scope of the ancillary development mandate that the project again be submitted to the voters of the City for approval. Further, and notwithstanding that the POS had

not been completed or released prior to the date of his letter, the lawyer stated that matters might be "omitted or misstated in the [POS]."

In regard to the allegations made by in the September Letter, portions of the POS relating to the Plan of Financing, the Redevelopment Project, the Risk Factors and Litigation should receive additional attention on review by the City Council and the Board of Commissioners. In particular, the lawyer asserts that the transient occupancy tax and tax increment to be generated from the hotels, office space and other development around the Ballpark Project will not be sufficient to pay for the City's contribution to the Ballpark Project. While the assertion rests upon the assumption that specific revenues were pledged for the project, the allegations highlight the importance of reviewing the financial projections and assumptions underlying the City's commitment and resources available to repay the bonds. In that regard, the members of the City Council and the Board of Commissioners should make use of the resources available through City officials in determining whether any of the assertions warrant further attention.

Although there can be no prediction of what future actions might be brought relating to the Ballpark Project or the offering of the 2001 Bonds, a thorough and careful review of the POS by the members of the City Council and the Board of Commissioners will provide a solid foundation to support any response to -- and hopefully summarily conclude -- potential, future challenges.

Very truly yours,

Gerald E. Boltz

Matthew D. Anhut

Exhibit 38

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 7260 / January 24, 1996

SECURITIES EXCHANGE ACT OF 1934
Release No. 36760 / January 24, 1996

ADMINISTRATIVE PROCEEDING
File No. 3-8937

In the Matter of COUNTY OF ORANGE, CALIFORNIA; ORANGE COUNTY FLOOD CONTROL DISTRICT; and COUNTY OF ORANGE, CALIFORNIA BOARD OF SUPERVISORS, Respondents.	ORDER INSTITUTING A PUBLIC ADMINISTRATIVE CEASE-AND-DESIST PROCEEDING PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that a public administrative cease-and-desist proceeding be and hereby is instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against the County of Orange, California ("Orange County" or the "County"), the Orange County Flood Control District (the "Flood Control District") and the County of Orange, California Board of Supervisors (the "Board").

II.

In anticipation of the institution of this proceeding, Orange County, the Flood Control District and the Board have submitted an Offer of Settlement, which the Commission has determined to accept. Solely for the purpose of this proceeding and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings contained herein, except that Orange County, the Flood Control District and the Board each

admits the jurisdiction of the Commission over them and over the subject matter of this proceeding, Orange County, the Flood Control District and the Board, by their Offer of Settlement, consent to the entry of this Order Instituting A Public Administrative Cease-And-Desist Proceeding Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Cease-and-Desist Order ("Order") and to the entry of the findings and the cease and desist order set forth below.

Accordingly, IT IS HEREBY ORDERED that a proceeding pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act be, and hereby is, instituted.

III.

On the basis of this Order and the Offer of Settlement submitted by Orange County, the Flood Control District and the Board, the Commission finds that:-[1]-

A. SUMMARY

This Order concerns false and misleading statements in the offer and sale of over $2.1 billion in municipal securities issued in 1993 and 1994 by Orange County, the Flood Control District and a school district located in Orange County (the "School District").-[2]- In connection with these

---------FOOTNOTES----------

-[1]- The findings herein are made pursuant to the Offer of Settlement of Orange County, the Flood Control District and the Board and are not binding on any other person or entity named as a respondent in this or any other proceeding.

-[2]- As more fully discussed below, the offerings may be categorized into four types: the reinvestment offerings; the tax and revenue anticipation note ("TRAN") offerings; the Teeter note offerings; and the Pension Bond offering. The reinvestment offerings were: the $400,000,000 COUNTY OF ORANGE, CALIFORNIA 1993-94 TAXABLE NOTES issued by Orange County on July 1, 1993; the $600,000,000 COUNTY OF ORANGE, CALIFORNIA 1994-95 TAXABLE NOTES issued by Orange County on July 8, 1994; the [SCHOOL DISTRICT] $50,000,000 TAXABLE NOTES issued by the School District on August 26, 1993; the [SCHOOL DISTRICT] $50,000,000 TAXABLE NOTES issued by the School District on August 1, 1994; and the $100,000,000 TAXABLE NOTES issued by the Flood Control District on August 2, 1994. The TRAN

(continued...)

==========START OF PAGE 2======

offerings, the County, the Flood Control District and the Board variously made material misstatements in the disclosure documents for the offerings (the "Official Statements") or authorized the use of Official Statements that were either false or misleading by omitting to state material facts regarding: 1) the Orange County Investment Pools (the "County Pools"), including the County Pools' investment strategy and investment results, manipulation of the County Pools' yield, and investment in the County Pools of the funds pledged to repay the securities, which matters affected the issuer's ability to repay the municipal securities and the County Pools' ability to perform under agreements to repurchase or provide for repayment of the municipal securities (the "Purchase Agreements"); 2) Orange County's financial condition, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities; 3) the tax-exempt status of the offering; 4) an undisclosed cap on the interest rate payable to investors on certain variable rate municipal securities sold in the offerings; and 5) the unauthorized use of an audit report. In addition, in connection with the offer and sale of certain of the municipal securities, misrepresentations were made to certain national securities rating agencies (the "Rating Agencies") concerning the County Pools. These material misstatements were made in violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. THE RESPONDENTS

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-[2]-(...continued)

offerings were: the $299,660,000 COUNTY OF ORANGE, CALIFORNIA 1994-95 POOLED TAX AND REVENUE ANTICIPATION NOTES, issued by Orange County on July 1, 1994; the $169,000,000 COUNTY OF ORANGE, CALIFORNIA 1994-95 TAX AND REVENUE ANTICIPATION NOTES, SERIES A issued by Orange County on July 5, 1994; and the $31,000,000 COUNTY OF ORANGE, CALIFORNIA 1994-95 TAX AND REVENUE ANTICIPATION NOTES, SERIES B issued by Orange County on August 11, 1994. The Teeter offerings were: the $111,000,000 COUNTY OF ORANGE, CALIFORNIA 1994-95 (TEETER PLAN) TAXABLE NOTES issued by Orange County on July 20, 1994; and the $64,000,000 COUNTY OF ORANGE, CALIFORNIA 1994-95 (TEETER PLAN) TAX-EXEMPT NOTES issued by Orange County on August 18, 1994. The Pension Bonds were issued by Orange County on September 28, 1994 in two series: the $209,840,000 COUNTY OF ORANGE, CALIFORNIA TAXABLE PENSION OBLIGATION BONDS SERIES 1994A; and the $110,200,000 COUNTY OF ORANGE, CALIFORNIA TAXABLE PENSION OBLIGATION BONDS SERIES 1994B.

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County of Orange, California ("Orange County" or the "County") is a legal subdivision and political subdivision of the State of California and a body corporate and politic having the powers specified in Title 3 of the California Government Code and such others necessarily implied from the express powers.-[3]- On December 6, 1994, the County filed for protection under Chapter 9 of the United States Bankruptcy Code after incurring investment losses in the County Pools. Orange County conducted eight of the eleven offerings of municipal securities that are the subject of this Order.

Orange County Flood Control District (the "Flood Control District") is a body corporate and politic having the powers enumerated in its enabling legislation.-[4]- The Orange County Board of Supervisors is designated and empowered to act as ex officio board of supervisors of the Flood Control District.-[5]- The Flood Control District's principal functions are to provide for the control and preservation of flood and storm waters within Orange County. The Flood Control District conducted one of the municipal securities offerings that are the subject of this Order.

Orange County Board of Supervisors (the "Board") is the body through which the County exercises its powers.-[6]- The Board consists of five full-time members, each serving a term of four years.-[7]- The Board has legislative, financial and police powers. The Board exercises its financial powers through its supervision of and control over the financial affairs of the County. The financial powers of the Board include: examination and audit, or causing the audit, of the financial accounts and records of all officers having responsibility for County moneys;

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-[3]- See Cal. Const. Art. XI, □ 1 (West Supp. 1995); Cal. Gov't Code □ 23003 (West 1988).

-[4]- See Cal. Water Code App. □ 36-1 et seq. (West 1968 & West Supp. 1995).

-[5]- Cal. Water Code App. □ 36-3 (West Supp. 1995).

-[6]- See Cal. Gov't Code □ 23005; see also Board of Supervisors of Modoc County v. Archer, 18 Cal. App. 3d 717, 721, 96 Cal. Rptr. 379, 382 (1971).

-[7]- Simultaneous with the entry of this Order, the Commission, pursuant to Section 21(a) of the Exchange Act, issued a Report of Investigation in the Matter of County of Orange, California as It Relates to the Conduct of the Members of the Board of Supervisors, in connection with the matters discussed herein.

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supervision of the official conduct of all County officers, including the Treasurer; investment of County surplus funds; approval of proposed County budgets and adoption of final County budgets; and contracting for County indebtedness, including issuing municipal securities.-[8]-

C. RELATED INSTRUMENTALITIES AND PERSONS

The Orange County Investment Pools (the "County Pools") were instrumentalities of the County and were not established as legal entities distinct from the County. The County Pools operated as an investment fund managed by Orange County through which the Treasurer invested the County funds and public funds deposited in the County's control by various local governments or districts (the "Pool Participants" or the "Participants"). As of December 1994, the County Pools held approximately $7.6 billion in Participant deposits, including County funds. The County Pools consisted of the Commingled Pool (the principal investment pool with $6.126 billion in Participant deposits), the Bond Pool (the pool primarily for proceeds from tax-exempt offerings with $1.261 billion in Participant deposits) and Specific Investments (investments separately managed for certain Participants, including Orange County, with $210 million in Participant deposits).

As of December 1994, there were approximately 183 Pool Participants. Orange County invested essentially all of its liquid assets in the County Pools, almost $2.3 billion. In addition, approximately 80 other Participants were required by California law to deposit their funds with the Treasurer (the "Mandatory Participants"). As of December 1994, these Mandatory Participants had deposited about $1.6 billion into the County Pools. The remaining approximately 102 Participants voluntarily deposited their funds with the Treasurer for investment in the County Pools (the "Voluntary Participants"). As of December 1994, these Voluntary Participants had deposited approximately $3.7 billion into the County Pools. In total, the County, the

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-[8]- See Cal. Gov't Code □ 25250 (West 1988) (examination and audit of County financial records); Cal. Gov't Code □ 25303 (West 1988) (supervision of County officials, particularly functions relating to public funds); Cal. Gov't Code □ 53601 (West Supp. 1995) (investment of surplus funds); Cal. Gov't Code □□ 29064 & 29088 (West Supp. 1995) (approval of proposed budget and adoption of final budget); Cal. Gov't Code □ 25256 (West 1988) (limitation on amount of debt Board may approve); Cal. Gov't Code □ 53853 (West Supp. 1995) (authorization of short-term note offerings).

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Mandatory Participants and the Voluntary Participants had invested or deposited $7.6 billion into the County Pools.

The Orange County Treasurer-Tax Collector (the "Treasurer") is an elected official who manages the treasury and tax collection functions of Orange County under the authority of the Board. The Treasurer is aided in his treasury responsibilities by an assistant treasurer (the "Assistant Treasurer"), a non-elected County official. The Treasurer and Assistant Treasurer also serve as the Treasurer and Assistant Treasurer of the Flood Control District.-[9]- The Treasurer and the Assistant Treasurer managed the County Pools' funds and securities, directed the County Pools' investments and communicated with Pool Participants and prospective investors in the County Pools.-[10]-

D. FACTS

1. Orange County's Financial Condition

Orange County's financial condition was closely tied to the financial condition of the County Pools. The County was heavily dependent on the County Pools as a source of income to balance its current operating budget.-[11]- The County's use of interest income as a revenue source to balance its discretionary budget had been increasing since at least fiscal year 1991-92,

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-[9]- See Cal. Water Code App. □ 36-3 (West Supp. 1995).

-[10]- Simultaneous with the entry of this Order, the Commission filed a complaint, Securities and Exchange Commission v. Robert L. Citron and Matthew R. Raabe, Civil Action No. (C.D. Cal.), in connection with the matters discussed herein.

-[11]- For fiscal year 1994-95, Orange County's total budget was approximately $3.7 billion. Of that amount, the County was required to spend about 88%, or $3.266 billion, for specific purposes. The remaining 12%, or $462.5 million, comprised Orange County's discretionary budget, over which the Board had authority to determine how funds would be allocated. Orange County's discretionary budget for fiscal year 1994-95 was $462.5 million.

The largest portion of that amount, $162 million, or 35%, was budgeted to come from investment income on Orange County's investment in the County Pools.

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and increased dramatically for fiscal year 1994-95.-[12]- This increased use of interest income was due to a decline in revenue from other sources, particularly property taxes.-[13]- The Board approved the County's budget and was aware of the County's increasing use of interest income from the County Pools to balance the discretionary budget.

The County had two sources of funds to invest in the County Pools and earn investment interest. First, from January 1993 to December 1994, Orange County had invested essentially all of its liquid assets in the County Pools, almost $2.3 billion, including funds pledged to repay municipal securities. Second, in 1993 and 1994, Orange County issued $1 billion in municipal securities, through two offerings, for the sole purpose of reinvesting the proceeds in the County Pools, $400 million of which was repaid in 1994.

Due to the County Pools' risky investment strategy, the County Pools ultimately lost approximately $1.7 billion of the Participants' deposits of $7.6 billion, a loss of about 22.3%, when the County Pools' securities portfolio was liquidated. Orange County itself lost approximately $600 million of its $2.3 billion investment in the County Pools. The County also suffered a loss of $157 million in estimated and budgeted interest earnings from the County Pools, contributing to a projected budget deficit for fiscal year 1994-95 of approximately $172 million. As a result of these losses, on December 6, 1994, Orange County filed a bankruptcy petition under Chapter 9 of the United States Bankruptcy Code. As a result of Orange County's economic dependence on the County Pools and their subsequent collapse, the County has not repaid or repurchased approximately $910 million in municipal securities at the time they were to mature by their original terms or were tendered for repurchase.-[14]-

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-[12]- For fiscal year 1991-92, interest earnings were $36.8 million, or 7.4% of the discretionary budget; for fiscal year 1992-93, $64.5 million, or 12.4% of the discretionary budget; and for fiscal year 1993-94, they were budgeted at $58.3 million, or 15.1% of the discretionary budget.

-[13]- Property tax revenues comprised 52.8% of the total discretionary budget for fiscal year 1991-92, 49.1% for fiscal year 1992-93, 33.4% for fiscal year 1993-94, and were projected to be only 25.4% for fiscal year 1994-95.

-[14]- These municipal securities have been rated in default by one of the Rating Agencies. In Orange

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2. The Orange County Investment Pools

The eleven municipal securities offerings that raised over $2.1 billion and that are the subject of this Order were significantly dependent on the investment performance of the County Pools in one or more of the following ways such that fair and accurate disclosure about the operation of the County Pools was material to investors in the municipal securities: 1) the proceeds from certain offerings, totalling $1.2 billion, were reinvested in the County Pools to obtain interest earnings; 2) the funds pledged to repay certain of the securities were invested in the County Pools; 3) the County Pools agreed to repurchase or repay certain of the securities; and/or 4) the County's economic reliance on the County Pools materially affected its ability to repay its securities. The false and misleading statements in the offer and sale of the municipal securities also related principally to the County Pools. Accordingly, in order to set forth these false and misleading statements, it is necessary to first discuss the County Pools and the reasons for their collapse.

a. The County Pools' Investment Strategy

The County Pools' investment policy as stated by the Treasurer's office to Pool Participants was, in order of importance: 1) preservation of investment capital; 2) liquidity; and 3) investment yield. The Treasurer, however, caused the County Pools to engage in a very risky investment strategy. The strategy involved using a high degree of leverage by obtaining funds through reverse repurchase agreements on a short-term basis (less than 180 days), and investing in securities with a longer maturity (generally two to five years), many of which were volatile derivative securities.-[15]-

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-[14]-(...continued)
County's bankruptcy proceeding, the County, the noteholders and the creditors' committee agreed to extend, or rollover, the maturity of approximately $800 million of these municipal securities to June 30, 1996.

-[15]- The term leverage is used where the value of the position is greater than the equity in the position. In other words, a person would be deemed to hold a leveraged position if he or she can maintain a larger position than the equity in the position. The term repurchase agreement refers to an agreement by the seller (i.e., the dealer) to repurchase securities (usually government securities), and an agreement by the
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The County Pools' investment return was to result principally from the interest received on the securities in the County Pools. Leverage enabled the County Pools to purchase more securities for the purpose of generating increased interest income. This strategy was profitable as long as the County Pools were able to maintain a positive spread between the long-term interest rate received on the securities and the short-term interest rate paid on the funds obtained through reverse repurchase agreements.

b. The County Pools' Holdings

During 1993 and 1994, the Treasurer on behalf of Orange County, using reverse repurchase agreements, leveraged the Participants' deposits to amounts ranging from 158% to over 292%.

The Treasurer then invested the Participants' deposits and the funds obtained through reverse repurchase agreements in debt securities issued by the United States Treasury or government sponsored enterprises; however, many of these securities were risky derivative securities, comprising from 27.6% to 42.2% of the combined County Pools' portfolio and from 31% to 53% of the Commingled Pool's portfolio.

The County Pools were heavily invested in derivative instruments known as inverse floaters that pay interest rates inversely related to the prevailing market interest rate. Inverse floaters are negatively affected by a rise in interest rates. From January 1993 through November 1994, from 24.89% to 39.84% of the County Pools' total portfolio consisted of inverse floaters. In contrast, the County Pools invested only sparingly in securities that paid interest rates directly related to the prevailing interest rate (variable rate securities) or securities that paid interest rates that rose at certain stated intervals to certain stated rates (step-up securities). From January 1993

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-[15]-(...continued)

purchaser (i.e., the investor) to resell the same securities, for a certain price at a certain time in the future. In a reverse repurchase agreement, the dealer agrees to buy the securities and the investor agrees to repurchase them at a later date. Reverse repurchase agreements were a method by which the County obtained funds from broker-dealers and effectively pledged the County Pools' securities as collateral. Derivative instruments encompass a wide array of financial contracts, including swaps, futures, options and forwards, that derive their value from the performance of other assets, such as equities, debt, foreign currency and commodities.

through November 1994, only 1.84% to 5.59% of the County Pools' portfolio consisted of such securities. Accordingly, the County Pools invested in inverse floaters to speculate on the direction of short and long-term interest rates.

c. The County Pools' Sensitivity To Interest Rate Changes

The composition of the County Pools' portfolio made it highly sensitive to interest rate changes. As interest rates rose, the market value of the County Pools' securities (debt instruments) fell, and the interest received on the County Pools' inverse floaters also dropped. In October 1992 and January 1993, the Treasurer was advised that the County Pools' modified duration was seven years.-[16]- In other words, for each 1% increase (or decrease) in the prevailing interest rate, the County Pools' equity (i.e., the value of the County Pools' securities less the amount obtained through reverse repurchase agreements) would decrease (or increase) by approximately 7%. The Treasurer was also advised that the modified duration indicated substantially more price volatility than would be expected from a portfolio with the County Pools' short average maturity. The Treasurer was further advised that the County Pools' lengthy modified duration was the result of the County Pools' investment in inverse floaters and the use of reverse repurchase agreements to leverage the portfolio.

In February 1994, the Treasurer was advised that: over $5 billion of the County Pools' derivative securities (which comprised roughly 75% of the County Pools' total derivative holdings and about 25% of the entire portfolio) had an average duration of approximately five years; and for each basis point (.01%) rise in comparable duration Treasury securities, the mark-to-market value of these securities would fall by $2.7 million.

d. The Effect Of The Rise In Interest Rates In 1994 On The County Pools

The County Pools' investment strategy was profitable so long as interest rates, including rates on reverse repurchase

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-[16]- A measure of the County Pools' sensitivity to interest rate changes, and therefore risk, is the portfolio's "modified duration." Modified duration measures the sensitivity of the portfolio's market value to changes in prevailing interest rates (duration does not refer to maturity of the portfolio). The longer the modified duration of a portfolio, the more sensitive its market value is to interest rate change.

agreements, remained low and the market value of the County Pools' securities remained stable. The Treasurer's Annual 1992-93 Financial Statement for the County Pools stated that the investment strategy was "predicated on interest rates to continue to remain low for a minimum of the next three years."

During 1993, interest rates remained low and relatively stable. Due to the low interest rates and the County Pools' investment strategy, the County Pools earned a relatively high yield of about 8% during 1993. Beginning in February 1994, interest rates began to rise. This rise in interest rates caused the County Pools' yield to decrease, the reverse repurchase costs to increase, the County Pools' interest income on inverse floaters to decrease and the market value of the County Pools' debt securities to decline.-[17]- The rising interest rates and the declining market value of the County Pools' securities also caused the County to be subject to collateral calls and reductions in amounts obtained under reverse repurchase agreements of over $1.36 billion. In sum, because of the leverage employed in managing the County Pools and the losses which would be incurred by selling the securities subject to reverse repurchase agreements, the County Pools were facing a growing liquidity crisis.

e. Manipulation Of The County Pools' Yield

The Treasurer and the Assistant Treasurer manipulated the County Pools' yield by: 1) diverting interest income from Commingled Pool Participants to an account for the benefit of Orange County; and 2) causing the Commingled Pool to acquire and transfer securities at off-market prices to the detriment of Commingled Pool Participants.

Between April 1993 and June 1994, the Treasurer and the Assistant Treasurer misappropriated a total of $92.9 million from the Commingled Pool Participants, diverting these funds to an Orange County account designated the "Economic Uncertainty Fund."

Between April 1993 and June 1994, they reported monthly, and distributed quarterly, to the Commingled Pool Participants the Commingled Pool's yield less the amount misappropriated. Then

---------FOOTNOTES----------

-[17]- By at least February 1992, the Treasurer generated month-end reports that marked-to-market a substantial portion of the County Pools' portfolio (from 26% to over 43%). These reports reflected that the securities marked-to-market declined in value, ranging from over $26 million in January 1994 (or .45% loss in value), to over $443 million in June 1994 (or 5.24% loss in value), to over $565 million (or 6.27% loss in value) in September 1994.

from July 1994 through November 1994, as the Commingled Pool's yield decreased, they overstated the Commingled Pool's yield to the Commingled Pool Participants by a total of $17.6 million.

From approximately April 1993 through November 1994, the Treasurer and the Assistant Treasurer caused the Commingled Pool to transfer securities at prices below market to, and to acquire securities at above market prices from, six Specific Investment Participants (including Orange County). These transactions resulted in a market value loss to the Commingled Pool that otherwise would have been borne by the Specific Investment Participants.

3. The Municipal Securities Offerings

The Board, the Treasurer and the Assistant Treasurer were the County officials primarily responsible for the issuance of the County's municipal securities. The Treasurer and the Assistant Treasurer were responsible for proposing to the Board and preparing the documents for the County's and the Flood Control District's short-term (less than thirteen months) debt offerings that are the subject of this Order. For such short-term debt offerings, they proposed the issuance of the securities, participated in the drafting and review of, and signed, the Official Statements and related documents and participated in the selection of the underwriters, bond counsel and financial advisers. They also participated in determining the County's cash flow deficit and the size of its cash flow borrowings. For the long-term debt offering that is the subject of this Order, the Treasurer and the Assistant Treasurer participated in the drafting and review of the portion of the Official Statement relating to the County Pools and in the preparation of various related documents.

The Assistant Treasurer, acting in his capacity as a County employee, was also principally responsible for the two offerings by the School District. He proposed that the School District issue the municipal securities and assisted in the drafting and review of the Official Statements and the selection of the underwriters, bond counsel and financial advisers. The Assistant Treasurer also met with the Rating Agencies to discuss the offerings that are the subject of this Order.

The Board had final authority to authorize and approve each of the municipal securities offerings by Orange County and the Flood Control District. The Board approved each of the County and the Flood Control District offerings discussed below, which raised over $2 billion. The Board's resolutions authorizing the issuance of the County's municipal securities specifically recited the approval of drafts of the Official Statements and authorized their completion and correction by a County official.

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a. The Reinvestment Offerings

In 1993 and 1994, Orange County, the Flood Control District and the School District conducted a total of five municipal securities offerings raising $1.2 billion for the purpose of earning interest income by investing the offering proceeds in the County Pools at an expected higher rate of return (the "Reinvestment Offerings"). In these transactions, the municipal securities issuers expected to generate profits by investing at a rate of return that was higher than the rate of interest paid to the noteholders. Unlike most municipal securities offerings, these Reinvestment Offerings did not provide investors with interest income exempt from federal income taxation because the reinvestment practices used in these offerings did not conform to federal income tax law for tax-exempt securities.

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(1) The 1993 Reinvestment Offerings

Orange County's first Reinvestment Offering was for $400 million in taxable notes (the "$400 Million Reinvestment Notes").

The notes had an interest rate of 3.95% per annum, matured, and were repaid, on July 1, 1994. On August 26, 1993, the School District issued $50 million in taxable notes (the "1993 $50 Million Reinvestment Notes"). The notes had an interest rate of 3.72% per annum, matured, and were repaid, on August 26, 1994.

The Official Statements for these 1993 Reinvestment Offerings represented that: the issuer would deposit the offering proceeds into an account pledged to repay the notes; the issuer intended to invest the funds in the repayment account; if the issuer suffered an investment loss, the pledged funds could be insufficient to repay the notes; and the issuer would satisfy any deficiency in the pledged funds from any other moneys lawfully available for repayment.

As discussed below, the Official Statements for the $400 Million Reinvestment Notes and the 1993 $50 Million Reinvestment Notes contained material misstatements and omissions regarding: 1) the County Pools, including the County Pools' investment strategy and investment in the County Pools of the funds pledged to repay the securities, which matters affected the issuer's ability to repay the municipal securities; and 2) the unauthorized use of an audit report (with respect to the $400 Million Reinvestment Notes only).

(2) The 1994 Reinvestment Offerings

In 1994, there were three Reinvestment Offerings. First, Orange County issued on July 8, 1994, $600 million in taxable notes (the "$600 Million Reinvestment Notes"). These notes had a variable interest rate equal to the one-month London Interbank Offered Rate ("LIBOR"); however, under the terms of the notes, the interest rate was not to exceed 12% per annum. The notes were originally due on July 10, 1995; the maturity of these notes has been extended to June 30, 1996. The School District issued $50 million in taxable notes (the "1994 $50 Million Reinvestment Notes") on August 1, 1994. The 1994 $50 Million Reinvestment Notes had a variable interest rate equal to the one-month LIBOR plus .03%; however, under the terms of the notes, the interest rate was not to exceed 12% per annum. The 1994 $50 Million Reinvestment Notes matured, and were repaid, on August 24, 1995. The Flood Control District, on August 2, 1994, issued $100 million in taxable notes (the "$100 Million Reinvestment Notes").

The notes had a variable interest rate equal to the one-month LIBOR plus .03%; however, under the terms of the notes, the interest rate was not to exceed 12% per annum. The notes matured, and were repaid, on August 1, 1995.

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The proceeds from these Reinvestment Offerings were deposited into an account pledged to repay the notes. Each of the Official Statements for these Reinvestment Offerings disclosed that the issuer intended to invest the pledged funds in the County Pools and that, if an investment loss occurred, the issuer would satisfy the deficiency from any other moneys lawfully available for repayment. The lawfully available funds for the $600 Million Reinvestment Notes consisted essentially of funds in the discretionary budget.

The Official Statements for the $600 Million Reinvestment Notes and the $100 Million Reinvestment Notes contained material misstatements and omissions regarding: 1) the County Pools, including the County Pools' investment strategy and investment results, and manipulation of the County Pools' yield, which matters affected the issuer's ability to repay the municipal securities; 2) Orange County's financial condition, including its economic reliance on investment results of the County Pools as a source of funds to repay its obligations on the securities (with respect to the $600 Million Reinvestment Notes only); 3) an undisclosed cap on the interest rate payable to noteholders; and 4) the unauthorized use of an audit report. The Official Statement for the 1994 $50 Million Reinvestment Notes contained material misstatements and omissions regarding the County Pools, including the County Pools' investment strategy and investment results, and manipulation of the County Pools' yield, which matters affected the issuer's ability to repay the municipal securities.

b. The Tax And Revenue Anticipation Note Offerings

In 1994, Orange County conducted three separate tax and revenue anticipation note ("TRAN") offerings raising a total of almost $500 million. TRANs are designed to help local governments cover periodic cash flow deficits that arise because they receive revenues infrequently during the year while their working capital expenses are ongoing. Such notes are later repaid with the expected tax and other revenue received. As the deficits occur only periodically, TRANs proceeds are typically not spent immediately and are invested to earn investment income until needed to fund cash flow deficits. Because of the exclusion from federal income taxation of interest received, tax-exempt TRANs carry a lower interest rate than taxable securities of the same maturity and credit quality, thereby increasing the potential return on reinvestment.

(1) The 1994 $299.66 Million Pooled TRANs

On July 1, 1994, Orange County issued $299.66 million pooled tax and revenue anticipation notes (the "$299.66 Million Pooled TRANs"). These TRANs were tax-exempt and had an interest rate of

4.5% per annum. The notes matured, and were repaid, on July 28,

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1995. As represented in the Official Statement, Orange County used the offering proceeds to purchase $299.66 million in notes issued by 27 Orange County school districts. The school districts then used these funds for their cash flow deficits. The Official Statement represented that, to repay the notes, the County would deposit certain funds pledged by the school districts in a repayment account, which the County pledged to repay the notes. The Official Statement also represented that the pledged money would be invested and reinvested but did not disclose where or how the pledged money would be invested.

The County Pools provided for repayment of the $299.66 Million Pooled TRANs through a Purchase Agreement, entitled Standby Purchase Agreement. Pursuant to this agreement, the Treasurer, as fund manager of the County Pools, agreed to purchase the school district notes to the extent they were not repaid by the school districts, thus assuring sufficient funds to repay the TRANs. The Assistant Treasurer signed the Purchase Agreement on behalf of the County Pools.

The Official Statement for the $299.66 Million Pooled TRANs contained material misstatements and omissions regarding the County Pools, including the County Pools' investment strategy and investment results, manipulation of the County Pools' yield, and investment in the County Pools of the funds pledged to repay the securities, which matters affected the issuer's ability to repay the municipal securities and the County Pools' ability to perform under the Purchase Agreement.

(2) The 1994 $169 Million And $31 Million TRANs

Orange County issued two series of TRANs for its own cash flow purposes. The first, issued on July 5, 1994, was the $169 Million 1994-95 Tax and Revenue Anticipation Notes, Series A (the "$169 Million TRANs"). These notes were represented to be tax-exempt and had an interest rate of 4.5% per annum. The second series of TRANs, the $31 Million 1994-95 Tax and Revenue Anticipation Notes, Series B (the "$31 Million TRANs"), was issued on August 11, 1994. These notes were also represented to be tax-exempt and had a variable interest rate equal to 70% of the one-month LIBOR; however, the interest rate on the notes was not to exceed 12% per annum. The $169 Million TRANs matured on July 19, 1995, and the $31 Million TRANs matured on August 10, 1995; the maturity of these notes has been extended to June 30, 1996.-[18]-

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-[18]- The County has also failed to set aside specified pledged amounts to repay these TRANs at maturity,

as required under the terms of these TRANs.

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In the Official Statements for these offerings, the County represented that the money to be used to repay the notes would be deposited in the County Pools. The Official Statements further advised prospective investors that, if Orange County suffered an investment loss and the repayment funds were insufficient to repay the notes, the County would satisfy the deficiency from any other moneys lawfully available for repayment. The lawfully available funds for these offerings consisted essentially of funds in the discretionary budget.

The Official Statement for the $169 Million TRANs and the $31 Million TRANs contained material misstatements and omissions regarding: 1) the County Pools, including the County Pools' investment strategy and investment results, and manipulation of the County Pools' yield, which matters affected the issuer's ability to repay the municipal securities ; 2) Orange County's financial condition, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities; 3) the tax-exempt status of the offering; and 4) the unauthorized use of an audit report.

c. The Teeter Note Offerings

In 1994, Orange County conducted two Teeter Note offerings. The purpose of the Teeter offerings was to fund the Teeter Plan which is an alternate method of property tax distribution. Pursuant to this plan, the County pays local entities (such as school districts) their share of property taxes from the offering proceeds upon levy rather than actual collection and then retains all property taxes, and the penalties and interest thereon, upon collection.

In the first Teeter offering, the County issued $111 million of taxable notes (the "$111 Million Teeter Notes") on July 20, 1994. These notes had a variable interest rate that was reset monthly at the one-month LIBOR; however, under the terms of the notes, the interest rate was not to exceed 12% per annum. In the second Teeter offering, the County issued $64 million of tax-exempt notes (the "$64 Million Teeter Notes") on August 18, 1994.

The $64 Million Teeter Notes had a variable interest rate that was reset monthly at 70% of the one-month LIBOR; however, the interest rate was not to exceed 12% per annum. The $111 Million and the $64 Million Teeter Notes (the "Teeter Notes") matured, and were repaid, on June 30, 1995.

The Official Statements for the Teeter notes represented that the County planned to invest certain delinquent tax receipts pledged to repay the Teeter Notes in the County Pools. The County Pools also agreed to repurchase the Teeter Notes through Purchase Agreements, entitled Standby Note Purchase Agreements,

which agreements obligated the Treasurer, as fund manager of the County Pools, to purchase the Teeter notes to the extent that

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there were insufficient funds to repay them. The Official Statements further advised potential investors that if the repayment funds were insufficient, any deficiency would be satisfied from moneys received under the Purchase Agreements and other moneys lawfully available for repayment. The lawfully available funds for these offerings consisted essentially of funds in the discretionary budget.

The Official Statement for the $111 Million Teeter Notes and the $64 Million Teeter Notes contained material misstatements and omissions regarding: 1) the County Pools, including the County Pools' investment strategy and investment results, and manipulation of the County Pools' yield, which matters affected the issuer's ability to repay the municipal securities and the County Pools' ability to perform under Purchase Agreements; 2) Orange County's financial condition, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities; 3) an undisclosed cap on interest rate payable to noteholders (with respect to the $111 Million Teeter Notes only); and 4) the unauthorized use of an audit report.

d. The Pension Bond Offering

In September 1994, Orange County issued taxable Pension Obligation Bonds (the "Pension Bonds") for the purpose of financing the County's unfunded, but accrued, pension liability. The Pension Bonds were issued in two series. The fixed-rate Series A bonds in the amount of $209.84 million were dated as of September 1, 1994, and issued on September 28, 1994, and matured or mature in varying amounts in the years 1995 through 2004. The variable-rate Series B bonds in the amount of $110.2 million were dated and issued on September 28, 1994, and mature in 2008 (the "Series B Pension Bonds").

Under the terms of the Series B Pension Bonds, the investors had the right to tender their bonds to a remarketing agent for repurchase. If the remarketing agent could not remarket the tendered Series B Pension Bonds within seven days, the County Pools, pursuant to a Purchase Agreement, entitled Standby Withdrawal Agreement, agreed to purchase the tendered securities in an amount up to the County's unrestricted funds in the County Pools, which included funds in the County's discretionary budget.

According to the Official Statement, that amount was approximately $491.4 million as of June 30, 1994. After Orange County announced the County Pools' losses in early December 1994, the holders of the Series B Pension Bonds tendered the bonds to the County Pools for repurchase. Orange County and the County Pools declared bankruptcy and refused to purchase any of the

regarding the County Pools in four areas: 1) the investment strategy; 2) the investment results; 3) the manipulation of the

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County Pools' yield; and 4) investment of funds pledged to repay certain securities into the County Pools.

(1) The County Pools' Investment Strategy And The Risks Of That Strategy

The Official Statements for all eleven municipal securities offerings misrepresented and/or failed to disclose material information concerning the County Pools' investment strategy and the risks of that strategy, as more fully stated below. The County Pools' investment strategy, particularly the amount of leverage, and the risks of that strategy were material to these securities offerings. The County Pools' investment strategy and the risks of that strategy were directly related to the safety of an investment in the municipal securities, the safety of the funds pledged to repay the municipal securities and the County Pools' ability to fulfill its obligations to repurchase or repay municipal securities. The County Pools' investment strategy and the risks of that strategy also directly affected Orange County's ability to repay its securities from other available funds because of the County's economic dependence on the County Pools. Investors were not informed of these matters and were deprived of the ability to make an informed investment decision based upon all material facts.

(a) The $400 Million Reinvestment Notes, The 1993 $50 Million Reinvestment Notes And The $299.66 Million Pooled TRANs

The Official Statements for two offerings--the $400 Million Reinvestment Notes and the 1993 $50 Million Reinvestment Notes--completely omitted any discussion of the County Pools. The Official Statement for another offering--the $299.66 Million Pooled TRANs--only referenced the County Pools in setting forth the terms of the Purchase Agreement. This discussion failed to provide any disclosure on the County Pools' investment strategy and the risks of that strategy.

Specifically, the Official Statements for these three offerings failed adequately to disclose that the investment strategy: 1) was risky; 2) was predicated upon the assumption that prevailing interest rates would remain at relatively low levels; 3) involved a high degree of leverage through the use of reverse repurchase agreements; 4) involved a substantial investment in derivative securities, including inverse floaters; and 5) was very sensitive to changes in the prevailing interest rate because of the leverage.

The Official Statements for these three offerings also

failed to adequately disclose the disproportionate risks that the investment strategy posed to repayment of the municipal securities.

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(b) The 1994 Reinvestment Notes, The $169 Million TRANs, The $31 Million TRANs And The Teeter Notes

The Official Statements for seven of the offerings--the 1994 Reinvestment Notes, the $169 Million and $31 Million TRANs and the Teeter Notes--contained some disclosure regarding the County Pools, which disclosure was virtually identical to each other, with only the deviations noted below.

With respect to the County Pools' holdings, the Official Statements disclosed that the County Pools invested in "various fixed and floating rate securities."-[19]- It was not disclosed that the County Pools were heavily invested in derivative securities, which comprised from 27.6% to 42.2% of the combined County Pools' portfolio and from 31% to 53% of the Commingled Pool's portfolio. In particular, inverse floaters comprised from 24.89% to 39.84% of the County Pools' holdings. The Official Statements further did not disclose the risks these holdings posed to repayment of the municipal securities.

With respect to the County Pools' investment strategy, the Official Statements disclosed that the County Pools' investment policy allowed for the purchase of a variety of securities, "with limitations as to exposure, maturity, and credit rating for each security type. The mix of securities held will vary depending upon liquidity requirements, interest rate expectations and other factors."-[20]- This statement failed to disclose that the County Pools' investment strategy was risky, and was premised on the assumption that interest rates would remain relatively low. The Official Statement further did not disclose the risks this

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-[19]- The Official Statements for the $64 Million Teeter Notes and the 1994 $50 Million Reinvestment Notes further disclosed that "[a]s of June 30, 1994, approximately 20% of the [Pools] was invested in derivative products of which substantially all were floating rate and inverse floating rate government securities." As stated above, the Pools' derivative holdings were significantly greater than 20% and most of them were inverse floaters.

-[20]- The Official Statements for the $64 Million Teeter Notes and the 1994 $50 Million Reinvestment Notes stated that the County Pools' investment policy permitted a "variety of domestic securities and derivative products" with the same limitations as

set forth above that would vary in the same way, i.e., "depending upon liquidity requirements, interest rate expectations and other factors."

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investment strategy posed to repayment of the municipal securities.

Additionally, with respect to the use of the County Pools' securities as collateral for the reverse repurchase agreements, the Official Statements for these offerings represented that: "[f]rom time to time," the Treasurer pledged "a significant portion" of the County Pools' securities "with respect to reverse repurchase agreements."-[21]- No mention was made of the extremely high degree of leverage involved in the portfolio, at times as much as 292%, or the risk this posed to repayment of the municipal securities.

With respect to the County Pools' sensitivity to interest rate changes, the Official Statements represented that: "[t]he price and income volatility of the [Pools' floating rate securities was] greater than standard fixed income securities and may serve to increase the volatility of the [Pools'] return and market value in various interest rate environments."-[22]- This statement is misleading in that it does not disclose that the County Pools' investment strategy was predicated on interest rates remaining low, nor the extent to which the County Pools were sensitive to interest rate changes; specifically, that rising interest rates would have an extremely negative impact on the County Pools, and in turn, upon the ability to repay the municipal securities from the sources dependent on the County Pools.

The Official Statements also represented that the "market value and liquidity of the [County Pools] will depend upon, among other factors, the maturity of the various investments," and that the average maturity of the County Pools' securities, depending on the offering, was from 843 to 884 days. The Official Statements did acknowledge that the "average maturities do not

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-[21]- With respect to leverage, the Official Statement for the $169 Million TRANs instead stated: "[f]rom time to time, the [County Pools have] and may also enter into various reverse repurchase agreements which are essentially leverage investments."

-[22]- The Official Statement for the $100 Million Reinvestment Notes differed only in that it included a reference to reverse repurchase agreements, stating: "[t]he price and income volatility of floating rate securities and reverse repurchase agreements is greater than standard

fixed income securities and may increase the volatility of the Pools' return and market value in various interest rate environments. . . ."

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account for the impact of leverage and other factors related to various derivative securities in the portfolio."-[23]- However, this statement also is misleading in that it failed to disclose, as the Treasurer had been advised, that: the modified duration indicated substantially more price volatility than would be expected from a portfolio with the County Pools' short average maturity; and the duration, or sensitivity of the portfolio to interest rate changes, was such that a large portion of the County Pools' securities holdings had an average duration of approximately five years. Moreover, it did not disclose the associated risks this posed to the repayment of the municipal securities.

Moreover, the Official Statements for these offerings failed to disclose the risks of rising interest rates on the County Pools' investment strategy. Namely, the Official Statements failed to disclose that if interest rates rose, as they did in 1994, it would have a substantial negative impact on the County Pools and, because of its dependence on the County Pools, the County itself. First, the reverse repurchase costs would increase and the income that the County Pools earned from the inverse floaters in the portfolio would decrease, creating lower earnings for the County Pools. Second, the County Pools' securities would decline in market value. Third, as the value of the County Pools' securities fell, the County would suffer collateral calls from broker-dealers and reductions in loan amounts on the reverse repurchase agreements. All three events would reduce the income that Orange County would receive from the County Pools, with the possible loss of principal of invested funds as well.

(c) The Pension Bonds

The Official Statement for the Pension Bond transaction contained even less disclosure regarding the County Pools' investment strategy and the risks of that strategy. The Official Statement represented that: "[t]he [County Pools'] investment policy focuses on retaining the safety of investment principal

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-[23]- The Official Statements for the $64 Million Teeter Notes and the 1994 $50 Million Reinvestment Notes also stated that "[i]f these derivative products were taken into account, the effect would be to lengthen the average maturity of the [County Pools]." As set forth above, the County Pools' derivative holdings were significantly greater than 20% and most of them were inverse floaters. This simple statement that the derivative products

Series B Pension Bonds.

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The Official Statement for the Pension Bonds contained material misstatements and omissions regarding: 1) the County Pools, including the County Pools' investment strategy and investment results, and manipulation of the County Pools' yield, which matters affected the issuer's ability to repay the municipal securities and the County Pools' ability to perform under the Purchase Agreement; and 2) Orange County's financial condition, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities.

4. Misrepresentations And Omissions In The Offer And Sale Of Municipal Securities

The offerings discussed above variously contained material misstatements and omissions regarding: 1) the County Pools, including the County Pools' investment strategy and investment results, manipulation of the County Pools' yield, and investment of funds pledged to repay certain securities into the County Pools, which matters affected the issuer's ability to repay the municipal securities and the County Pools' ability to perform under the Purchase Agreements; 2) the financial condition of Orange County, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities; 3) the tax-exempt status of the offering; 4) an undisclosed cap on the interest rate payable to investors on certain variable rate municipal securities sold in the offerings; and 5) the unauthorized use of an audit report.

a. The Risks Relating To The County Pools

Each of the Official Statements for the eleven offerings misrepresented or was misleading in failing to disclose material information concerning the County Pools. The significance of the County Pools to these transactions was obvious. Where the funds pledged to repay the notes were invested in the County Pools, the issuer looked to that investment to satisfy its repayment obligations. Any risks that those pledged funds would decrease affected the issuer's ability to repay the notes. Similarly, in the offerings where the County Pools, pursuant to Purchase Agreements, provided for repurchase or repayment of the securities, disclosure regarding the County Pools was important so that investors could evaluate the County Pools' financial strength and ability to perform under the agreement. In addition, in certain County offerings in which other County funds were a source of repayment, disclosure regarding the County Pools was important to investors because availability of such other funds depended upon the County Pools' performance. The Official Statements variously contained false or misleading disclosure

> would lengthen maturity was inadequate to describe their actual or likely effect on the portfolio's interest rate sensitivity.

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while earning satisfactory yields." It went on to state that: "it is the [County Pools'] practice to select quality investments from reputable, stable and trustworthy dealers, and not to take any risks which . . . would be unreasonable." Additionally, the Official Statement disclosed that:

> The [County Pools'] funds are invested primarily in United States Government Securities, including, but not limited to, United States Treasury Notes, Treasury Bills, Treasury Bonds, and obligations of United States Government Agencies [and that w]hen circumstances warrant, the [County Pools'] investments may also include bankers acceptances, negotiable certificates of deposit of national or state-chartered banks and state or federal thrifts, commercial paper, repurchase agreements, reverse repurchase agreements, medium term corporate notes and collateralized time deposits.

The Official Statement further represented that "[t]o maintain the liquidity of its investments, the [County Pools] invest in securities that are actively traded in the securities markets."

These statements were false or misleading. The County Pools' investment strategy was not "focus[ed] on retaining the safety of investment principal" but was highly risky and premised upon the assumption that prevailing interest rates would remain at relatively low levels. The Official Statement omitted to disclose that the County Pools were highly leveraged through reverse repurchase agreements and that the County Pools were heavily invested in derivative securities, including inverse floaters. The Official Statement further omitted to disclose that the use of this strategy made the County Pools' extremely sensitive to changes in the interest rate.

(2) The County Pools' Investment Results

Moreover, as a result of the County Pools' investment strategy, the County Pools suffered investment losses in 1994, which investment results were also not disclosed to investors in the 1994 municipal securities offerings. As a result, investors were not provided information material to the assessment of the ability to repay the municipal securities from sources affected by the County Pools.

The Official Statements for the nine offerings conducted in 1994 failed to disclose material information concerning the County Pools' investment results. During 1994, the County Pools' investment income declined because reverse repurchase costs had increased while the income that the County Pools earned from

inverse floaters had decreased. Additionally, the County Pools had suffered substantial market losses in the overall value of the portfolio. Declining market value of securities in the

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County Pools subject to reverse repurchase agreements resulted in collateral calls and reduction in loan amounts against such securities on rollover of the agreements, as well as reduction of the liquidity of the County Pools.-[24]- None of these facts were disclosed in any of the Official Statements.

The Official Statements for these 1994 offerings included Orange County's financial statements for the fiscal year ended June 30, 1993, which were based on information that was at least twelve months old at the time of the offerings. The financial statements contained a footnote concerning the County Pools that presented information that the market value of the investments was above the purchase price, indicating that the County Pools had a market profit. By the end of June 1994, just prior to the 1994 offerings, the Treasurer's records indicated that the portion of the County Pools' securities that were marked-to-market had suffered market losses of over $443 million, or a 5.24% loss in value. In light of these market losses, the inclusion of the 1993 financial statements alone in the 1994 offerings without any update regarding investment results was materially misleading because the Official Statements failed to disclose information regarding the recent market losses, which related to the ability to repay the municipal securities.

Information concerning the decline in the County Pools' investment results was material to these securities offerings. The County Pools' declining investment results were directly related to the safety of an investment in the securities, the safety of the funds pledged to repay the securities and the ability of the County Pools to fulfill its obligations to repurchase or repay the securities. The County Pools' investment results also directly affected Orange County's ability to repay its securities from other available funds because of the County's economic dependence on the Pools.

(3) Manipulation Of The County Pools' Yield

The Official Statements for eight offerings--the 1994 Reinvestment Notes, the $169 Million and the $31 Million TRANs, the Teeter Notes and the Pension Bonds--misrepresented that the County Pools' yield would be distributed pro rata to the Participants. The Treasurer and the Assistant Treasurer had in fact diverted interest income from certain Commingled Pool Participants to an account for the benefit of Orange County. As a result, the Commingled Pools' yield was misrepresented in the Official Statements for these offerings. In late 1994, the

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-[24]- From January through June 1994, the County was

subject to approximately $873 million in collateral calls or reductions in loan amounts under reverse repurchase agreements.

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Treasurer and the Assistant Treasurer used a portion of the misappropriated funds to supplement the Commingled Pool's yield. The "supplemented" yield was then falsely reported in the Official Statement for the Pension Bonds.

The Treasurer and the Assistant Treasurer also shifted $131 million in market losses from some Specific Investment Participants, including the County, to the Commingled Pool, causing the Commingled Pool Participants to suffer losses that should have been borne by others. This information was not disclosed and also rendered false the representations regarding the pro rata distribution.

The Commingled Pool's accurate reporting of investment results and assumption of market losses were directly related to the safety of an investment in the securities, the safety of the funds pledged to repay the securities and the ability of the County Pools to fulfill their obligations to repurchase or repay the securities. Accordingly, the information concerning the Commingled Pool's true yield, the calculation and payment of the Commingled Pool's yield, the misappropriation of interest income from the Participants and the Commingled Pool's acquisition and transfer of securities at off-market prices was material.

(4) Investment In The County Pools

The Official Statements for three offerings--the $400 Million Reinvestment Notes, the 1993 $50 Million Reinvestment Notes and the $299.66 Million Pooled TRANs--stated that the funds pledged to repay the notes would be invested as permitted by the resolutions authorizing the issuance and sale of the notes and by California law. None of the Official Statements for these three offerings disclosed that the issuer intended to invest such funds in the County Pools. The Official Statement for the $299.66 Million Pooled TRANs only mentions that, under the Purchase Agreement, the County Pools would purchase the school district notes to the extent that any of the school districts failed to repay.

Information concerning the issuers' use and investment of such funds was directly related to their ability to later repay the securities, an issue of critical importance to investors. Moreover, as discussed herein, disclosure regarding investment in the County Pools was material in light of the County Pools' risky investment strategy and poor investment results in 1994.

b. The Financial Condition Of Orange County

The Official Statements for six offerings--the $600 Million

Reinvestment Notes, the $169 Million and $31 Million TRANs, the Teeter Notes and the Pension Bonds--failed to disclose Orange County's true financial condition, in particular, that the County

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was using interest income from the County Pools as the largest single source of revenue for its discretionary budget. Further, Orange County's use of this interest income as a revenue source was increasing while other traditional revenue sources, such as property taxes, were decreasing. The funds invested to generate investment income came from two sources, the County's own funds and proceeds from the Reinvestment Offerings. Orange County had invested essentially all of its liquid assets in the County Pools, including funds to repay its municipal securities. In addition, the investment of virtually all of the County's liquid assets in the County Pools exposed Orange County to the volatility of the County Pools, including the potential loss of not only interest income, but of principal as well. The failure to disclose this information rendered disclosure regarding the County's financial condition and its ability to repay its securities materially misleading.

The Official Statements disclosed the decline in certain traditional revenue and that, as a result of the decline, the County's fiscal year 1992-93 and 1993-94 budgets were becoming increasingly dependent on state funding for revenue to support County services. The Official Statements for the six 1994 offerings failed to disclose, however, that for the County's proposed 1994-95 discretionary budget, the County was using interest income as the largest single revenue source. The inclusion of the information concerning prior budgets was materially misleading in light of the proposed 1994-95 discretionary budget's use of interest income as the largest single revenue source.

Such information regarding Orange County's financial condition was important as it related to Orange County's ability to repay its obligations, including municipal securities debt. Moreover, with the exception of the Pension Bonds, these County offerings were short-term general obligations, which, under California law, the County could repay only with funds received or accrued during fiscal year 1994-95. Therefore, given the County's use of interest income from the County Pools, if the County Pools' investments performed poorly, as eventually occurred, the County would have a budget deficit and could not repay the securities and meet its other expenses. The County's financial condition was also material to the Purchase Agreement for the Series B Pension Bonds, under which the County Pools, to the extent of the County's unrestricted funds in the County Pools, agreed to repurchase any tendered securities. If the County Pools' investments performed poorly, as eventually occurred, the County would not have sufficient unrestricted funds to purchase the Series B Pension Bonds when tendered under the terms of the Purchase Agreement.

c. The Tax-Exempt Status Of The Offerings

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The purpose of the tax-exempt $169 Million TRAN and the $31 Million TRAN offerings was purportedly to fund Orange County's projected cash flow deficit for fiscal year 1994-95. As such, these TRAN offerings were offered and sold as tax-exempt borrowings. Compliance with the Internal Revenue Code and Treasury Regulations is a prerequisite to exemption from federal income taxation of the interest received on the municipal securities by the investors. The Official Statements failed to disclose, however, that the County's activities in calculating the size of the offerings placed the tax-exempt status in jeopardy.-[25]-

The Internal Revenue Service has regulations that limit the size of a municipality's tax-exempt short-term working capital borrowings to, in effect, the amount that the municipality will actually use to fund cash flow deficits.-[26]- Therefore,

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-[25]- Orange County's bond counsel issued an opinion that these TRANs were tax-exempt. However, the County was aware of material facts concerning the relationship between the size of the offering and the County's cash flow deficit. As discussed below, the Official Statements were materially misleading in failing to disclose these facts and the significant associated risks that the tax-exempt status could be denied. Investors were, therefore, unable to make an informed investment decision regarding the tax-exempt status of the offerings.

-[26]- More specifically, Treasury Regulations include a proceeds-spent-last expenditure rule which implicitly provides the sizing rule for TRAN offerings. See Treasury Regulation □ 1.148-6(d)(3)(i). Sizing analysis of a tax-exempt borrowing is critical because oversizing a borrowing will preclude the conclusion that proceeds will be spent within the allowable temporary period, a necessary element of a tax-exempt borrowing. Under the rules regarding allocation of proceeds of an issue for determining when the proceeds are spent, proceeds of a TRAN borrowing are allocated to working capital expenditures as of any date only to the extent that those working capital expenditures exceed "available amounts." See id. Available amounts include amounts that may be used without legislative or judicial action and without a

legislative, judicial or contractual requirement that amounts be reimbursed. See Treasury Regulation □ 1.148-6(d)(3)(iii).

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the determination of available amounts is critical to the sizing of a TRANs borrowing and ultimately to the tax-exempt status of the borrowing.

Internal Revenue Code □ 103(a) provides the statutory authority for tax-exempt bonds. This section provides, in summary, that gross income does not include interest on any state or local bond (i.e., the bonds are tax-exempt), with certain exceptions, including the exception that the exclusion from gross income does not apply to any "arbitrage bond."-[27]- Municipal securities are arbitrage bonds under Internal Revenue Code □ 148 if an abusive arbitrage device is used in connection with the securities issue. Therefore, municipal securities are not tax-exempt if the issuer engages in an "abusive arbitrage device."-[28]- If the IRS determines that a portion of a purported tax-exempt offering is an abusive arbitrage device, then the IRS can declare the entire offering taxable. Moreover, should the IRS later declare the notes to be taxable, its remedy is to seek the unpaid taxes from the noteholders.-[29]-

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-[27]- See Internal Revenue Code □ 103(b)(2).

-[28]- Treasury Regulation □ 1.148-10(a)(1) defines an abusive arbitrage device as any "action [that] has the effect of: (i) enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage; and (ii) overburdening the tax-exempt bond market," which occurs if the action "results in issuing more bonds." Treasury Regulation □ 1.148-10(a) further states that the regulation concerning abusive arbitrage devices "is to be applied and interpreted broadly to carry out the purposes of section 148."

-[29]- Should the IRS determine that the tax-exempt securities are "arbitrage bonds" under Internal Revenue Code □ 148(a), the IRS would seek rebate of the excess interest earned from the issuer. See Internal Revenue Code □ 148(f). The IRS, however, does not have a right to tax or assess the issuer but can request that the amount be rebated. If the issuer fails to rebate the arbitrage, the remedy is to seek the amount from the noteholders as the interest earned on the notes is not excludable from the noteholders'

income. See Harbor Bancorp v. Commissioner of Internal Revenue, 1995 U.S. Tax Ct. LEXIS at *54-55 (Oct. 16, 1995).

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Information concerning the tax-exempt status of these TRANs offerings was very important to investors. Failure to disclose information regarding the tax analysis that provided the basis for the tax-exemption opinion deprived investors of information material to an assessment of the tax-exempt status of the TRANs.-[30]- Tax-exempt securities typically pay a lower interest rate than other debt securities, which interest rate differential investors accept because of the tax-exempt status. Thus, if the securities are not tax-exempt, the interest rate is not competitive and the securities are not as attractive to investors. Further, the investors may be liable for the unpaid taxes on the interest received.

(1) The $169 Million TRANs

On June 21, 1994, the County restricted $27.5 million so that these funds could not be used to pay future working capital expenditures. The County restricted the funds to increase the amount of its projected cash flow deficit. The County intended to use the $27.5 million for working capital expenditures in fiscal year 1994-95 and budgeted for that purpose in the final budget adopted by the Board on September 27, 1994 (and effective July 1, 1994).

The effect of this artificial increase in the cash flow deficit was to enable the County to increase the size of its TRAN offering from $142 million to $169 million. A County Auditor-Controller employee testified that County officials questioned the propriety of the restrictions to increase the cash flow deficit and the size of the TRAN offering but dropped their objections after bond counsel opined that the $169 Million TRANs would be tax-exempt.

None of the facts relating to the County's artificial increase of the size of its cash flow deficit were disclosed in the Official Statement for this offering. The Official Statement also failed to disclose the risks that the IRS might declare the entire $169 Million TRANs taxable and that the investors may be liable for the unpaid taxes.

(2) The $31 Million TRANs

On August 2, 1994, Orange County restricted another $64 million. The purpose of this restriction was to make the $64

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-[30]- See SEC v. Stifel, Nicolaus and Co., Lit. Rel. No. 14587 (Aug. 3, 1995); In the Matter of Derryl W. Peden, Securities Act Rel. No. 7069, Exchange Act

Rel. No. 35045, Admin. Proc. File No. 3-8400 (Dec. 2, 1994); SEC v. Matthews & Wright Group, Inc., Lit. Rel. No. 12072 (April 27, 1989).

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million unavailable to the County to pay future working capital expenditures and to thereby further increase the amount of its fiscal year 1994-95 cash flow deficit by $64 million. Accordingly, the County was able to issue the $31 million TRAN on August 11, 1994, to finance this cash flow deficit. As with the other TRANs borrowing, the Official Statement failed to disclose the facts surrounding the sizing of the offering and the risks this created to the tax-exempt status.

d. The Interest Rate Cap

The Official Statements for three offerings--the $600 Million Reinvestment Notes, the $111 Million Teeter Notes and the $100 Million Reinvestment Notes--each stated that they paid a variable interest rate equal to the one-month LIBOR. Undisclosed, however, was the fact that the notes for each of these offerings contained a 12% per annum cap on the maximum variable interest rate that the County would pay. While the existence of this cap was indicated on the face of the actual notes, no disclosure was made to noteholders in the Official Statements. The existence of an interest rate cap is material to investors.-[31]-

e. Unauthorized Use Of Audit Report

The Official Statements for seven offerings--the $400 Million, the $600 Million and the $100 Million Reinvestment Notes, the $169 Million and the $31 Million TRANs and the two Teeter Notes--falsely represented that the County's auditor had consented to the inclusion of its audit report of the County's financial statements in the Official Statements. This report and Orange County's audited financial statements were included as exhibits to the Official Statements for these offerings.

Under Generally Accepted Auditing Standards ("GAAS"), if the auditor had consented to the inclusion of its audit reports in the Official Statements, the auditor would have been required to "extend [its] procedures with respect to subsequent events from the date of [its] audit report[s] up to the effective date [of the sale of the securities]."-[32]- Pursuant to the GAAS

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-[31]- LIBOR never reached 12% per annum during the original term of the notes; therefore, the interest cap never limited the interest rate paid to investors. However, certain investors have investment policies against buying securities containing an interest rate cap.

-[32]- AICPA 1989 Audit and Accounting Guide, Audits of State and Local Governmental Units, Ch. 19, (continued...)

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subsequent events procedures, if the auditor had consented, the auditor should have, among other things, read the County's most recent interim financial statements, read minutes of Board meetings, made inquiries of County officials concerning the County's operations and finances, made inquiries of the County's legal counsel and made such other inquiries as it considered necessary and appropriate.-[33]-

The engagement contract between Orange County and the auditors provided that the auditors would perform a subsequent events review upon the request of the County Auditor-Controller as necessary to allow the use of the auditors' report in the Official Statements and that the auditors would perform two such reviews at no charge.

In fact, Orange County did not obtain the consent of the auditors to include their report in the Official Statements, and the auditors did not conduct any post-audit review. That the auditor had not consented to the inclusion of its audit report accompanying the County's financial statement in these Official Statements was important. Reasonable investors rely on audited financial statements in making investment decisions. Further, the representation that the auditor has consented to the inclusion of its audit report implies that the auditor has conducted some additional review prior to consenting to this use.

The investors' ability to rely on an audit opinion is affected by the fact that the auditor has not consented to the inclusion of its audit report in the Official Statement and has not conducted any post-audit review.

5. Misrepresentations To Rating Agencies

In presentations to the Rating Agencies relating to eight offerings--the $600 Million, the $100 Million and the 1994 $50 Million Reinvestment Notes, the $169 Million and the $31 Million TRANs, the two Teeter Notes and the Pension Bonds--the Assistant Treasurer misrepresented the County Pools' holdings. These misrepresentations ultimately ran to the purchasers of these securities. The Assistant Treasurer represented that only 20% of the County Pools' portfolio consisted of derivative securities. In fact, derivative securities comprised from 27.6% to 42.2% of the combined County Pools' portfolio and from 31% to 53% of the Commingled Pool's portfolio. In particular, inverse floaters

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-[32]-(...continued)
19.6; see also AICPA Codification of Statements on

Auditing Standards ("AU")
□ 711.

-[33]- See AU □ 560.12.

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comprised from 24.89% to 39.84% of the County Pools' holdings.-[34]-

The Assistant Treasurer also misrepresented to the Rating Agencies that money in the Economic Uncertainty Fund was available to pay the principal and interest on five offerings--the $600 Million Reinvestment Notes, the $169 Million and the $31 Million TRANs and the two Teeter Notes--and omitted to disclose that such funds had been misappropriated from the Commingled Pool Participants.

E. LEGAL DISCUSSION: ORANGE COUNTY, THE FLOOD CONTROL DISTRICT AND THE BOARD VIOLATED THE ANTIFRAUD PROVISIONS OF SECTION 17(a) OF THE SECURITIES ACT AND SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER IN THE OFFER AND SALE OF THE MUNICIPAL SECURITIES

Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person, in the offer or sale (Section 17(a)) or in connection with the purchase or sale of any security (Section 10(b) and Rule 10b-5), to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact, to omit to state a material fact, or to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person through the means or instruments of interstate commerce or the mails.

The notes and bonds issued by Orange County, the Flood Control District and the School District are clearly securities under Section 2(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. In addition, the County Pools' obligations under the agreements to repurchase the Teeter Notes and the Series B Pension Bonds were puts and, therefore, separate securities under Section 2(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.

Information is material if there is a substantial likelihood that a reasonable investor would consider it important to an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). Furthermore, when the information pertains to a possible future event, "materiality `will depend upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.'" Basic Inc., 485 U.S. at 238 (quoting

---------FOOTNOTES----------

-[34]- Obviously, the materiality of the percentage of securities in a portfolio that are derivatives will depend upon the type and use of the derivatives in that portfolio.

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SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (2d Cir. 1968) (en banc), cert. denied, 394 U.S. 976 (1969)).

Scienter is required to establish violations of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. See Aaron v. SEC, 446 U.S. 680, 701-02 (1980). Scienter is "a mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, recklessness satisfies the scienter requirement. Hollinger v. Titan Capital Corp., 914 F.2d 1564 (9th Cir. 1990) (en banc), cert. denied, 499 U.S. 976 (1991). Recklessness is "an extreme departure from the standards of ordinary care, and which presents a danger of misleading [investors] that is either known to the defendant or is so obvious that the actor must have been aware of it." Id., 914 F.2d at 1569.

1. The Misrepresentations And Omissions Of Material Facts

As described more fully above, in the offer and sale of the Reinvestment Note offerings, the TRAN offerings, the Teeter Note offerings and the Pension Bond offering, Orange County misrepresented and/or omitted to disclose material information regarding: 1) the Orange County Investment Pools (the "County Pools"), including the County Pools' investment strategy and investment results, manipulation of the County Pools' yield, and investment in the County Pools of the funds pledged to repay the securities, which matters affected the issuer's ability to repay the municipal securities and the County Pools' ability to perform under Purchase Agreements; 2) Orange County's financial condition, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities; 3) the tax-exempt status of the offering; 4) an undisclosed cap on the interest rate payable to investors on certain variable rate municipal securities sold in the offerings; and 5) the unauthorized use of an audit report. In addition, misrepresentations were made to the Rating Agencies concerning the County Pools.-[35]-

In the offer and sale of the $100 Million Reinvestment Notes, the Flood Control District misrepresented and/or omitted to disclose material information regarding: 1) the Orange County Investment Pools (the "County Pools"), including the County

---------FOOTNOTES----------

-[35]- The Assistant Treasurer's misrepresentations to the Rating Agencies are separate violations of the antifraud provisions of Section 17(a) of the

Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. See SEC v. Coffey, 493 F.2d 1304 (6th Cir. 1974), cert. denied, 420 U.S. 908 (1975).

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Pools' investment strategy and investment results, manipulation of the County Pools' yield, and investment in the County Pools of the funds pledged to repay the securities, which matters affected the issuer's ability to repay the municipal securities; 2) an undisclosed cap on the interest rate payable to investors on certain variable rate municipal securities sold in the offerings; and 3) the unauthorized use of an audit report.

The Board, in the offer and sale of the $169 Million TRANs, the $31 Million TRANs, the $600 Million Reinvestment Notes, the $111 Million Teeter Notes, the $64 Million Teeter Notes and the Pension Bonds, approved Official Statements that misrepresented and/or omitted to disclose material information regarding the financial condition of Orange County, including its economic reliance on the investment results of the County Pools as a source of funds to repay its obligations on the securities.

2. Orange County, The Flood Control District And The Board Acted With Scienter

Orange County, the Flood Control District and the Board acted with scienter in making the above misrepresentations and omissions of material fact in the securities offerings. For purposes of the County's and the Flood Control District's liability under the federal securities laws, the scienter of Orange County and Flood Control District officials may be imputed to Orange County and the Flood Control District. See SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

The Treasurer and the Assistant Treasurer acted with a high degree of scienter. They were involved in the day-to-day management of the County Pools and directed the County Pools' investments. Of all the participants involved, they had the most detailed knowledge of the County Pools' investment strategy and declining investment results during 1994. Further, they directed the misappropriation of interest income from the Commingled Pool Participants, the manipulation of the Commingled Pool's yield and the Commingled Pool's off-market securities transactions with Specific Investment Participants.

The Treasurer and the Assistant Treasurer also participated in Orange County's budget process by providing estimates of projected interest revenue. Additionally, they were involved in determining Orange County's cash flow deficit, increasing the size of that deficit by restricting Orange County funds, thereby artificially increasing the size of the $169 Million TRANs and the $31 Million TRANs. They actively participated in the offer

and sale of the municipal securities, including participating in the preparation of the Official Statements and selecting the professional participants.

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The Board acted with scienter in authorizing the disclosure disseminated in connection with the issuance of six offerings--the $600 Million Reinvestment Notes, the $169 Million and the $31 Million TRANs, the two Teeter Notes and the Pension Bonds. The Board knew that the County intended to use interest income from the County Pools to fund a growing percentage of the County's discretionary budget. Nevertheless, the Board authorized the issuance of approximately $1.3 billion in debt in 1994, much of which was solely for reinvestment to generate interest income, without taking appropriate steps under the circumstances to assure that information about the County's finances was fairly and accurately disclosed to investors.

F. CONCLUSION

Accordingly, based on the foregoing, the Commission finds that Orange County, the Flood Control District and the Board violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

Orange County has submitted an Offer of Settlement in which, without admitting or denying the findings herein, it consents to the Commission's entry of this Order, which makes findings, as set forth above, and orders Orange County to cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As set forth in Orange County's Offer of Settlement, Orange County undertakes to cooperate with Commission staff in preparing for and presenting any civil litigation or administrative proceedings concerning the transactions that are the subject of this Order.

V.

The Flood Control District has submitted an Offer of Settlement in which, without admitting or denying the findings herein, it consents to the Commission's entry of this Order, which makes findings, as set forth above, and orders the Flood Control District to cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As set forth in the Flood Control District's Offer of Settlement, the Flood Control District undertakes to cooperate with Commission staff in preparing for and presenting any civil litigation or administrative proceedings concerning the transactions that are the subject of this Order.

VI.

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The Board has submitted an Offer of Settlement in which, without admitting or denying the findings herein, it consents to the Commission's entry of this Order, which makes findings, as set forth above, and orders the Board to cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As set forth in the Board's Offer of Settlement, the Board undertakes to cooperate with Commission staff in preparing for and presenting any civil litigation or administrative proceedings concerning the transactions that are the subject of this Order.

VII.

In determining to accept this Offer, the Commission considered remedial acts adopted and implemented by Orange County, the Flood Control District and the Board, such as the adoption and implementation of policies and procedures regarding the authorization, approval and issuance of proposed municipal securities offerings and regarding internal audit and accounting procedures and cooperation afforded the Commission staff.

VIII.

In view of the foregoing, the Commission deems it appropriate to accept the Offer of Settlement submitted by Orange County, the Flood Control District and the Board and impose the cease-and-desist orders specified in the Offer of Settlement.

Accordingly, IT IS HEREBY ORDERED that, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act:

1. Orange County shall cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

2. Orange County shall comply with its undertakings described in Section IV above;

3. The Flood Control District shall cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

4. The Flood Control District shall comply with its undertakings described in Section V above;

5. The Board shall cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and

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6. The Board shall comply with its undertakings described in Section VI above.

By the Commission.

Jonathan G. Katz
Secretary

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Exhibit 39

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

TROY A. DAHLBERG

KROLL

WILLKIE FARR & GALLAGHER LLP

through the next few years and keep a fiscally sound funding ratio."[1005] In February 2002, the June 30, 2001 actuarial valuation was officially released, and City and SDCERS officials learned that the funded ratio had dropped from 97.3% to 89.9%.[1006] City and SDCERS officials explicitly acknowledged the risk of hitting the trigger, especially in light of a continued slump in investment earnings – "The 82% trigger point is looking WAY too close" – and considered ways to obtain a more current estimate of the funded ratio.[1007] The actuarial valuation in February 2002 alerted City and SDCERS officials to a significant risk that a further decline in the funded ratio could cause the MP-1 trigger to be breached and created a duty to disclose the financial impact on the City if this should occur.[1008]

Three bond offerings occurred during the first half of 2002, including the Ballpark Bond offering.[1009] The Ballpark Bond offering was particularly significant. In August and September 2004, Terri Webster had explicitly expressed her concern about this offering, noting that the BRC Report should not "mess w/ballpark bonds," *i.e.*, the BRC Report, which would negatively describe the City's pension funding,

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1005 E-mail from Terri Webster to Cathy Lexin (Oct. 11, 2001).

1006 Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 13, 2001, at 13 (Feb. 12, 2002); E-mail from Terri Webster to Ed Ryan (Feb. 12, 2002).

V&E found that the City Auditor's Office was aware of the risk that the trigger might be hit only as early as the June 30, 2002 actuarial valuation, but stated that "[n]evertheless, the City failed to amend its disclosure to reflect its increased knowledge of problems with the funding of its retirement system." Paul S. Maco & Richard C. Sauer, Vinson & Elkins LLP , Report on Investigation, The City of San Diego, California's Disclosures of Obligation to Fund the San Diego Employees Retirement System and Related Disclosure Practices 1996–2004 with Recommended Procedures and Changes to the Municipal Code at 96 (Sept. 16, 2004). In its 2005 Report, V&E concluded that the City's pension-related disclosures in the period leading up to MP-2 were materially misleading, based partially on the omission in such disclosures of the risk that the trigger might be hit. Paul S. Maco & Richard C. Sauer, Vinson & Elkins LLP , Potential Violations of the Federal Securities Laws by the City of San Diego and Associated Individuals at 74, 81 (Draft July 15, 2005). City Attorney's Interim Report No. 2 found that the City withheld "adverse financial facts from investors in the City's bonds" relating to the drop in SDCERS's funding ratio towards the trigger, even as it became aware of the deterioration of the pension plan's financial condition during fiscal year 2002. The report broadly concluded that the City's disclosures from March 18, 2002 to June 30, 2003 were materially misleading in violation of federal securities laws, and relied partially on the City's concealment of the risk that the trigger might be hit in reaching this conclusion. City Attorney Michael J. Aguirre, Interim Report No. 2 Regarding Possible Abuse, Illegal Acts or Fraud by City of San Diego Officials at 9, 103-110 (Feb. 9, 2005).

1007 E-mail from Terri Webster to Mary Vattimo (Feb. 12, 2002).

1008 GASB 27 ¶ 22(b) requires the City to disclose "[f]actors that significantly affect the identification of trends in the amounts reported." This includes changes in benefit provisions and actuarial methods and assumptions used. A breach of the MP-1 trigger provision would have a significant impact on the City's contribution rate to SDCERS. This information should have been disclosed. Governmental Accounting and Financial Reporting Standards, Vol. II GASB 27 ¶ 22(b) (June 30, 2005).

1009 The City issued the following bond offerings: $169,685,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (Feb. 14, 2002); $93,200,000 City of San Diego, California 2002-03 Tax Anticipation Notes Series A (June 4, 2002); $25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds Series 2002 B (Fire and Life Safety Facilities Project) (June 12, 2002).

should be delayed so it would not harm the Ballpark Bond offering.[1010] She was well aware that the disclosure of a potential large drop in the funded ratio would negatively impact the City's credit rating, and chose not to disclose this negative information.[1011]

In the period leading up to MP-2, the sharp decline in SDCERS's investment earnings and the imminent risk of blowing through the trigger were material facts that should have been disclosed. As discussed above, the risks to the City's fiscal health, inherent in MP-1, would have taken on additional significance as the funded ratio dropped toward the floor. The risk that the City would have to make a large balloon payment within a short period of time posed a threat to the City's ability to generate enough revenue in the year the balloon payment was due to satisfy all of its obligations for that year. That risk would have been material to an investor contemplating a purchase of the City's bonds.

The City issued two additional bond offerings in June 2002.[1012] By this time, City and SDCERS officials had obtained additional information that projected the trigger would be breached as of June 30, 2002, and began discussing alternative funding proposals to either change or remove the trigger.[1013] By not disclosing the risk of the MP-1 trigger or even its existence in these bond offerings, City officials concealed material information from the investing public and violated the requirements to disclose factors that significantly affect the identification of trends in amounts reported under GASB 27.[1014]

4. Disclosure Failures Related to MP-2 and Its Aftermath

The SDCERS Board and the City approved MP-2 in November 2002, prior to the issuance of the City's 2002 CAFR.[1015] MP-2 and its consequences for the financial condition of the City should have

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1010 Handwritten Notes of Terri Webster (Aug. 31, 2001 and Sept. 10, 2001).

1011 E-mail from Terri Webster to Ray Garnica (Mar. 18, 2002); E-mail from Dick Vortmann to Linc Ward cc to Terri Webster, April Boling, Joe Craver, Mary Ball, ariel001@san.it.com, vilaplana@scmv.com, mcurine@swsslaw.com, and Andrew Poat (Jan. 3, 2002); Interview by the Audit Committee with Lakshmi Kommi (May 4, 2006) (Ms. Kommi recalled relying heavily on Terri Webster as she prepared the information that was presented to rating agencies, because of Ms. Webster's background regarding the pension system.).

1012 $93,200,000 City of San Diego, California 2002-03 Tax Anticipation Notes Series A (June 4, 2002); $25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds Series 2002 B (Fire and Life Safety Facilities Project) (June 12, 2002).

1013 E-mail from Lawrence Grissom to Terri Webster (April 15, 2002); E-mail from Ed Ryan to Terri Webster (April 15, 2002); E-mail from Terri Webster to Elmer Heap and Michael Rivo cc to Cathy Lexin (April 17, 2002).

1014 GASB 27 ¶ 22(b) requires the City to disclose "[f]actors that significantly affect the identification of trends in the amounts reported." This includes changes in actuarial methods and assumptions used. Because a breach of the MP-1 trigger provision would have had a significant impact on the City's contribution rate to SDCERS, this information should have been disclosed. Governmental Accounting and Financial Reporting Standards, Vol. II, GASB 27 ¶ 22(b) (June 30, 2005).

1015 San Diego, Cal., Ordinance O-19121 (Nov. 18, 2002); San Diego City Council Resolution R-297336 (Nov. 18, 2002); Minutes, San Diego City Council Meeting at 8-9, 39-40 (Nov. 18, 2002); Minutes, SDCERS Board Meeting at 29-30 (Nov. 15, 2002).

Exhibit 40

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8751 / November 14, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54745 / November 14, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12478

In the Matter of **City of San Diego, California,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against the City of San Diego, California (the "City" or "Respondent").

II.

In anticipation of the institution of these proceedings, the City has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, the City consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and the City's Offer, the Commission finds that:[1]

A. SUMMARY

This matter involves the City of San Diego's violations of the antifraud provisions of the federal securities laws in connection with the offer and sale of over $260 million in municipal bonds in 2002 and 2003. At the time of these offerings, City officials knew that the City faced severe difficulty funding its future pension and health care obligations unless new revenues were obtained, pension and health care benefits were reduced, or City services were cut. The City's looming financial crisis resulted from (1) the City's intentional under-funding of its pension plan since fiscal year 1997; (2) the City's granting of additional retroactive pension benefits since fiscal year 1980; (3) the City's use of the pension fund's assets to pay for the additional pension and retiree health care benefits since fiscal year 1980; and (4) the pension plan's less than anticipated earnings on its investments in fiscal years 2001 through 2003.

Despite the magnitude of the problems the City faced in funding its future pension and retiree health care obligations, the City conducted five separate municipal bond offerings, raising more than $260 million, without disclosing these problems to the investing public. In each of these offerings, the City prepared disclosure documents that are used with municipal securities offerings—that is, preliminary official statements and official statements—and made presentations to rating agencies.[2] In addition, in 2003 it prepared and filed information pursuant to continuing disclosure agreements under Exchange Act Rule 15c2-12 with respect to $2.29 billion in outstanding City bonds and notes.[3] Although the City provided some disclosure about its pension and retiree health care obligations, it did not reveal the gravity of the City's financial problems, including that:

- The City's unfunded liability to its pension plan was expected to dramatically increase, growing from $284 million at the beginning of fiscal year 2002 and $720

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[1] The findings herein are made pursuant to the City's offer of settlement and are not binding on any other person or entity in this or any other proceeding.

[2] An official statement is a document prepared by an issuer of municipal bonds that discloses material information regarding the issuer and the particular offering. A preliminary official statement is a preliminary version of the official statement that is used to describe the proposed new issue of municipal securities prior to the determination of the interest rate(s) and offering price(s). The preliminary official statement may be used to gauge interest in an issue and is often relied upon by potential purchasers in making their investment decisions.

[3] Continuing disclosures are disclosures of material information relating to prior years' municipal bond offerings that are periodically provided to the marketplace by the bonds' issuer pursuant to contractual agreements and Exchange Act Rule 15c2-12.

million at the beginning of fiscal year 2003 to an estimated $2 billion at the beginning of fiscal year 2009;

- The City's total under-funding of the pension plan was also expected to increase dramatically, growing tenfold from $39.2 million in fiscal year 2002 to an estimated $320 to $446 million in fiscal year 2009;
- The City's projected annual pension contribution would continue to grow, from $51 million in 2002 to $248 million in 2009; and
- The estimated present value of the City's liability for retiree health benefits was $1.1 billion.

The City's enormous pension and retiree health liabilities and failure to disclose those liabilities placed the City in serious financial straits. When the City eventually disclosed its pension and retiree health care issues in fiscal year 2004, the credit rating agencies lowered the City's credit rating. The City also has not obtained audited financial statements for fiscal years 2003, 2004, and 2005.

Consequently, the City violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit the making of any untrue statement of material fact or omitting to state a material fact in the offer or sale of securities.[4]

B. THE RESPONDENT

City of San Diego, California is a California municipal corporation with all municipal powers, functions, rights, privileges, and immunities authorized by the California Constitution and laws, including the power to issue debt. The City is the seventh most populous city in the country, with approximately 1.3 million residents.

C. RELATED PARTY

San Diego City Employees' Retirement System ("CERS") is a defined benefit plan[5] established by the City to provide retirement, disability, death, and retiree benefits to its members,

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[4] The Commission acknowledges that in the City's offering documents for sewer revenue bonds issued in 1995, 1997, and 1999 and sewer revenue bonds that were offered but not issued in 2003, in its continuing disclosures, and in its communications with rating agencies, the City failed to disclose that the City's wastewater fee rate structure did not comply with certain federal and state clean water laws, that the City was not in compliance with the terms of certain government grants and loans, and that the City could have been required to repay those grants and loans due to such non-compliance. The offerings in the 1990s, however, predate the offerings that are the subject of this Order, and the City did not consummate the 2003 offering because issues arose regarding the adequacy of its pension disclosure. In addition, in 2004, the City came into compliance with the federal and state clean water laws and the grant and loan covenants by adopting a new fee rate structure. The City thereby avoided having immediately to repay the government grants and loans.

[5] A defined benefit plan is a traditional pension plan under which pre-determined retirement benefits are based on a formula established by factors such as age, years of service, and

i.e., City employees and their beneficiaries. CERS is administered by the CERS Board, which during the relevant period included eight City employees, including the City Treasurer and the Assistant City Auditor and Comptroller, one retiree, and three non-employee City citizens appointed by the City Council as CERS Board members.

D. FACTS

1. Background

a. Structure of the City's Government

Until January 2006, the City's form of government was a city manager system.[6] Legislative powers of the City were vested in the City Council ("Council"), which made policies and appointed a professional city manager to carry out those policies. The Council was composed of nine full-time Council members who served for staggered four-year terms. Eight of the Council members represented the City's eight districts. The Mayor, who was elected at large, presided at the meetings of the Council and served as the official head of the City for ceremonial purposes. The Mayor and each Council member had one vote; the Mayor had no veto power.

Prior to 2006, the City Manager ("Manager") was the City's chief administrative officer and had substantial control over local government decisions. The Manager, appointed by the Mayor and Council, advised the Council of the City's present and projected financial condition, appointed and removed all city department heads (except the City Auditor and Comptroller ("City Auditor"), City Attorney, and City Clerk), prepared the City's budget, and carried out the Council's budget plan. During the relevant time period, the City's general fund budget was less than $900 million. The City Manager had several Deputy City Managers, one of whom was in charge of the Financing Services Department, which had responsibility for overseeing the City's issuance of municipal securities.

Prior to 2006, the City Auditor was also appointed by the Council, and was required to file at least monthly with the City Manager and Council a summary statement of revenues and expenses for the preceding accounting period.[7] The Auditor was the City's chief financial officer and was responsible for the preparation and issuance of the City's Comprehensive Annual Financial Reports, also referred to as CAFRs. The City's Comprehensive Annual Financial Reports included audited financial statements prepared pursuant to standards established by the

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compensation, and in which the employer bears risk if the employer and employee contributions and the investment return on those contributions are not sufficient to fund the pension benefits.

[6] In January 2006, the City transitioned from a City Manager / Council form of government to a strong Mayor form of government. Under the new system, the Mayor became the City's chief executive officer and the City Manager's position was eliminated. The Council continues to act as the legislative body. City of San Diego City Charter, Article XV.

[7] City of San Diego City Charter, Article V, Section 39.

Government Accounting Standards Board ("GASB")[8] and various statistical, financial, and other information about the City. Portions of the Comprehensive Annual Financial Reports for the years ended June 30, 2001, and June 30, 2002 were attached as appendix B to the preliminary official statements and the official statements. The Comprehensive Annual Financial Reports for 2001 and 2002 were also filed as continuing disclosures.

The elected City Attorney served as the chief legal officer for the City. The City Attorney's office advised the Council, City Manager, and all City departments on legal matters, including disclosure in the City's securities offerings. The City Attorney was responsible for preparing all ordinances, resolutions, contracts, and other legal documents.

b. The City's Pension Plan

The City provided a defined benefit pension plan and retiree health care benefits to its employees through CERS. CERS functioned as a trust for the benefit of its members (i.e., approximately 18,500 current and former City employees and officials). The City was the creator of the trust and determined its terms, including the members' required contributions and the levels of benefits. CERS was administered by a Board of Administration, which controlled the investment of CERS's funds and which owed fiduciary duties to CERS members. CERS's assets consisted of past contributions by the City and CERS members and investment earnings on those funds. CERS's liabilities consisted of operating expenses and the future pension benefits that were owed to members.

Each year, CERS hired an actuary to determine the value of the plan's assets and liabilities based on certain actuarial assumptions and the amount that needed to be contributed to the plan so that the plan accumulated sufficient assets to pay pension (but not health care) benefits when due.[9] Pursuant to the City Charter, the City was to contribute half of that amount, which was expressed in terms of a percentage of payroll expenses, with the other half to be contributed by the employees, which amount was determined as a percentage of compensation based on the employee's age upon entry into CERS.

At least three concepts were particularly important in the disclosure to the public of the City's pension obligations and funding of those obligations: (1) CERS's funded ratio; (2) the

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[8] GASB is the organization that establishes standards of state and local governmental accounting and financial reporting.

[9] An actuarial valuation is a determination by an actuary, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets, and other relevant values for a pension plan based on certain actuarial assumptions. The actuarial value of assets refers to the value of cash, investments, and other property belonging to a pension plan as used by the actuary for the purpose of preparing the actuarial valuation for the pension plan. The actuarial accrued liabilities are what is owed in connection with past services, as determined by one of the actuarial cost methods. Actuarial assumptions are estimates of future events with respect to certain factors affecting pension costs, including rates of mortality, disability, employee turnover, retirement, rates of investment income, and salary increases. Actuarial assumptions are generally based on past experience, often modified for projected changes in conditions.

City's unfunded liability to CERS; and (3) the City's net pension obligation, also called the NPO. CERS's funded ratio was the ratio of its assets to liabilities. The City's unfunded liability to CERS was the dollar shortfall between CERS's assets and liabilities. The City's net pension obligation was the cumulative difference between what the City actually contributed to CERS and the amount that the City would have contributed had it conformed to a funding method recognized by GASB.

2. The City's Pension and Retiree Health Care Benefits and Funding of CERS

The City failed to disclose material information regarding substantial and growing liabilities for its pension plan and retiree health care and its ability to pay those obligations in the future in the disclosure documents for its 2002 and 2003 offerings, in its continuing disclosures filed in 2003, and in its presentations to the rating agencies. As more fully described below, the City's substantial and growing pension and retiree health care liabilities resulted from several factors, including: (1) the City's intentional under-funding of its annual pension contribution; (2) the City's granting of new retroactive pension benefits; (3) the City's use of certain CERS earnings to pay for various additional pension and retiree health care benefits and to pay a portion of employees' pension contributions; and (4) CERS's earning less than anticipated returns on its investments.

a. The City's Historical Practice of Using "Surplus Earnings" to Fund Pension and Retiree Health Care Benefits

In fiscal year 1980, the City began instructing CERS to use "surplus earnings"—i.e., earnings above the actuarially projected 8% return rate[10]—to fund an ever-increasing amount of additional benefits for CERS members. Pension plans typically retain surplus earnings to support the plan's financial soundness and to make up for years in which earnings fall short of the assumed return rate. Rather than retaining its surplus earnings, the City began using surplus earnings in fiscal year 1980 to fund an annual extra or "13th check" to retirees. The City continued using surplus earnings to pay for retiree health care benefits in fiscal year 1982 and to pay an ever-increasing amount of the employees' CERS contributions in fiscal year 1998.[11]

In total, the City used surplus earnings to pay pension benefits and employees' contributions totaling $150 million as of the end of fiscal year 2001 and an additional $25 million as of the end of fiscal year 2002. According to a 2005 CERS audit, the City's use of surplus

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[10] Without regard to its actual historical rate of return on investments, the CERS Board assumed an annual rate of investment return of 8%, which the actuary incorporated into his calculations. CERS defined surplus earnings as the amount of realized investment earnings in excess of the actuarially projected 8% return rate.

[11] In fiscal years 2003 and 2004, the City used CERS's surplus earnings from prior years to pay up to 27% of the employees' contributions.

earnings accounted for 17% of the increase in the City's unfunded liability to CERS from fiscal year 1997 through fiscal year 2003.

b. Manager's Proposal 1: The City Proposes Additional Benefits in Exchange for Contribution Relief

In fiscal year 1996, the City agreed to increase significantly and retroactively all employees' pension benefits. The City, however, could not afford to fund the cost of the benefit increases. The City therefore made the pension benefit increases contingent on CERS's agreement to the City's under-funding of its annual contribution to CERS.

In fiscal year 1997, the City and CERS entered into an agreement, which was referred to as Manager's Proposal 1, that set the City's annual contribution at gradually increasing rates through fiscal year 2008. This funding method, which the City termed "Corridor" funding, was not recognized by GASB and set annual funding rates that were not actuarially determined and were projected to be below GASB-recognized funding rates through fiscal year 2006. In other words, under Corridor funding, the City would be intentionally under-funding its annual liability to CERS in fiscal years 1997 through 2006.[12] After fiscal year 2006, it was estimated that the funding rate of Manager's Proposal 1 would equal a GASB-accepted rate. Manager's Proposal 1 also contained a provision intended to protect CERS's financial soundness. Specifically, if CERS's funded ratio fell below 82.3%, the City would have to increase its CERS contribution rate.

In fiscal years 1996 and 1997, the City estimated that under Manager's Proposal 1, by the end of fiscal year 2008, the City's net pension obligation would be $110.35 million. Because the City's Corridor funding method was not GASB-recognized, GASB required that the City disclose its net pension obligation in its annual financial statements.

c. The *Corbett* Litigation Requires the City to Fund Additional Retroactive Benefits

In March 2000, the City again retroactively increased pension benefits. Specifically, the City and CERS settled a class action lawsuit brought by CERS members, with *Corbett* as the named class plaintiff.[13] Under the *Corbett* settlement, the City retroactively gave increased pension benefits to both current and retired City employees, increasing CERS's liabilities. Under

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[12] Manager's Proposal 1 was viewed skeptically by some members of the CERS Board who were not City employees. The majority of the CERS Board, however, consisted of City officials who received benefit increases that were contingent on the Board's approval of Manager's Proposal 1. Moreover, CERS's actuary informed the CERS Board that Manager's Proposal 1 was a sound proposal and CERS's fiduciary counsel opined that the Board would be acting within the ambit of its fiduciary discretion in approving Manager's Proposal 1.

[13] The *Corbett* plaintiffs raised various claims based on a 1997 California Supreme Court decision which held that an employee's salary for purposes of calculating basic pension benefits included the value of overtime and accrued leave.

Manager's Proposal 1, however, the City's contributions to CERS did not increase. As a result, the City's unfunded liability to CERS increased by $185 million.

In negotiating the *Corbett* settlement, however, the City purposefully structured certain of the increased *Corbett* benefits to avoid having those benefits adversely affect CERS's reported funded ratio and the City's reported unfunded liability to CERS. Specifically, the City structured the *Corbett* settlement so that the increased benefits for retired CERS members were to be paid in a given year only if there were sufficient surplus earnings from that year to pay the benefit. If there were insufficient surplus earnings in a given year to pay the increased benefit, then the cost of the increased benefit would become CERS's liability and would eventually be paid from future years' surplus earnings. The City and CERS treated the increased benefits to retired CERS members as contingent liabilities that were not taken into account in determining CERS's funded ratio or the City's unfunded liability to CERS. As of June 30, 2001, according to CERS's actuary, if the contingent portion of the *Corbett* settlement had been included in CERS's valuation, the City's unfunded liability to CERS would have increased by $70 to $76 million and CERS's funded ratio would have decreased by 2% to 2 ½ % from what was actually reported by the City. Thus, the City's pension situation was even more dire than the numbers, as they were reported by the City, indicated.

d. CERS's Actuary Report for Fiscal Year 2001 Shows a Dramatic Increase in the City's Pension Liabilities

In fiscal year 2001, CERS's investment return began to fall short of its anticipated 8% annual return. The City was informed of CERS's declining performance in February 2002, when it received CERS's annual actuarial valuation for fiscal year 2001. This report stated that as of the end of fiscal year 2001, CERS's funded ratio was 89.9% and the City's unfunded liability to CERS was $284 million, as compared to a funded ratio of 97.3% and an unfunded liability of $69 million only one year earlier. Moreover, the report noted that if the *Corbett* contingent benefit to CERS retired members were included, the City's unfunded liability to CERS would have increased to at least $354 million and CERS's funded ratio would have fallen to at least 87.9%.

CERS's actuary attributed these changes to a number of factors, including CERS's actuarial investment losses[14] of $95.6 million (and warned that there would be further actuarial investment losses in fiscal year 2002 unless the markets improved during the remaining five months of the fiscal year). In his report, CERS's actuary also warned that "all parties" should be "acutely aware that the current practice of paying less than the [actuarial] computed rate of contribution … will help foster an environment of additional declines in the funded ratio in absence of healthy investment returns."

In May 2002, the City learned that CERS would likely not have any surplus earnings from fiscal year 2002 to pay for the contingent benefits—specifically, retiree health care benefits, the 13th check, and the *Corbett* increase to retirees.

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[14] Actuarial investment losses are the difference between the assumed investment rate, which in the City's case was 8% annually, and the actual investment results.

e. The Blue Ribbon Committee Report Puts the City on Notice about its Growing Pension and Retiree Health Care Liabilities

In April 2002, the City received a warning that the City's pension and retiree health care liabilities would continue to grow and that the City was not adequately planning to meet those liabilities. This came in the form of a report from the City's Blue Ribbon Committee to the City Council.[15] The report stated that the Blue Ribbon Committee had three principal concerns regarding CERS. First, the City was granting retroactive retirement benefit increases but pushing the cost of those benefit increases into the future, long after the individuals involved in the decisions were gone. Second, the City's budgetary process did not adequately comprehend the steadily growing annual expense of the pension contribution, "particularly given the uncontrollable and non-discretionary nature of this liability." The Committee stated that the City's pension contribution would substantially increase and warned that any future benefit increases, particularly retroactive increases, would "significantly exacerbate this problem." Third, the City's budgetary process did not recognize that retiree health care costs were a non-discretionary expense that would grow at an increasing rate and that the City was not paying out of its current year's budget the full cost for their future retiree health benefits. This report thus squarely put the City on notice that it had substantial future pension and healthcare liabilities it would probably be unable to pay under the current system.

f. Manager's Proposal 2: The City Again Proposes Additional Pension Benefits in Exchange for Relief from an Impending Lump Sum Payment

In fiscal year 2003, the City again increased its pension liability by granting additional retroactive benefits, used additional CERS assets to pay for additional pension and retiree health care benefits and an increased portion of the employees' contribution, and obtained additional time to under-fund its annual CERS contribution.

In the second half of fiscal year 2002, the City agreed to increase pension benefits for fiscal year 2003. From as early as October 2001, however, the City was concerned that CERS's funded ratio would fall below the 82.3% floor established by Manager's Proposal 1, which would require the City, at the very least, to increase its contributions to CERS by at least $25 million to be at a higher GASB-accepted rate.

Concerned about having to pay the additional $25 million, the City sought to condition the pension benefit increases on the City's obtaining from CERS relief from the floor of Manager's Proposal 1. In November 2002, the City and CERS agreed to Manager's Proposal 2 and the City

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[15] In April 2001, the Mayor had appointed a nine-member committee of San Diego citizens, known as the Mayor's Blue Ribbon Committee on City Finances, to independently evaluate the City's fiscal health and make any appropriate recommendations. In February 2002, the Blue Ribbon Committee presented its report to the Council's Rules Committee, identifying nine areas of concern, two of which related to the City's pension fund. The same report was made to the full Council in April 2002.

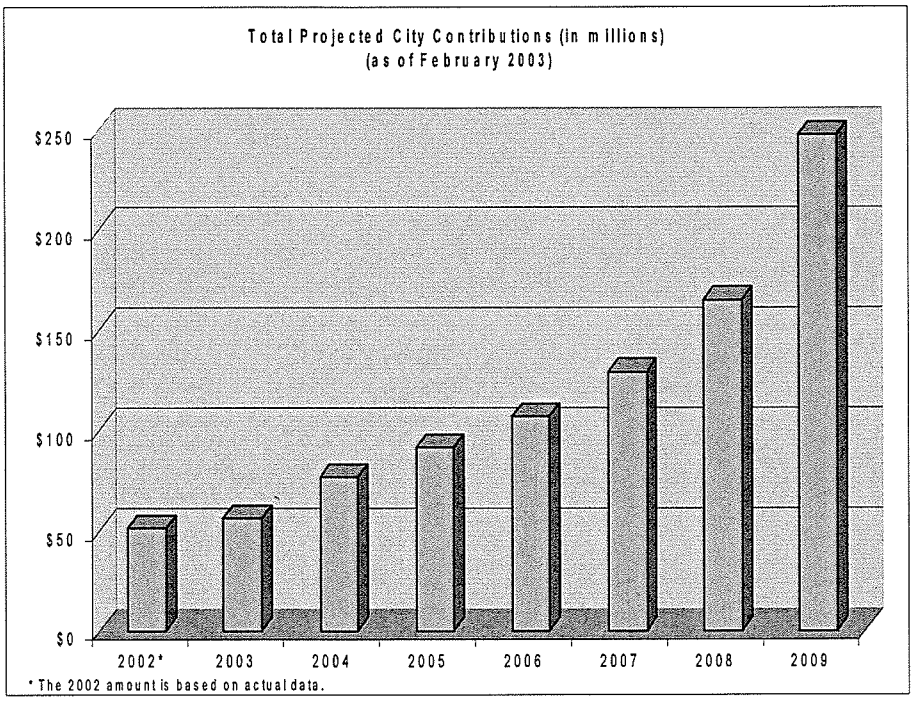
adopted the increased pension benefits as of July 2002. Under Manager's Proposal 2, once CERS's funded ratio fell below 82.3%, the City would have five years to increase its contributions to CERS to reach a GASB-recognized funding rate.

As a result of CERS's actuarial losses in fiscal year 2002, CERS did not have surplus earnings to pay the 13th check, the cost of retiree health care, and the *Corbett* benefit increase to retired CERS members. In conjunction with Manager's Proposal 2, however, the City directed CERS to use certain of its reserve accounts to pay the 13th check and the retiree health care benefits, and to pay an increased portion of certain City employees' CERS contributions. The reserve funds could have been used to increase CERS's funded ratio and decrease the City's unfunded liability to CERS; instead, the City directed that CERS use the reserve funds to pay additional benefits.

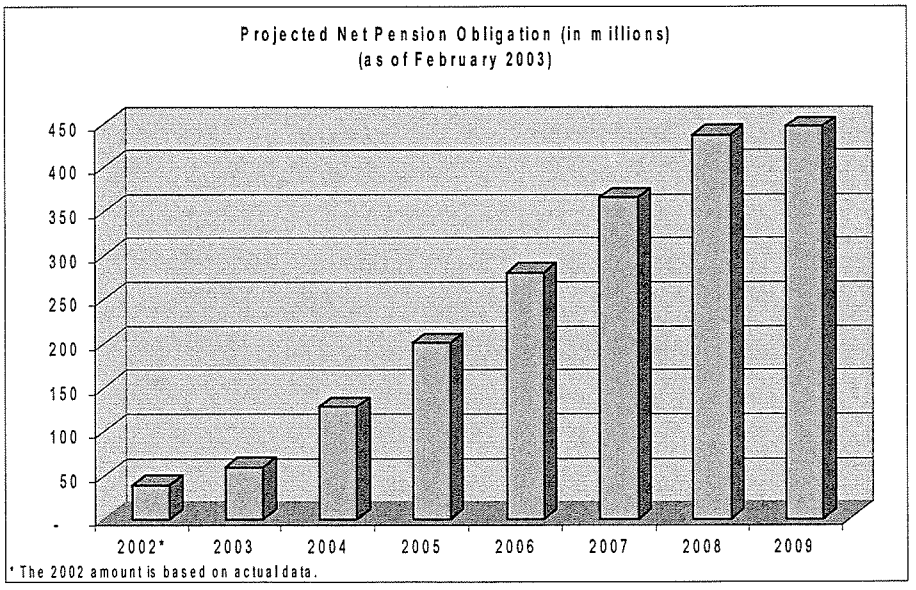
g. CERS's Actuary Report for Fiscal Year 2002 and Projections for the Future Show that the City Faces Substantial Problems Funding its Pension and Retiree Health Care Liabilities

In early 2003, the City received two reports from CERS's actuary. These reports provided the City with negative information regarding the present and projected status of CERS's funded ratio and the City's unfunded liability to CERS. First, in January 2003, the City received CERS's actuary report for fiscal year 2002. This report stated that during fiscal year 2002, CERS suffered an actuarial loss of $364.8 million and that as of the end of fiscal year 2002, CERS's funded ratio was 77.3% and the City's unfunded liability to CERS was $720 million, as compared to a funded ratio of 89.9% and unfunded liability of $284 million only one year earlier. The actuary's report further stated that if the *Corbett* contingent benefit to CERS retired members had been included, the City's unfunded liability to CERS would have been at least $790 million, and CERS's funded ratio would have been approximately 75.3%. In the concluding comment, the actuary stated that CERS was "in adequate condition," which was the first time that the actuary had not described CERS as "actuarially sound."

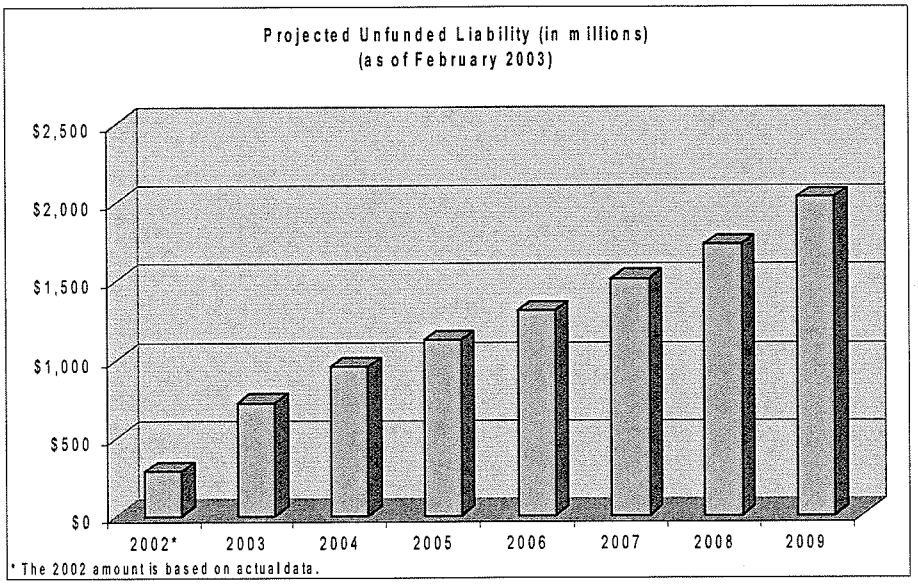
Second, in February 2003, CERS's actuary provided to the City projections of the City's contributions under Manager's Proposal 2, the City's net pension obligation, the City's unfunded liability to CERS, and CERS's unfunded ratio. Specifically, the City's contribution rate was projected to more than quadruple—from 9.83% of payroll in fiscal year 2002 ($51 million) to 35.27% of payroll in fiscal year 2009 ($248 million). The following chart illustrates the growth in the City's projected annual contribution to CERS:



The City's net pension obligation was projected to grow by tenfold—from $39.23 million in fiscal year 2002 to as much as $446 million in fiscal year 2009. The following chart illustrates the growth in the City's projected net pension obligation:



The City's unfunded liability was projected to increase more than seven fold—from $284 million at the beginning of fiscal year 2002 to $2 billion at the beginning of fiscal year 2009. CERS's funded ratio was projected to continue to fall—from 77.3% at the beginning of fiscal year 2003 to 65.6% at the beginning of fiscal year 2009. The following chart illustrates this dramatic increase in the City's projected unfunded liability to CERS:



The City had knowledge of these projections prior to all of its 2003 municipal securities offerings.

h. The *Gleason* Litigation: CERS Members Challenge Manager's Proposal 1 and Manager's Proposal 2

Further evidence that the City's under-funding of CERS was potentially threatening the City's future fiscal health came in January 2003, when CERS members filed a class action, with *Gleason* as the named class plaintiff, against the City and CERS alleging breaches in connection with the City's under-funding of CERS under Manager's Proposal 1 and Manager's Proposal 2. Among other things, the *Gleason* complaint alleged that by 2009, the City would owe approximately $2.8 billion to CERS, with an annual City budget expense of more than $250 million. In March 2003, the CERS attorney in the *Gleason* litigation advised CERS that (1) certain CERS Board members had breached their fiduciary duty by adopting Manager's Proposal 2; and (2) CERS should exercise its right to nullify Manager's Proposal 2. The CERS Board, which included the City Treasurer and the Assistant City Auditor and Comptroller, rejected this advice. If Manager's Proposal 2 had been nullified, the City would have been required to make an immediate potential payment to CERS of up to $159 million.

i. CERS's Response to the Blue Ribbon Committee Report Advises the City's Officials of the Growing Pension and Retiree Health Care Crisis.

In February 2003, additional detailed information about the City's pension funding crisis was presented to City officials when CERS responded to the Blue Ribbon Committee's report.[16] In its response, CERS advised the City that as of June 30, 2002, CERS's funded ratio had fallen to 77.3% and the City's unfunded liability to CERS had increased to $720 million. The response also stated that the falling funded ratio and the increasing unfunded liability resulted from three factors: a dramatic decline in CERS's investment performance in fiscal years 2001 and 2002; the City's granting of increased benefits; and the City's contributions to CERS at less than a GASB-recognized rate.

With respect to the City's under-funding, the response stated that the annual amount of the City's under-funding of CERS continued to increase in fiscal years 2002 and 2003, which was contrary to the initial projections from Manager's Proposal 1 that the annual amount of under-funding would decline beginning in fiscal year 2001. The response further stated that the City's net pension obligation would reach $102 million by the end of fiscal year 2003 and $423 million by the end of fiscal year 2009.

The response also discussed the City's future liability for retiree health care. CERS's actuary had estimated that the present value of the City's liability for future retiree health care was in excess of $1.1 billion. The response further stated that the City was not making any contributions to CERS to pay for this liability, that CERS had been paying for this liability with money in a reserve funded with CERS's surplus earnings from prior years, that the reserve would be depleted in fiscal year 2006, and that in fiscal year 2006, the City would have to pay an estimated $15 million for retiree health care. The response warned that absent a change in the benefit and a dramatic decrease in future health care costs, the City could be facing significant future funding obligations. The response recommended that the City consider funding this future health care liability as part of its annual contribution to CERS.

j. The City's Study of Its Pension Obligations Concludes that the City's Pension Liabilities Could Negatively Impact the City's Credit Rating

In April 2003, the City received additional information regarding the projected growth of its future pension liabilities and the possible negative effect those liabilities would have on the City's credit rating and ability to issue municipal securities. In February 2003, the City hired a financial adviser to analyze CERS's funding and to develop potential solutions. On April 16,

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[16] From February 9 through 13, 2003, the local newspaper wrote three front page, above-the-fold articles about the City's under-funded pension system and the CERS response. The newspaper articles explained that (1) by the end of FY 2009 the City's unfunded liability to CERS was projected to increase to almost $2 billion; and (2) the City's unfunded liability for retiree health care was estimated to be $1.1 billion.

2003, the financial adviser provided to the City a preliminary pension analysis. In its analysis, the financial adviser stated that because of the City's under-funding, the City's unfunded liability would continue to grow and CERS's funded ratio would continue to fall through fiscal year 2021 regardless of actuarial gains or losses. The financial adviser estimated that under Manager's Proposal 2, the City's unfunded liability to CERS would grow to $1.9 billion at the end of fiscal year 2009 and to $2.9 billion at the end of fiscal year 2021, and CERS's funded ratio would fall to 66.5% at the end of fiscal year 2009 and would be 67% at the end of fiscal year 2021.

The preliminary pension analysis also stated that the City's large unfunded liability to CERS would cause the City's contribution to CERS to increase dramatically. The analysis estimated that the City's contribution rate to CERS would more than double—from 18.87% of payroll (or $107.5 million) in fiscal year 2004 to 40.9% of payroll ($286.9 million) in fiscal year 2009.

The preliminary pension analysis also discussed the effect that the City's unfunded liability would have on the City's credit rating. The financial adviser stated that the City's current unfunded liability would not only trigger an adverse credit event but that the rating agencies would expect the City to develop a plan to reduce its unfunded liability by increasing its annual contributions and/or funding the unfunded liability by issuing bonds. The financial adviser further stated that if the City did not develop and implement such a plan, the City's unfunded liability could cause the City "significant credit and legal challenges." The City's disclosures in 2003 failed to inform investors of the financial adviser's analysis.

3. The Offerings, Continuing Disclosures, and Rating Agency Presentations

a. The Bond Offerings and the City's Preparation of the Offerings' Disclosure Documents

During 2002 and 2003, the City conducted the following five municipal securities offerings totaling $261,850,000 in par value:

- $25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002B (Fire and Safety Project) (June 2002)
- $93,200,000 City of San Diego, 2002-03 Tax Anticipation Notes Series A (July 2002)
- $15,255,000 City of San Diego/Metropolitan Transit Development Board Authority 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding (April 2003)
- $17,425,000 City of San Diego 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Park Refunding) (May 2003)
- $110,900,000 City of San Diego 2003-04 Tax Anticipation Notes Series A (July 2003)

A transactional financing team prepared the offering documents, that is, the preliminary official statement and the official statement, for each of the five municipal bond offerings. The

financing team consisted of outside consultants and officials from the City Manager's office (financing services division), Auditor and Comptroller's office, and the City Attorney's office. The outside consultants included, among others, bond counsel, disclosure counsel, and underwriters. The preliminary official statement and the official statement for each of the five offerings consisted of a description of the offering, a general description of the City, including financial, economic, statistical, and other information in appendix A, and audited annual financial statements from the City's Comprehensive Annual Financial Reports in appendix B. Information regarding its pension and retiree health care obligations was provided in both appendices A and B.

The outside consultants took the lead in drafting the description of the bond offerings. City officials in the financing services division were responsible for drafting appendix A. The financing services division updated Appendix A on an ongoing basis and at the time of a bond offering, forwarded the latest version of Appendix A to the entire financing team. The team met several times to review, comment on, and ultimately finalize the preliminary official statements and official statements at "page-turner meetings." Appendix B was prepared by the Auditor's office and the City's outside auditor. The Council approved all of the 2002 and 2003 offerings at open session meetings.

b. The Continuing Disclosures

During the relevant period, the City also filed annual continuing disclosures relating to its $2.29 billion in outstanding bonds for the purpose of updating investors on the state of the City's finances.[17] City officials in the financing services division coordinated, reviewed, and filed the 2002 and 2003 continuing disclosures. Almost all of these continuing disclosures included appendix A and portions of the City's Comprehensive Annual Financial Reports. The financing services division was responsible for ensuring that the most updated and accurate version of appendix A was attached to the continuing disclosures before they were filed.

c. The 2003 Rating Agency Presentations

The City made presentations to the rating agencies on a yearly basis, both in connection with specific bond offerings and to update the rating agencies on the City's general credit. The presentations were made orally with PowerPoints in meetings with representatives from Fitch Ratings, Moody's Investors Service, and Standard and Poor's. In 2003, the rating agencies specifically asked the City to address the pension plan as part of its annual presentations. These presentations were important because they directly affected the City's bond ratings. The 2003

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[17] An underwriter of municipal securities covered by Exchange Act Rule 15c2-12 may not purchase or sell municipal securities in connection with an offering unless the issuer has undertaken in a written agreement or contract for the benefit of the bondholders to provide its audited annual financial statements and certain other annual financial and operating information, to nationally recognized municipal securities information repositories and state information depositories designated by the Commission and to provide notices of certain material events and notices of any failures to file on the nationally recognized municipal securities information repositories or the Municipal Securities Rulemaking Board and state information depositories.

PowerPoint presentations were prepared and presented by officials from the City Manager's office, including the financing services division, and the City Auditor and Comptroller's office. The financing services division drafted the pension portion of the 2003 PowerPoint presentation. Officials from the City Auditor's office made the oral presentation on the pension plan and fielded numerous questions on that topic from the rating agencies.

4. The False and Misleading Disclosures

In the preliminary official statement and the official statements for the 2002 and 2003 offerings, the 2003 presentations to the rating agencies, and the 2003 continuing disclosures, the City made substantial disclosures regarding (1) the City's policies for funding CERS; and (2) the status of CERS's funding and the City's liability to CERS. Additionally, in the preliminary official statements, the official statements, and continuing disclosures, the City made certain representations regarding its retiree health care obligations. The disclosures (collectively "Disclosures"), however, were misleading because the City failed to include material information regarding the City's current funding of its pension and retiree health care obligations, the City's future pension and retiree health care obligations, and the City's ability to pay those future obligations.

First, with respect to the pension issues, the City failed in the Disclosures to reveal several material facts, including that (1) the City was intentionally under-funding its pension obligations so that it could increase pension benefits but push off the costs associated with those increases into the future; (2) because of the City's under-funding of its pension plan, its net pension obligation was expected to continue to grow at an increasing rate, reaching from $320 million to $446 million by the end of fiscal year 2009; (3) the City's unfunded liability was expected to continue to grow at a substantial rate, reaching approximately $2 billion by fiscal year 2009; (4) this growth in the City's unfunded liability resulted from the City's intentional under-funding of its pension plan, the City's granting of new retroactive pension benefits, the City's use of pension plan earnings to pay additional benefits, and the pension plan's less than anticipated investment return; (5) the City's annual pension contribution was expected to more than quadruple by fiscal year 2009; and (6) the City would have difficulty funding its future annual pension contributions unless it obtained new revenues, reduced pension benefits, or reduced City services. Moreover, the City falsely disclosed in Appendix B to its preliminary official statements and its official statements that its net pension obligation was funded in a reserve.

Additionally, with respect to retiree health care benefits, the City failed to disclose in its preliminary official statements, official statements, and continuing disclosures that[18] (1) the estimated present value of its liability for retiree health care was $1.1 billion; (2) the City had been covering the annual cost for retiree health care with pension plan earnings from prior years that were expected to be depleted in fiscal year 2006; (3) after fiscal year 2006, the City would have to pay for the retiree health care benefits from its own budget at an estimated annual cost of $15 million; and (4) the City had not planned for paying such additional costs.

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[18] The issue of retiree health care was not addressed in the rating agency presentations.

5. The City's Knowledge of the Misleading Disclosures

The City, through certain of its officials, knew that its Disclosures were misleading. The Mayor and Council were responsible for approving the issuance of the bonds and notes, including issuance of the preliminary official statements and official statements. The Mayor and Council delegated final approval of the official statements to the City Manager. The City Manager's office was responsible for the preparation of the preliminary official statements and the official statements, including appendix A. The City Auditor's office was responsible for the preparation of appendix B to the preliminary official statements and official statements. Through their designees on the CERS Board, among other things, both the City Manager's and the City Auditor's offices had knowledge about the City's use of CERS's surplus earnings, Manager's Proposals 1 and 2, CERS's actuary reports for fiscal years 2001 and 2002, and CERS's response to the Blue Ribbon Committee Report. Also, several representatives of the City Manager's office, City Attorney's office, and Auditor and Comptroller's office attended relevant closed session meetings of the Council where Manager's Proposals 1 and 2 and the *Corbett* and *Gleason* litigations were discussed. Moreover, the Blue Ribbon Committee Report and CERS's response to the Blue Ribbon Committee Report were both presented to a committee of the Council at which officials from the City Manager's and Auditor and Comptroller's office were present. Finally, the offices of the City Manager and the City Auditor were responsible for the City's study of its pension obligations that occurred in early 2003. Through their participation and involvement in the above-referenced matters, certain city officials knew or were reckless in not knowing that the Disclosures were false and misleading.

Specifically, by early 2002, the City, through its officials, knew, among other things, that (1) CERS's funded ratio would likely fall below the 82.3% floor set by Manager's Proposal 1; (2) the City was proposing Manager's Proposal 2 to avoid the effects of CERS's falling below the floor; (3) Manager's Proposal 2 allowed the City more time to under-fund CERS; and (4) the Blue Ribbon Committee had raised concerns about the City's under-funding of CERS and the future retiree health care liability. By early 2003, the City, through its officials, knew, among other things, that (1) the City's projected total contributions to CERS would grow from $77 million in fiscal year 2004 to $248 million in fiscal year 2009; (2) CERS had fallen below the 82.3% floor of Manager's Proposal 1; (3) the City and CERS had adopted Manager's Proposal 2 to allow the City more time to under-fund CERS; and (4) CERS was using reserved surplus earnings to pay certain benefits and to pay an increased portion of the employees' CERS contribution.

6. Materiality and the City's Voluntary Disclosure

The misleading Disclosures were material in view of the City's overall financial health. The Disclosures were also material given the magnitude of the City's projected annual CERS payments in the future and the potential consequences of those liabilities to the City, including inability to make the payments without reduction in other services.

The nature and level of under-funding brought into question the City's ability to fund the pension and health care benefits in the future as well as its ability to repay the bonds and notes. Under such a scenario, the City could be forced to choose between paying pension contributions, paying what the City owes on its bonds and notes, reducing services, and/or raising fees and taxes.

The materiality of the misleading Disclosures was demonstrated by the impact on the City's bond ratings when it finally disclosed key facts about the pension plan on January 27, 2004 in a voluntary report of information, after a non-employee CERS Board member raised concerns about the City's disclosure. The voluntary report provided information regarding (1) CERS's current and estimated future funded status; (2) the City's current and estimated future liabilities to CERS; (3) the reasons for the substantial decrease in CERS's funded ratio and increase in the City's liability to CERS; (4) the City's previous use of CERS funds to pay for retiree health care and the City's estimated future liabilities for retiree health care; and (5) the City's anticipated difficulty funding its increasing CERS contribution without new City revenues, a reduction in pension benefits, a reduction in City services, or other actions. Shortly after the disclosures in the voluntary report, the rating agencies lowered their ratings on the City's bonds and notes.

E. Legal Discussion

1. The Securities Act and Exchange Act Antifraud Provisions

State and local governments are exempt from the registration and reporting provisions of the Securities Act and the Exchange Act. Similarly, the Commission's authority to establish rules for accounting and financial reporting under Section 19 of the Securities Act and Section 13(b) of the Exchange Act does not extend to municipal securities issuers. The City and other municipal securities issuers, however, are subject to the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, the Commission has promulgated a broker-dealer rule, Exchange Act Rule 15c2-12, which in general limits market access for certain municipal securities issues to those offerings in which the issuer agrees to file annual financial disclosures of specified financial and operating information as well as notices of certain events, if material, and notices of any failures to file with repositories designated by the Commission. The antifraud rules apply to such disclosure and to any other statements made to the market.

Section 17(a) of the Securities Act prohibits misrepresentations or omissions of material facts in the offer or sale of securities. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit misrepresentations or omissions of material fact in connection with the purchase or sale of any security. These provisions prohibit the making of any untrue statement of material fact or omitting to state a material fact in the offer, purchase, or sale of securities. A fact is material if there is a substantial likelihood that its disclosure would be considered significant by a reasonable investor. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1987); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 require a showing that defendants acted with scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980). Scienter is "a mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, recklessness satisfies the scienter requirement. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990) (en banc). Recklessness is "an extreme departure from the standards of ordinary care, and which presents a danger of misleading [investors] that is either known to the defendant or is so obvious

that the actor must have been aware of it." Id., 914 F.2d at 1569. Scienter, however, need not be shown to establish a violation of Section 17(a)(2) or (3). Aaron v. SEC, 446 U.S. 680, 697 (1980). Violations of these sections may be established by showing negligence. SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997); SEC v. Steadman, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992).

2. The City's Violations of the Antifraud Provisions of the Securities Act and the Exchange Act

The City's public disclosures in the preliminary official statements and official statements for its 2002 and 2003 offerings, its 2003 continuing disclosures, and presentations to the rating agencies failed to disclose material information regarding the City's current funding of its pension and retiree health care obligations, the City's future pension and retiree health care obligations, and the City's ability to pay those future obligations. The omission of this information caused the information that was disclosed to be misleading.

This information was material to investors. The magnitude of the City's unfunded liabilities was enormous. For example, the City knew that by 2009 the unfunded liability would reach $1.9 billion and its actuarially required contribution would be approximately $240 million compared to $51 million in FY 2002. The City's under-funding of CERS and unfunded liabilities to CERS and for retiree health care were projected to continue to grow at an increasing rate. The increase in the City's under-funding and unfunded liabilities resulted, in part, from the City's decisions to increase pension and retiree health care benefits but push the costs of those increases into the future, to use CERS's prior earnings to cover additional benefits, and to pay a portion of the employees' contribution to CERS. All of this information raised a question whether the City could pay for these pension and retiree health care obligations and repay the bonds and notes issued by and on behalf of the City.

The City, through its officials, acted with scienter.[19] City officials who participated in drafting the misleading disclosure were well aware of the City's pension and retiree health care issues and the magnitude of the City's future liabilities. Moreover, even though the City officials knew that the City's pension issues were of concern to the rating agencies, they failed to disclose material information regarding the City's pension and retiree health care issues. In light of the City's officials' detailed knowledge of the magnitude of the City's pension and retiree health care liabilities and of the rating agencies' interest in those liabilities, the City officials acted recklessly in failing to disclose material information regarding those liabilities.

F. REMEDIAL EFFORTS AND UNDERTAKINGS

1. Since 2005, Respondent has implemented several remedial measures with a view to detect and prevent securities violations. Specifically, the City has terminated certain officials in the City Manager's and Auditor and Comptroller's offices or has allowed them to resign. The City has filled these positions with new employees generally having significant relevant experience with

[19] The City's scienter is based on the mental state of its officials. SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

other municipal governments or the private sector. The City has hired a full time municipal securities attorney who is responsible for coordinating the City's public disclosure and who has conducted continuing education for the City's deputy attorneys on the City's disclosure requirements.

2. The Mayor resigned and has been replaced by a former City police chief. In January 2006, pursuant to a public referendum, the City changed from a strong city manager form of government to a strong mayor form of government.

3. The City has hired new outside professionals including new auditors for its fiscal year audits. The City also hired individuals not affiliated with the City to act as the City's Audit Committee and charged the Committee with investigating the City's prior disclosure deficiencies and making recommendations to prevent future disclosure failures. The City has also hired new disclosure counsel for all of its future offerings, who will have better and more continuous knowledge on the City's financial affairs. This disclosure counsel has conducted seminars for City employees on their responsibilities under the federal securities laws.

4. The City has also enacted ordinances designed to change the City's disclosure environment. First, the City created a Disclosure Practices Working Group, comprised of senior City officials from across city government. The Working Group is charged with reviewing the form and content of all the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to securities issued by the City or its related entities; and conducting a full review of the City's disclosure practices and to recommend future controls and procedures. Second, the Mayor and City Attorney must now personally certify to the City Council the accuracy of the City's official statements. Third, the City Auditor must annually evaluate the City's internal financial controls and report the results to the City Council.

5. Respondent shall comply with the following undertakings to:

a. Retain, not later than 60 days after the date of this Order, at its expense, an independent consultant not unacceptable to the Commission's staff (the "Independent Consultant"). The City shall require the Independent Consultant to (a) conduct annual reviews for a three-year period of the City's policies, procedures, and internal controls regarding its disclosures for offerings, including disclosures made in its financial statements, pursuant to continuing disclosure agreements, and to rating agencies, the hiring of internal personnel and external experts for disclosure functions, and the implementation of active and ongoing training programs to educate appropriate City employees, including officials from the City Auditor and Comptroller's office, the City Attorney's office, the Mayor, and the City Council members regarding compliance with disclosure obligations; (b) make recommendations concerning these policies, procedures, and internal controls with a view to assuring compliance with the City's disclosure obligations under the federal securities laws; and (c) assess, in years two and three, whether the City is complying with its policies, procedures, and internal controls, whether the City has adopted any of the Independent Consultant's recommendations from prior year(s) concerning such policies, procedures, and internal controls for disclosures

for offerings, and whether the new policies, procedures, and internal controls were effective in achieving their stated purposes;

b. No later than 10 days following the date of the Independent Consultant's engagement, provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant's responsibilities pursuant to paragraph 5(a) above;

c. Arrange for the Independent Consultant to issue its first report within 120 days after the date of the engagement and the following two reports within 60 days following each subsequent one-year period from the date of engagement. Within 10 days after the issuance of the reports, the City shall require the Independent Consultant to submit to Kelly Bowers of the Commission's Pacific Regional Office a copy of the Independent Consultant's reports. The Independent Consultant's reports shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the policies, procedures, and internal controls adequate and address the deficiencies set forth in Section III.D of the Order. The City may suggest an alternative method designed to achieve the same objective or purpose as that of the recommendation of the Independent Consultant provided that the City's Mayor and City Attorney certify in writing to the Commission staff that they have a reasonable belief that the alternative method is expected to have the same objective or purpose as that of the Independent Consultant's recommendation;

d. Take all necessary and appropriate steps to adopt, implement, and employ the Independent Consultant's recommendations or the City's alternative method designed to achieve the same objective or purpose as that of the Independent Consultant's recommendation; and

e. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the City, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity; provided however, that the Independent Consultant may enter into an agreement with the City to serve as an independent monitor to oversee the City's remedial efforts with respect to enhanced accountability, greater transparency, increased fiscal responsibility, and independent oversight. Except as permitted above, the agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Pacific Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the City, or any of its present or former affiliates, directors, officers, employees, or agents acting in

their capacity as such for the period of the engagement and for a period of two years after the engagement.

6. In determining whether to accept the City's Offer, the Commission considered these undertakings and remediation measures.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the City's Offer.

Accordingly, it is hereby ORDERED that:

A. The City cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and

B. The City comply with the undertakings enumerated in paragraph 5 of Section III.F. above.

By the Commission.

Nancy M. Morris
Secretary

Exhibit 41

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

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recalled that Mr. Girard suggested specific questions they should ask and admonished them to be careful not to stray far from that list.[1234] Most of the Council members stated that they believed that the memorandum and oral presentation were specifically applicable to the Ballpark offering, rather than a comprehensive lesson in their disclosure oversight obligations going forward.[1235]

The Council members' recollections of the Bryan Cave Memorandum and oral presentation, however, are undercut by several facts. As an initial matter, the language of the memorandum broadly describes the Council's obligations in authorizing bond issuances; it does not limit the description of the Council's legal obligations to any one issuance. With respect to what was communicated by Mr. Boltz in the closed session presentation, both Messrs. Girard and Anhut recalled that Mr. Boltz generally explained the duties imposed upon the Council by the securities laws.[1236] Mr. Anhut recalled hearing that, according to Mr. Girard, Council members had asked questions suggesting they had been somewhat shaken by Mr. Boltz's presentation. And, it only makes sense that Mr. Boltz would have advised the Council of its obligations in rather forceful tones. Mr. Boltz, who recently passed away, had served as Regional Director of the SEC's Pacific Regional Office and had represented the Orange County Board of Supervisors, a case which gave him firsthand experience with the SEC's expectations for elected officials and how the SEC viewed those that fell short.[1237]

In the months following this advice, the Council learned of several instances where the City faced significant potential liability, but made no inquiry as to whether these potential threats to the City's finances were disclosed to the investing public. In January 2002, the Council was informed that the City was violating the Clean Water Act, and as a result could be forced to repay hundreds of millions of dollars in

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1234 Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006).

1235 Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

1236 Interview by the Audit Committee with Matthew Anhut (May 25, 2006); Interview by the Audit Committee with Leslie Girard (May 11, 2006). Interview by Vinson & Elkins with Gerald E. Boltz and Matthew D. Anhut (Aug. 18, 2004). Mr. Boltz recently passed away and was not interviewed by the Audit Committee in connection with this report.

1237 Interview by the Audit Committee with Matthew Anhut (May 25, 2006). Prior to his presentation to the City Council, Mr. Boltz had authored *Lessons from Orange County: The SEC's Requirements for Issuers and Public Officials, available at* http://www.naco.org/cnews/1997/97-02-17/report.htm.

grants and loans.[1238] Significantly, these officials learned of this problem in closed session, because it created a "Significant Exposure" to litigation.[1239]

On March 18, 2002, City Council met in closed session to discuss the ongoing meet and confer negotiations. The Council members were shown a PowerPoint presentation, including a slide indicating that the pension system's funded ratio had substantially declined, approaching 85% or 83.1% (depending on how it was calculated), and that if it fell to 82.3%, the "trigger" in MP-1 would be hit, requiring the City to pay the "full rate" estimated to be "a potential $40m annual impact."[1240] Significantly, at a closed session meeting held one month later, Council was shown the exact same slide warning of the precipitous decline of the funded ratio and the fiscal implications of hitting the "Trigger."[1241]

Notwithstanding these looming problems, on April 29, 2002, the City Council approved the issuance of $25,070,000 in Lease Revenue Bonds intended to finance improvements for fire and life safety facilities, without any disclosure of the City's potential liabilities arising from the City hitting the MP-1 trigger or the City's non-compliant sewer rates.[1242] Notably, on that same day, the City Council in closed session discussed reducing the SDCERS trigger to 75%.[1243]

In November 2002, the Council received a formal opinion from the City Attorney's Office and the City Treasurer confirming the City's "Significant Exposure to Litigation" as a result of its violations of federal and state law and its grant and loan conditions, and that a consequence of its continued violation

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1238 E-mail from Les Girard to Dennis Kahlie cc to Patricia Frazier and Mary Vattimo (Apr. 15, 2004); Dennis Kahlie, Salient Points, Sewer Cost of Service Compliance Issue (Nov. 13, 2002); Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

1239 San Diego City Council, Closed Session Report (Jan. 29, 2002).

1240 Memorandum from Daniel E. Kelley, Labor Relations Manager, to Honorable Mayor and City Council (Mar. 15, 2002), with attached PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session at 66 (Mar. 18, 2002). In addition, another slide in the presentation specifically warned: "Given recent actuarial losses of the System, any consideration to absorb cost must carefully evaluate impact on System's funding ration [sic]." *Id.* at 67.

1241 Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session at 39 (Apr. 15, 2002).

1242 San Diego, Cal., Ordinance O-19054 (Apr. 29, 2002). Councilmembers Scott Peters, Byron Wear, Toni Atkins, George Stevens, Brian Maienschein, Donna Frye, Jim Madaffer, Ralph Inzunza, and Mayor Richard Murphy voted to approve the offering. The Lease Revenue Bond issuance was the first offering authorized by the Council after the Council's closed session presentation on sewer rate non-compliance in January 2002. Although the Ballpark Bonds were issued on February 15, 2002, the Council authorized the issuance and approved the "form" of the Preliminary Official Statement much earlier, on November 20, 2001. San Diego City Council Resolution R-295760 (Nov. 20, 2001).

1243 PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session (Apr. 29, 2002).

was immediate repayment of approximately $370 million.[1244] Nonetheless, on June 30, 2003, the City Council approved the offering of Sewer Revenue Bonds, without making any inquiry as to whether the City's violations or their potentially serious consequences needed to be disclosed to investors.[1245] Instead, the 2003 Sewer Revenue Bond POS, like its predecessors, misleadingly informed the investing public only that the "City's rate structure has been reviewed by the State Board and no grant funds or costs under grant funded programs have been disallowed based on the nature of the rate structures."[1246] (The 2003 Sewer Revenue Bonds were never actually offered to the public. As discussed above, the offering was aborted on the eve of pricing after the POS's inaccurate pension disclosure was focused upon.) The City's potential liability arising from its non-compliant sewer rates was not disclosed to the public until February 2004, when Councilmember Frye informed the City's bond disclosure counsel, Paul Webber, about the issue.[1247]

In fairness to the Council, several facts must be noted. First, the Council members clearly did not view ensuring the accuracy of bond disclosures as part of their duties, and aside from the Bryan Cave Memorandum and presentation, no one told them that they were charged with that obligation. Rather, the Council undoubtedly took comfort from the knowledge that members of the City Attorney's Office and City Manager's Office were directly responsible for that task, and were assisted by financial advisors and bond and disclosure counsel specializing in municipal bond offerings from Orrick, Herrington & Sutcliffe, LLP.[1248] Although the SEC asserted in the Orange County Report that such reliance does not absolve local officials of their duty to take "appropriate steps" when they know of facts indicating a risk that a disclosure may be misleading,[1249] the facts known to the Orange County Supervisors were very different than the facts known to the Council. The Orange County Supervisors had knowledge of facts "calling into question the County's

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1244 Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002).

1245 Minutes, San Diego City Council Meeting at 15-16 (June 30, 2003). Council members Scott Peters, Michael Zucchet, Toni Atkins, Charles Lewis, Brian Maienschein, Donna Frye, James Madaffer, and Mayor Murphy voted to approve the offering. Councilmember Ralph Inzunza was not present. *Id.* at 16.

1246 $505,550,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Sewer Revenue Bonds, Series 2003A and Series 2003B (Preliminary Official Statement) at 27 ("Sept. [•], 2003").

1247 E-mail from Paul S. Maco to Paul Webber (Feb. 12, 2004).

1248 In connection with the City's 2002 and 2003 Tax Anticipation Note Series ("TANS") offerings, the Council did not receive a copy of the POS along with the implementing resolution when voting to approve the POS and other aspects of the offerings. *See* San Diego City Council Resolution No. R-296500 (May 14, 2002); San Diego City Council Resolution No. R-297969 (May 20, 2003). Notably, the City Treasurer—as opposed to the City Manager—was charged with overseeing the finalization of the POS and the OS for TANS offerings without Council's continuing supervision or final approval.

1249 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *8-9 (Jan. 24, 1996).

ability to repay the securities."[1250] In the face of that knowledge, the SEC stated that the Supervisors were required to take steps such as reading the disclosure documents and asking questions about the disclosure.[1251]

The role of the San Diego City Council in government was significantly different than that of the Orange County Board.[1252] The Orange County Board was charged with supervising, and had ultimate responsibility for, the official conduct of all County officers, including the Treasurer, and it had fiscal powers which included the issuance of municipal securities.[1253] In contrast, San Diego's City Manager form of government placed far less power and responsibility with the City Council. The City Manager was responsible for the activities of all City departments, including those tasked with preparing the bond disclosures.[1254]

Notwithstanding the San Diego City Council's somewhat lesser role, it was still the governmental body that authorized the City's bond issuances. As such, the same duties placed upon the Orange County Board applied to the San Diego City Council. The Council's awareness of potentially significant liabilities in advance of several of those issuances should have caused the Council to take appropriate steps to make sure the City was not disseminating inaccurate or misleading information about these liabilities, by reading the disclosures or even just asking questions. It took no such steps. As such, the Mayor and City Council must share the responsibility for some of the City's disclosure failures due to their negligent behavior.

1250 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *7 (Jan. 24, 1996).

1251 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *9 (Jan. 24, 1996).

1252 Although the SEC has brought enforcement actions and issued Reports of Investigations relating to defective municipal bond disclosures since the Orange County Report – including actions based solely on negligence – none have addressed the obligations of elected officials. *See, e.g., In re Massachusetts Turnpike Authority and James E. Kerasiotes*, Securities Act Release No. 8260, 80 SEC Docket 2081, 2003 WL 21757219 (July 31, 2003); *In re City of Miami, Florida*, Securities Act Release No. 8213, 79 SEC Docket 2580, 2003 WL 1412636 (Mar. 21, 2003); *In re City of Syracuse, New York*, Securities Act Release No. 7460, 65 SEC Docket 1199, 1997 WL 598008 (Sept. 30, 1997).

1253 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *2 (Jan. 24, 1996).

1254 San Diego City Charter art. V, §§ 28-30. In connection with the City's 2002 and 2003 Tax Anticipation Note Series ("TANS") offerings, Council did not receive a copy of the POS along with the implementing resolution when voting to approve the POS and other aspects of the offerings. *See* San Diego City Council Resolution No. R-2002-1509 (May 14, 2002); San Diego City Council Resolution No. R-2003-1262 (May 20, 2003). Notably, the City Treasurer – as opposed to the City Manager – was charged with overseeing the finalization of the POS and the OS for TANS offerings without Council's continuing supervision or final approval.

Exhibit 42

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

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KROLL

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By March, it was clear to the Council it was likely that the City could owe up to an extra $40 million to the pension the next year.[359]

It was in the context of these discussions that the Mayor and City Council, in closed sessions in April and May 2002, agreed to a proposal which would condition certain retirement benefits on the SDCERS Board's agreement to eliminate or reduce the MP-1 trigger.[360] In exchange, the City agreed to increase the basic multiplier (the number multiplied by a retiree's years of creditable service and then by his highest one-year salary to arrive at his annual retirement benefit) for retirement benefits for general employees to 2.5% from 2.25%.[361]

Among the new retirement benefits agreed upon during the 2002 meet and confer and considered by the City Council in April and May 2002 were "Presidential Leave and Retirement Benefits" ("Presidential Leave").[362] Presidential Leave was a benefit to the presidents of three municipal unions, the Police Officers' Association ("POA"), the International Association of Firefighters, AFL-CIO ("Local 145"), and the Municipal Employees' Association ("MEA").[363] One of the union presidents, Ronald Saathoff of Local 145, was a member of the SDCERS Board.

Until 2002, the POA and MEA presidents – who were employed by their unions and not the City during their tenures as union presidents – had made contributions to SDCERS through their

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359 Memorandum from Daniel E. Kelley, Labor Relations Manager, to the Honorable Mayor and City Council (Mar. 15, 2002); Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006).

360 E-mail from Terri Webster to Ed Ryan and Dan Kelley cc to Bob Lawrence, Bob Wilson, and Elmer Heap (May 21, 2002); Memorandum from Daniel E. Kelley, Labor Relations Manager, to Management Team (May 17, 2002); Memorandum from Michael T. Uberuaga, City Manager, to Lawrence B. Grissom, Retirement Administrator (May 15, 2002); Proposal from City of San Diego to San Diego City Firefighters Local 145 (May 10, 2002); San Diego City Council, Closed Session Report, with attached PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (May 6, 2002); PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 29, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Head Deputy City Attorney, to Hon. Mayor and City Council (Apr. 26, 2002); E-mail from Terri Webster to Elmer Heap and Michael Rivo cc to Cathy Lexin (Apr. 17, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 15, 2002).

361 City of San Diego (City) Proposal to the San Diego Municipal Employees' Association (MEA) regarding Implementation of Enhanced Retirement Benefits, Amendment to the Memorandum of Understanding between the City and MEA (May 29, 2002); San Diego, Cal., Ordinance O-19121 (Nov. 18, 2002).

362 PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 29, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 15, 2002).

363 Although a fourth union, AFSCME Local 127, was authorized to participate in the Presidential Leave Program, it never opted to do so during the period of our investigation. Letter from Ice Miller to the Internal Revenue Service (July 12, 2005).

Exhibit 43

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INVESTIGATION INTO THE

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funded ratio was in danger of falling below the trigger of 82.3%. Several individual SDCERS Board members, including Richard Vortmann, Ray Garnica, and Fred Pierce, understood this as well in February and March.[340] Any elected City official who did not know of this danger learned of it on March 18, 2002, in a memorandum discussing the 2002 "meet and confer," when the Mayor and City Council were officially informed by the Labor Relations Manager Daniel Kelley that the funded ratio had significantly declined, approaching 85.6% or 83.1% (depending on how it was calculated), and that if it fell below the MP-1 trigger, the City would be required to pay the "full rate," which was estimated to be "a potential $40 [million] annual impact."[341]

On April 15, 2002, SDCERS Administrator Lawrence Grissom sent an e-mail to Ms. Webster advising her that recent negative developments "without any other actuarial losses or additions to liabilities for new benefits, etc. put us at about 80%."[342] In other words, by April 2002, Mr. Grissom and Ms. Webster were aware the financial performance of the fund was such that the actual funded ratio was likely to fall below the 82.3% trigger as of June 30, 2002.[343] Furthermore, Mr. Grissom's assessment was without regard to the additional 2% reduction that would result if *Corbett* benefits were accounted for properly. Without an immediate and dramatic turnaround in investment performance – which did not, in fact, materialize – the actuarial report for fiscal year 2002 would inevitably show that the MP-1 trigger had been hit. Mr. Grissom asked Ms. Webster to "[p]lease treat this [information] as confidential for the moment."[344]

3. Approaching the MP-1 Trigger

Beginning in 2000, the SDCERS funded ratio – the ratio of the Actuarial Value of Assets available to pay benefits under the plan to the total Actuarial Accrued Liability of the plan – declined steeply. From 97.3% as of June 30, 2000, the funded ratio declined to 89.9% one year later.[345] In the same one-year period, SDCERS's UAAL – the shortfall between the actuarial value of the plan's assets and its actuarial

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340 E-mail from Terri Webster to Ray Garnica (March 18, 2002); Letter from Richard H. Vortmann, NASSCO President, to Frederick W. Pierce IV, Chairman – San Diego City Employees' Retirement System (Feb. 18, 2002).

341 Memorandum from Daniel E. Kelley, Labor Relations Manager, to Honorable Mayor and City Council (March 15, 2002); *see also* Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006).

342 E-mail from Terri Webster to Larry Grissom (Apr. 15, 2002).

343 E-mail from Terri Webster to Mary Vattimo (Feb. 12, 2002); E-mail from Mary Vattimo to Terri Webster and Cathy Lexin (Feb. 27, 2002).

344 E-mail from Terri Webster to Larry Grissom (Apr. 15, 2002).

345 Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2001, at 13 (Feb. 12, 2002).

Exhibit 44

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D. City Council's Responsibility for the City's Disclosure Failures: Pension and Wastewater

In addition to those with direct responsibility for drafting the City's financial disclosures, the Mayor and City Council must also bear responsibility for the City's failure to disclose information about the City's looming pension crisis and potential liability for the City's non-compliant sewer rates.[1225] Elected officials who authorize the issuance of municipal securities have an obligation to satisfy themselves that the disclosures made in connection with those issuances accurately disclose significant risks to the investing public. In the wake of the bankruptcy of Orange County, the SEC issued a well publicized Report of Investigation "to emphasize the responsibilities under the federal securities laws of local government officials who authorize the issuance of municipal securities and related disclosure documents and the critical role such officials play with respect to the representations contained in the Official Statements for those securities."[1226] The Report stated:

> [T]he antifraud provisions of the federal securities laws impose responsibilities on a public official who authorizes the offer and sale of securities. A public official who approves the issuance of securities and related disclosure documents may not authorize disclosure that the public official knows to be materially false or misleading; nor may the public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading.

The SEC did not provide a comprehensive list of the steps that public officials must undertake in the face of such information. Rather, in the case of the Orange County Supervisors, who had knowledge of facts calling into question the County's ability to repay the securities it issued, the SEC specified that "such steps could

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1225 With regard to the City's looming pension crisis, Mr. Aguirre concluded that there was "substantial evidence consistent with a finding that the Mayor and City Council engaged in *civil* violations of federal securities laws," as they "recklessly disregarded facts indicating a risk that the disclosures might be misleading." City Attorney Michael J. Aguirre, Interim Report No. 2 Regarding Possible Abuse, Illegal Acts or Fraud by City of San Diego Officials at 106-07 (Feb. 9, 2005) (emphasis in original). Mr. Aguirre briefly assessed the responsibility of individual Council members for disclosure failures, creating a continuum of culpability based on their time in office and legal background. Mr. Aguirre concluded that Mayor Murphy and Councilmember Peters, each of whom was Phi Beta Kappa, held law degrees and graduated from esteemed universities, were most responsible for the disclosure failures, whereas Councilmember Frye, who held "no advanced degrees in business or law" and opposed some of the benefit increases, fell on the other end of the spectrum. *Id.* at 108-09. With regard to the City's non-compliant sewer rates, Mr. Aguirre found there was "substantial evidence consistent with a finding that members of the City Council and other City officials acted knowingly or recklessly to approve related disclosures to investors without taking steps to prevent the dissemination of materially false or misleading information." Michael J. Aguirre, Wastewater Interim Report No. 1, City of San Diego Officials' Failure to Disclose Material Facts in Connection with the Offer and Sale of Wastewater Bonds and Related Improper Activity at 20 (Sept. 15, 2005). Yet he did not describe the evidence supporting this conclusion nor did he identify by name those individuals whose conduct purportedly rose to the level of "knowing" or "reckless." *Id.* at 17.

1226 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *1 (Jan. 24, 1996) (hereinafter, the "Orange County Report").

have included becoming familiar with the disclosure documents and questioning the issuer's officials, employees or other agents about the disclosure of those facts."[1227]

Not only was the Orange County Report the subject of news reports that should have been followed closely by any leader of municipal government,[1228] its lessons were directly communicated to San Diego's Mayor and City Council both orally and in writing. In advance of the Council's approval of the Ballpark Bonds, the Mayor and City Council members received the Bryan Cave Memo, which warned that Council members "cannot simply 'rubber stamp' the [disclosure] document."[1229] This memorandum was followed by an oral presentation by Mr. Boltz, who repeated his description of Council members' duties under the securities laws.[1230]

Although the advice provided in the Bryan Cave Memorandum clearly described the Council's duties with respect to bond issuances, some of the Councilmembers who were interviewed explained that they were not given a sufficient opportunity to read it. They said it was provided to them at the beginning of the closed session and retrieved at the end.[1231] The Council members recalled being told that the memorandum and presentation were given to them in order to bolster a defense to potential securities litigation that could be brought in an effort to derail the Ballpark plans, rather than a description of their obligations under the securities laws.[1232] They recalled being told to read the Ballpark POS and ask questions in open session before approving the Ballpark Bonds, to show that they were exercising diligence.[1233] Some

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1227 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *9 (Jan. 24, 1996).

1228 Michael Utley, *County Charged with Fraud in Landmark Action by SEC*, The Bond Buyer, Jan. 25, 1996, at 1; Michael Utley, *SEC Reprimand Has the Potential to Jolt Local Officials Nationwide*, The Bond Buyer, Jan. 26, 1996, at 1; *SEC Actions in Orange County Investigation: Misstatements and Omissions Alleged in the Disclosure Materials for Offerings of More than $2.1 Billion in Municipal Securities*, Government Finance Review, April 1996, at 13; Leslie Wayne, *Orange County Settlement Sends a Signal from S.E.C.*, N.Y. Times, Jan. 25, 1996, at D4; Debora Vrana, *Dire Straits: SEC Dragnet Has Some California Towns in a Panic*; L.A. Times, Mar. 24, 1996, at D1.

1229 Memorandum from Leslie J. Girard, Assistant City Attorney, to Honorable Mayor and Members of the City Council (Nov. 6, 2001), with attached Letter from Gerald E. Boltz and Matthew D. Anhut, Bryan Cave LLP, to Leslie J. Girard, Esq. (Oct. 29, 2001).

1230 Interview by the Audit Committee with Matthew Anhut (May 25, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

1231 Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006).

1232 Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

1233 Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

recalled that Mr. Girard suggested specific questions they should ask and admonished them to be careful not to stray far from that list.[1234] Most of the Council members stated that they believed that the memorandum and oral presentation were specifically applicable to the Ballpark offering, rather than a comprehensive lesson in their disclosure oversight obligations going forward.[1235]

The Council members' recollections of the Bryan Cave Memorandum and oral presentation, however, are undercut by several facts. As an initial matter, the language of the memorandum broadly describes the Council's obligations in authorizing bond issuances; it does not limit the description of the Council's legal obligations to any one issuance. With respect to what was communicated by Mr. Boltz in the closed session presentation, both Messrs. Girard and Anhut recalled that Mr. Boltz generally explained the duties imposed upon the Council by the securities laws.[1236] Mr. Anhut recalled hearing that, according to Mr. Girard, Council members had asked questions suggesting they had been somewhat shaken by Mr. Boltz's presentation. And, it only makes sense that Mr. Boltz would have advised the Council of its obligations in rather forceful tones. Mr. Boltz, who recently passed away, had served as Regional Director of the SEC's Pacific Regional Office and had represented the Orange County Board of Supervisors, a case which gave him firsthand experience with the SEC's expectations for elected officials and how the SEC viewed those that fell short.[1237]

In the months following this advice, the Council learned of several instances where the City faced significant potential liability, but made no inquiry as to whether these potential threats to the City's finances were disclosed to the investing public. In January 2002, the Council was informed that the City was violating the Clean Water Act, and as a result could be forced to repay hundreds of millions of dollars in

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1234 Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006).

1235 Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

1236 Interview by the Audit Committee with Matthew Anhut (May 25, 2006); Interview by the Audit Committee with Leslie Girard (May 11, 2006). Interview by Vinson & Elkins with Gerald E. Boltz and Matthew D. Anhut (Aug. 18, 2004). Mr. Boltz recently passed away and was not interviewed by the Audit Committee in connection with this report.

1237 Interview by the Audit Committee with Matthew Anhut (May 25, 2006). Prior to his presentation to the City Council, Mr. Boltz had authored *Lessons from Orange County: The SEC's Requirements for Issuers and Public Officials, available at* http://www.naco.org/cnews/1997/97-02-17/report.htm.

grants and loans.[1238] Significantly, these officials learned of this problem in closed session, because it created a "Significant Exposure" to litigation.[1239]

On March 18, 2002, City Council met in closed session to discuss the ongoing meet and confer negotiations. The Council members were shown a PowerPoint presentation, including a slide indicating that the pension system's funded ratio had substantially declined, approaching 85% or 83.1% (depending on how it was calculated), and that if it fell to 82.3%, the "trigger" in MP-1 would be hit, requiring the City to pay the "full rate" estimated to be "a potential $40m annual impact."[1240] Significantly, at a closed session meeting held one month later, Council was shown the exact same slide warning of the precipitous decline of the funded ratio and the fiscal implications of hitting the "Trigger."[1241]

Notwithstanding these looming problems, on April 29, 2002, the City Council approved the issuance of $25,070,000 in Lease Revenue Bonds intended to finance improvements for fire and life safety facilities, without any disclosure of the City's potential liabilities arising from the City hitting the MP-1 trigger or the City's non-compliant sewer rates.[1242] Notably, on that same day, the City Council in closed session discussed reducing the SDCERS trigger to 75%.[1243]

In November 2002, the Council received a formal opinion from the City Attorney's Office and the City Treasurer confirming the City's "Significant Exposure to Litigation" as a result of its violations of federal and state law and its grant and loan conditions, and that a consequence of its continued violation

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1238 E-mail from Les Girard to Dennis Kahlie cc to Patricia Frazier and Mary Vattimo (Apr. 15, 2004); Dennis Kahlie, Salient Points, Sewer Cost of Service Compliance Issue (Nov. 13, 2002); Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

1239 San Diego City Council, Closed Session Report (Jan. 29, 2002).

1240 Memorandum from Daniel E. Kelley, Labor Relations Manager, to Honorable Mayor and City Council (Mar. 15, 2002), with attached PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session at 66 (Mar. 18, 2002). In addition, another slide in the presentation specifically warned: "Given recent actuarial losses of the System, any consideration to absorb cost must carefully evaluate impact on System's funding ration [sic]." *Id.* at 67.

1241 Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session at 39 (Apr. 15, 2002).

1242 San Diego, Cal., Ordinance O-19054 (Apr. 29, 2002). Councilmembers Scott Peters, Byron Wear, Toni Atkins, George Stevens, Brian Maienschein, Donna Frye, Jim Madaffer, Ralph Inzunza, and Mayor Richard Murphy voted to approve the offering. The Lease Revenue Bond issuance was the first offering authorized by the Council after the Council's closed session presentation on sewer rate non-compliance in January 2002. Although the Ballpark Bonds were issued on February 15, 2002, the Council authorized the issuance and approved the "form" of the Preliminary Official Statement much earlier, on November 20, 2001. San Diego City Council Resolution R-295760 (Nov. 20, 2001).

1243 PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session (Apr. 29, 2002).

was immediate repayment of approximately $370 million.[1244] Nonetheless, on June 30, 2003, the City Council approved the offering of Sewer Revenue Bonds, without making any inquiry as to whether the City's violations or their potentially serious consequences needed to be disclosed to investors.[1245] Instead, the 2003 Sewer Revenue Bond POS, like its predecessors, misleadingly informed the investing public only that the "City's rate structure has been reviewed by the State Board and no grant funds or costs under grant funded programs have been disallowed based on the nature of the rate structures."[1246] (The 2003 Sewer Revenue Bonds were never actually offered to the public. As discussed above, the offering was aborted on the eve of pricing after the POS's inaccurate pension disclosure was focused upon.) The City's potential liability arising from its non-compliant sewer rates was not disclosed to the public until February 2004, when Councilmember Frye informed the City's bond disclosure counsel, Paul Webber, about the issue.[1247]

In fairness to the Council, several facts must be noted. First, the Council members clearly did not view ensuring the accuracy of bond disclosures as part of their duties, and aside from the Bryan Cave Memorandum and presentation, no one told them that they were charged with that obligation. Rather, the Council undoubtedly took comfort from the knowledge that members of the City Attorney's Office and City Manager's Office were directly responsible for that task, and were assisted by financial advisors and bond and disclosure counsel specializing in municipal bond offerings from Orrick, Herrington & Sutcliffe, LLP.[1248] Although the SEC asserted in the Orange County Report that such reliance does not absolve local officials of their duty to take "appropriate steps" when they know of facts indicating a risk that a disclosure may be misleading,[1249] the facts known to the Orange County Supervisors were very different than the facts known to the Council. The Orange County Supervisors had knowledge of facts "calling into question the County's

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1244 Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002).

1245 Minutes, San Diego City Council Meeting at 15-16 (June 30, 2003). Council members Scott Peters, Michael Zucchet, Toni Atkins, Charles Lewis, Brian Maienschein, Donna Frye, James Madaffer, and Mayor Murphy voted to approve the offering. Councilmember Ralph Inzunza was not present. *Id.* at 16.

1246 $505,550,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Sewer Revenue Bonds, Series 2003A and Series 2003B (Preliminary Official Statement) at 27 ("Sept. [•], 2003").

1247 E-mail from Paul S. Maco to Paul Webber (Feb. 12, 2004).

1248 In connection with the City's 2002 and 2003 Tax Anticipation Note Series ("TANS") offerings, the Council did not receive a copy of the POS along with the implementing resolution when voting to approve the POS and other aspects of the offerings. *See* San Diego City Council Resolution No. R-296500 (May 14, 2002); San Diego City Council Resolution No. R-297969 (May 20, 2003). Notably, the City Treasurer—as opposed to the City Manager—was charged with overseeing the finalization of the POS and the OS for TANS offerings without Council's continuing supervision or final approval.

1249 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *8-9 (Jan. 24, 1996).

ability to repay the securities."[1250] In the face of that knowledge, the SEC stated that the Supervisors were required to take steps such as reading the disclosure documents and asking questions about the disclosure.[1251]

The role of the San Diego City Council in government was significantly different than that of the Orange County Board.[1252] The Orange County Board was charged with supervising, and had ultimate responsibility for, the official conduct of all County officers, including the Treasurer, and it had fiscal powers which included the issuance of municipal securities.[1253] In contrast, San Diego's City Manager form of government placed far less power and responsibility with the City Council. The City Manager was responsible for the activities of all City departments, including those tasked with preparing the bond disclosures.[1254]

Notwithstanding the San Diego City Council's somewhat lesser role, it was still the governmental body that authorized the City's bond issuances. As such, the same duties placed upon the Orange County Board applied to the San Diego City Council. The Council's awareness of potentially significant liabilities in advance of several of those issuances should have caused the Council to take appropriate steps to make sure the City was not disseminating inaccurate or misleading information about these liabilities, by reading the disclosures or even just asking questions. It took no such steps. As such, the Mayor and City Council must share the responsibility for some of the City's disclosure failures due to their negligent behavior.

1250 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *7 (Jan. 24, 1996).

1251 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *9 (Jan. 24, 1996).

1252 Although the SEC has brought enforcement actions and issued Reports of Investigations relating to defective municipal bond disclosures since the Orange County Report – including actions based solely on negligence – none have addressed the obligations of elected officials. *See, e.g., In re Massachusetts Turnpike Authority and James E. Kerasiotes*, Securities Act Release No. 8260, 80 SEC Docket 2081, 2003 WL 21757219 (July 31, 2003); *In re City of Miami, Florida*, Securities Act Release No. 8213, 79 SEC Docket 2580, 2003 WL 1412636 (Mar. 21, 2003); *In re City of Syracuse, New York*, Securities Act Release No. 7460, 65 SEC Docket 1199, 1997 WL 598008 (Sept. 30, 1997).

1253 Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *2 (Jan. 24, 1996).

1254 San Diego City Charter art. V, §§ 28-30. In connection with the City's 2002 and 2003 Tax Anticipation Note Series ("TANS") offerings, Council did not receive a copy of the POS along with the implementing resolution when voting to approve the POS and other aspects of the offerings. *See* San Diego City Council Resolution No. R-2002-1509 (May 14, 2002); San Diego City Council Resolution No. R-2003-1262 (May 20, 2003). Notably, the City Treasurer – as opposed to the City Manager – was charged with overseeing the finalization of the POS and the OS for TANS offerings without Council's continuing supervision or final approval.

XI. CONCLUSIONS AS TO INDIVIDUAL CULPABILITY

With regard to the City's unlawful financial disclosures, we believe the evidence supports the determination that the following City representatives acted with wrongful intent, i.e., scienter as defined pursuant to Section 10(b) of the Securities Exchange Act of 1934:

Deputy City Manager Patricia Frazier
City Treasurer Mary Vattimo
Auditor and Comptroller Ed Ryan
Deputy Auditor and Comptroller Terri Webster
SDCERS Administrator Larry Grissom
Utilities Finance Administrator Dennis Kahlie
Deputy Director, MWWD William Hanley
Deputy City Attorney Kelly Salt

As to the City's financial disclosures, we believe the evidence supports a determination that the following City representatives were negligent in the fulfillment of their responsibilities to the City:

City Manager Jack McGrory
City Manager Michael Uberuaga
City Attorney Casey Gwinn
Accounting Division Manager Phil Phillips
Principal Accountant Rudy Graciano
Executive Assistant City Attorney Leslie Girard
SDCERS General Counsel Loraine Chapin
Senior Deputy City Attorney Ted Bromfield

As to the members of the SDCERS Board of Trustees, we believe the evidence supports the determination that the following SDCERS board members breached their fiduciary responsibilities:

SDCERS Board President Keith Enerson
Deputy City Manager, SDCERS Board member Bruce Herring
SDCERS Board member Sharon Wilkinson
Deputy Auditor and Comptroller, SDCERS Board member Terri Webster
SDCERS Board member Robert Scannell
SDCERS Board member Ronald Saathoff
SDCERS Board member John Torres
City Treasurer, SDCERS Board member Conny Jamison
SDCERS Board member John Casey
City Treasurer, SDCERS Board member Mary Vattimo
SDCERS Board President Frederick Pierce, IV
City Human Resources Director, SDCERS Board member Cathy Lexin

As to members of the City Council, we believe the evidence supports a determination that the following Council members were negligent in fulfillment of their bond offering disclosure responsibilities:

Mayor Richard Murphy
Councilmember Toni Atkins
Councilmember Donna Frye
Councilmember Ralph Inzunza
Councilmember James Madaffer
Councilmember Brian Maienschein
Councilmember Scott Peters
Councilmember George Stevens
Councilmember Byron Wear

We believe the evidence also supports a determination that, with the exception of Donna Frye, George Stevens, and Byron Wear, those same Councilmembers knowingly and improperly caused the City to violate federal and state law by failing to act in accordance with sewage treatment cost allocation legal mandates.

Exhibit 45

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

TROY A. DAHLBERG

KROLL

WILLKIE FARR & GALLAGHER LLP

accrued liability – increased from $68.96 million to $283.89 million, a nearly 400% increase.[346] By the spring of 2002 – when the City once again concluded negotiations with its four main labor unions as part of the 2002 "meet and confer" process – SDCERS's funded ratio was already projected to fall below the MP-1 trigger.[347]

With an official breach of the MP-1 trigger looming, City and SDCERS officials began to discuss the financial consequences to the City of the breach.[348] According to the proposal which set forth the terms of MP-1:

> In the event that the funded ratio of the System falls to a level 10% below the funded ratio calculated at the June 30, 1996 actuarial valuation which will include the impact of the benefit improvements included in this Proposal [92.3 percent], the City-paid rate will be increased on July 1 of the year following the date of the actuarial valuation in which the shortfall in funded ratio is calculated. *The increase in the City-paid rate will be the amount determined by the actuary necessary to restore a funded ratio no more than the level that is 10% below the funded ratio calculated at the June 30, 1996 actuarial valuation.*[349]

Although the proposal seems, by its terms, to require the City to fully restore SDCERS's funding to a ratio of 82.3% no later than July 1 of the year immediately following a trigger "hit," Mr. Grissom stated in 2002 that he believed the City was required only to begin paying the full PUC rate at that time, not to make a one-time payment to bring the funded ratio up to the 82.3% floor.[350] Mr. Grissom's new interpretation was adopted by certain members of the SDCERS Board and by the City Manager's Office.[351]

The financial impact of this interpretation was significant. For example, the City Manager's Office estimated that, under its interpretation, the City owed SDCERS approximately an additional $20-$26

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346 Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2001, at 9 (Feb. 12, 2002).

347 E-mail from Terri Webster to Larry Grissom (Apr. 15, 2002).

348 E-mail from Terri Webster to Ray Garnica (Mar. 18, 2002); E-mail from Larry Grissom to Richard Vortmann cc to Fred Pierce (Mar. 13, 2002).

349 Memorandum from Cathy Lexin, Labor Relations Manager, to Larry Grissom, Retirement Administrator (July 23, 1996) *attaching* City Manager, Retirement System Proposal (Consolidated from Proposal Dated June 7, 1996, as Modified by June 21, 1996 Proposal) (emphasis added).

350 E-mail from Larry Grissom to Richard Vortmann cc to Fred Pierce (Mar. 13, 2002).

351 E-mail from Terri Webster to Cathy Lexin and Bruce Herring (Mar. 13, 2002). In an April 15, 2002, closed session meeting concerning meet and confer issues, the City management team apparently presented a PowerPoint slide show to the City Council advancing the interpretation that a breach of the trigger would only require a return to the full actuarial rate. One of the slides in this presentation states: "If CERS funding ratio drops below 82.3% (currently 89.9%) City must pay full actuarial rate, $25m more annually." PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session (Apr. 15, 2002).

million in the first year after the trigger was hit.[352] In contrast, if the funded trigger were read to require the City to fully restore SDCERS's funded ratio to 82.3%, the City would have owed, in FY 2003, an estimated lump-sum payment of at least $75 million.[353] Even this estimate, based on the assumption that the funded ratio as of June 30, 2002 would be 80%, was far too low. The actual ratio turned out to be 77.3%, not counting *Corbett* "contingent" liabilities, which would have reduced the ratio 2% more.[354] Fully restoring the 82.3% funded ratio in FY 2003 probably would have cost the City approximately $160 million.[355]

K. Manager's Proposal 2

During the spring of 2002, the City and its municipal unions engaged in "meet and confer" negotiations, the point of which was to reach a multi-year agreement regarding salary and benefits for City employees.[356] Early on in the meet and confer process, it was understood by City officials that there were serious financial consequences to the City if the MP-1 trigger was breached.[357] As City Auditor Ed Ryan noted in an e-mail dated February 28, 2002, addressed to Cathy Lexin (a SDCERS Board member who also served as the City's chief negotiator in the meet and confer process) and Deputy City Manager Bruce Herring:

> Cathy[,] Bruce [sic] You might want to use Ron Saathoff to get their [the Board's] attention. I don't believe you can conclude meet and confer without knowing what retirement is going to do. That means they have to tell the City likely by the March meeting. I believe the Manager has to tell Council the budget status before meet and confer concludes and he'd have to know the retirement solution to do that.[358]

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352 E-mail from Terri Webster to Ray Garnica (Mar. 18, 2002); E-mail from Terri Webster to Cathy Lexin and Bruce Herring (Mar. 13, 2002).

353 This was the interpretation adopted at least by SDCERS actuary Rick Roeder and fiduciary counsel Robert Blum. Minutes, SDCERS Board Meeting at 20 (June 21, 2002); Letter from Constance M. Hiatt and Robert Blum to Lawrence Grissom, Retirement Administrator (Draft June 12, 2002).

354 Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2002, at 13-15 (Jan. 9, 2003).

355 Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2002, at 13 (Jan 9, 2003).

356 Minutes, SDCERS Board Meeting at 2 (July 11, 2002); Minutes, SDCERS Special Meeting at 36 (May 29, 2002); Memorandum from Daniel E. Kelley, Labor Relations Manager, to Honorable Mayor and City Council (Mar. 15, 2002).

357 Minutes, SDCERS Board Meeting at 25 (July 11, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Head Deputy City Attorney, to Honorable Mayor and City Council (June 14, 2002); E-mail from Terri Webster to Cathy Lexin and Bruce Herring (Mar. 13, 2002); E-mail from Terri Webster to Mary Vattimo (Feb. 12, 2002); E-mail from Terri Webster to Ed Ryan (Feb. 12, 2002).

358 E-mail from Mary Vattimo to Ed Ryan, Terri Webster, and Cathy Lexin cc to Bruce Herring (Feb. 28, 2002).

By March, it was clear to the Council it was likely that the City could owe up to an extra $40 million to the pension the next year.[359]

It was in the context of these discussions that the Mayor and City Council, in closed sessions in April and May 2002, agreed to a proposal which would condition certain retirement benefits on the SDCERS Board's agreement to eliminate or reduce the MP-1 trigger.[360] In exchange, the City agreed to increase the basic multiplier (the number multiplied by a retiree's years of creditable service and then by his highest one-year salary to arrive at his annual retirement benefit) for retirement benefits for general employees to 2.5% from 2.25%.[361]

Among the new retirement benefits agreed upon during the 2002 meet and confer and considered by the City Council in April and May 2002 were "Presidential Leave and Retirement Benefits" ("Presidential Leave").[362] Presidential Leave was a benefit to the presidents of three municipal unions, the Police Officers' Association ("POA"), the International Association of Firefighters, AFL-CIO ("Local 145"), and the Municipal Employees' Association ("MEA").[363] One of the union presidents, Ronald Saathoff of Local 145, was a member of the SDCERS Board.

Until 2002, the POA and MEA presidents – who were employed by their unions and not the City during their tenures as union presidents – had made contributions to SDCERS through their

Why leave out the PowerPoint presentation?

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359 Memorandum from Daniel E. Kelley, Labor Relations Manager, to the Honorable Mayor and City Council (Mar. 15, 2002); Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006).

360 E-mail from Terri Webster to Ed Ryan and Dan Kelley cc to Bob Lawrence, Bob Wilson, and Elmer Heap (May 21, 2002); Memorandum from Daniel E. Kelley, Labor Relations Manager, to Management Team (May 17, 2002); Memorandum from Michael T. Uberuaga, City Manager, to Lawrence B. Grissom, Retirement Administrator (May 15, 2002); Proposal from City of San Diego to San Diego City Firefighters Local 145 (May 10, 2002); San Diego City Council, Closed Session Report, with attached PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (May 6, 2002); PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 29, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Head Deputy City Attorney, to Hon. Mayor and City Council (Apr. 26, 2002); E-mail from Terri Webster to Elmer Heap and Michael Rivo cc to Cathy Lexin (Apr. 17, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 15, 2002).

361 City of San Diego (City) Proposal to the San Diego Municipal Employees' Association (MEA) regarding Implementation of Enhanced Retirement Benefits, Amendment to the Memorandum of Understanding between the City and MEA (May 29, 2002); San Diego, Cal., Ordinance O-19121 (Nov. 18, 2002).

362 PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 29, 2002); Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 15, 2002).

363 Although a fourth union, AFSCME Local 127, was authorized to participate in the Presidential Leave Program, it never opted to do so during the period of our investigation. Letter from Ice Miller to the Internal Revenue Service (July 12, 2005).

respective unions based on their union salaries.[364] Thus, they expected their retirement benefits to be calculated based on their high-one year salaries.[365] However, the legality of this arrangement previously had been questioned, as it was not clear that union employees could contribute to SDCERS based on their union salaries.[366] Mr. Saathoff, by contrast, was employed *jointly* by the City and Local 145, with his (and the City's) contribution to SDCERS based on his salary paid by the City.[367] His retirement benefit, in turn, was expected to be based on his high one-year *City* salary – approximately 70% of his total compensation.[368]

The resolution implementing the Presidential Leave benefit provided that the retirement benefits of the incumbent presidents of the POA, MEA and Local 145, and the two former POA presidents who had not yet retired from City service, would be based on their high one-year *combined* union and City salaries.[369] However, because the MEA and POA presidents were paid union, but not City, salaries, this ordinance essentially ratified the existing arrangement for the POA and MEA presidents.[370] Thus, the resolution, insofar as it implemented Presidential Leave, affected only Mr. Saathoff, the only union president who was paid by both the City and by his union.[371] Presidential Leave had no economic impact on the other union presidents beyond codifying the benefits they would receive on account of contributions they had

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364 E-mail from Theresa McAteer to Cathy Lexin, Dan Kelley, Ed Ryan, Eugene Ruzzini, and Terri Webster (Jan. 19, 2001); Memorandum from Cathy Lexin, Human Resources Director & (*unidentified*), Deputy City Attorney, to Honorable Mayor and City Council (Draft Nov. 13, 2001); PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 29, 2002).

365 Draft Memorandum from Cathy Lexin, Human Resources Director & (*unidentified*), Deputy City Attorney, to Honorable Mayor and City Council (Draft Nov. 13, 2001).

366 E-mail from Theresa McAteer to Cathy Lexin, Dan Kelley, Ed Ryan, Eugene Ruzzini, and Terri Webster (Jan. 19, 2001), forwarding an e-mail from Terri Webster to unknown recipients (Jan. 19, 2001); Memorandum from Cathy Lexin, Human Resources Director & (*unidentified*), Deputy City Attorney, to Honorable Mayor and City Council (Draft Nov. 13, 2001).

367 E-mail from Judy Zellers to Lawrence Grissom (Sept. 20, 2001); Memorandum on Local 145 High One Year Calculation (Nov. 5, 2001); Memorandum from Cathy Lexin, Human Resources Director & (*unidentified*), Deputy City Attorney, to Honorable Mayor and City Council (Draft Nov. 13, 2001); PowerPoint Presentation, San Diego City Council Meet and Confer 2002 Closed Session (Apr. 29, 2002).

368 Memorandum on Local 145 High One Year Calculation (Nov. 5, 2001).

369 San Diego City Council Resolution R-297212 (Oct. 21, 2002). The Presidential Leave benefit passed by unanimous vote, with Council members Scott Peters, Toni Atkins, Byron Wear, Brian Maienschein, Donna Frye, James Madaffer, George Stevens, Ralph Inzunza, and Mayor Murphy voting in favor of the resolution. Minutes, San Diego City Council Meeting at 30-31 (Oct. 21, 2002).

370 E-mail from Dan Kelley to Cathy Lexin (June 4, 2002); San Diego City Council Resolution R-297212 (Oct. 21, 2002).

371 E-mail from Judy Zellers to Lawrence Grissom (Sept. 20, 2001); Memorandum on Local 145 High One Year Calculation (Nov. 5, 2001); E-mail from Dan Kelley to Cathy Lexin (June 4, 2002); San Diego City Council Resolution R-297212 (Oct. 21, 2002).

Exhibit 46

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

TROY A. DAHLBERG

KROLL

WILLKIE FARR & GALLAGHER LLP

Office, assisted by the City Attorney's Office; and Appendix B to each POS and OS contained excerpts from the City's most recent CAFR, prepared by the City Auditor's Office.[926]

During the process of approving a bond offering resolution or ordinance, City Council members were generally provided with the applicable Preliminary Official Statement and back-up information about the offering under cover of a "Form 1472" (Request for Council Action).[927] The Council members voted on the issuance in an open session, after the bond ordinance or resolution had been discussed at least once and a representative of Financing Services had briefed the City Council about the background of and issues relating to the bond issuance.[928]

3. Presentations to Debt Rating Agencies

Municipal bonds are analyzed by three major rating agencies: Fitch Ratings, Standard & Poor's, and Moody's Investors Service.[929] Municipalities, such as the City of San Diego, are not required to provide information directly to rating agencies, but often do so in an attempt to explain and supplement the information contained in CAFRs and bond offering documents. The rating agencies make this information available to the investing public, and the City understands that they will do so.[930] The agencies also use this information to rate specific offerings. The City of San Diego had annual meetings with rating agencies, and also met with them periodically to discuss particular offerings.[931] In advance of these meetings, the rating agencies provided the City with a list of questions regarding the City's finances, which the City responded to at the meetings.[932] These presentations covered the City's financial condition, general economic and demographic trends, and current and proposed financings.

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926 *See, e.g.*, $68,425,000 Public Facilities Financing Authority of the City of San Diego, Taxable Lease Revenue Bonds, Series 1996A (San Diego Jack Murphy Stadium) (Dec. 12, 1996). Some bond offerings have this information in a different Appendix or in its own section as part of the bond. *See, e.g.*, $59,465,000 City of San Diego Community Facilities District No. 1 (Miramar Ranch North), Special Tax Refunding, Series 1998 (June 24, 1998); $250,000,000 Public Facilities Financing Authority of the City of San Diego, Sewer Revenue Bonds, Series 1997A and 1997B (Feb. 1, 1997).

927 Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Ed Wochaski (Apr. 20, 2006); Interview by Vinson & Elkins with Kelly Salt (Mar. 24, 2004).

928 San Diego City Charter art. III, § 16; Interview by Vinson and Elkins with Kelly Salt (Mar. 24, 2004).

929 WM Financial Strategies, Municipal Bond Ratings, *available at* http://www.munibondadvisor.com/rating.htm.

930 For example, following the City's Voluntary Disclosure in January 2004, several rating agencies publicly released revised outlooks on the City's financial health. *See, e.g.*, Memorandum from Michael T. Uberuaga, City Manager, and Ed Ryan, City Auditor and Comptroller, to the Honorable Mayor and City Council (Feb. 2, 2004); Moody's Investors Service, *Moody's Changes Outlook to Negative from Stable on City of San Diego General Obligation Bonds and General Fund Obligations* (Feb. 2, 2004); *see also* E-mail from Paul Dyson, Standard and Poor's, to Lakshmi Kommi cc to Patricia Frazier (Feb. 23, 2004).

931 Interview by the Audit Committee with Lakshmi Kommi (May 4, 2006).

932 Interview by the Audit Committee with Lakshmi Kommi (May 4, 2006).

Exhibit 47

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

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B. The City

1. The City Council

As the legislative branch of the City government, the City Council was a key party in the enactment of MP-1 and MP-2. In 1996 and again in 2002, the City Council voted to approve pension funding arrangements that violated the California Constitution, the City Charter, and the Municipal Code.[673] Despite the plain language of the controlling statutes, and their obligation as elected officials to uphold the laws of the City and State,[674] there is no evidence the Council members ever bothered to inquire whether these agreements were permissible under California law.

It should be noted that the Council members who voted on MP-2 had inherited an already violative system and both they and the predecessor Council that adopted MP-1 were failed by their legal counsel – the City Attorney's Office and outside fiduciary counsel – who did not bring the issue of the legality of these proposals to the Council's attention. This does not change the central fact, however, that the Council's vote in approving both MP-1 and MP-2 resulted in an illegally funded pension system.

2. City Administration

The City and its various offices and employees also bear responsibility for illegalities in connection with the City's pension funding. First, to the extent that the SDCERS Board violated its responsibilities to its members by approving MP-1 and MP-2, overruling Mr. Rick Roeder on the suggested actuarial treatment of the *Corbett* settlement, and allowing the retirement system to become actuarially unsound, the City is responsible for its active encouragement of these unsound practices in order to obtain short-term contribution relief. Second, to the extent the financial condition of the retirement system created reporting obligations for the City, the City is responsible for its failures to satisfy these disclosure requirements.

In the case of MP-1, the relevant City personnel who encouraged the SDCERS Board's breach of fiduciary duty and contributed toward the City's violation of the California Constitution, the City Charter, and the Municipal Code include City Manager McGrory, City Auditor Ryan, and the City representatives on the SDCERS Board: Terri Webster, Sharon Wilkinson, and Bruce Herring. City Manager

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673 San Diego City Council Ordinance O-19121 (Nov. 18, 2002); San Diego, Cal., Ordinance O-18383 (Feb. 25, 1997); *Gai v. Fresno City Council*, 63 Cal. App. 3d 381, 387 (1976) ("[C]ity charters pertaining to municipal affairs supersede all laws inconsistent therewith."); *Acton v. Henderson*, 150 Cal. App. 2d 1, 13 (1957) ("We start with the premise that the ordinances . . . of the Municipal Code are invalid if they conflict with the charter . . . section 6 of article XI of the state Constitution so provide[s], and the cases are in accord.").

674 Cal. Const. arts. XX, § 3; San Diego City Charter art. XIV, § 211.

Exhibit 48

Report on Investigation

The City of San Diego, California's

Disclosures of Obligation to Fund the

San Diego City Employees' Retirement System

and Related Disclosure Practices

1996-2004

with

Recommended Procedures and Changes to the Municipal Code

September 16, 2004

Paul S. Maco
Richard C. Sauer
Vinson & Elkins L.L.P.
Washington, D.C.

made by the City Auditor and Comptroller and City Manager; the procedures, diligence, ability, and work product of the outside auditor; and the City's exercise of its obligations under federal and state securities laws. The Board would be authorized to conduct such other studies, reviews, and public hearings on matters relating to or connected with the City's financings, disclosures, audits, and internal financial controls and procedures as the Mayor and City Council might direct. The Board would also establish procedures to receive and respond to any complaints or concerns regarding accounting, internal controls or auditing matters, including procedures for the confidential and anonymous submission by employees of any such complaints or concerns.

In order to ensure that the process for selecting the City's Independent Auditor is not subject to improper influence, the Board would review and evaluate all responses to a Request for Proposals for the City's Independent Auditor, and make a recommendation to the City Council as to which candidate it believes is most qualified. The City Council may approve or reject the Board's selection but may not substitute a candidate of its own choosing. In the event that the City Council rejects the recommendation of the Board, the Board would provide another recommendation or, in its sole discretion, provide for the issuance of a new Request for Proposals to encourage additional candidates to submit their proposals.

To encourage participation by qualified candidates, the members of the Board would be reimbursed for reasonable expenses incurred in the performance of their official duties, pursuant to City Administrative Regulations, and the members of the Board would be defended and indemnified with respect to the course and scope of their official duties as set forth in state law.

To permit the Board to effectively execute its responsibilities, the City Manager, the City Attorney, the City Auditor and Comptroller, and the City Treasurer would be instructed to fully cooperate with the Board and to provide such assistance and resources as are reasonably necessary to allow it to carry out its responsibilities. In the City's Annual Budget, in addition to budgeting sufficient internal staff resources as described above, the City Manager would be instructed to propose expenditures of funds sufficient to engage such independent counsel or other independent advisers to assist the Board in carrying out its responsibilities as the Board shall reasonably request. The City Council would agree to appropriate monies as proposed by the Manager sufficient to meet these needs. In addition, we recommend amending the Municipal Code to direct the City Attorney to assign one or more Deputy City Attorneys to serve as legal advisors to the Board.

Disclosure Controls and Procedures: Disclosure Practices Working Group

Prior to the enactment of the Sarbanes-Oxley Act, the Securities and Exchange Commission proposed rules that would require companies subject to the reporting requirements of the securities laws to "maintain sufficient procedures to provide reasonable assurance that the

Exhibit 49

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR COUNTY OF SAN DIEGO
CENTRAL DIVISION

F I L E D
Clerk of the Superior Court
MAY 17 2005
By: Marcee Wheaton, Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. RONALD LEE SAATHOFF, Defendant.	*DECLARATION IN SUPPORT OF ARREST WARRANT* *Case No.* CD190930-02 *D.A. No.* ABM833-02

I, VINCENT GIAIME, declare:

I am a peace officer employed by the San Diego District Attorney's Office and I allege and state the following:

I have been employed as a District Attorney Investigator for approximately six years. I am currently assigned to the Special Operations Division. I have been a peace officer or special agent for over 31 years. Prior to working for the District Attorney's Office, I was employed by the Naval Criminal Investigative Service for twenty-two years. Prior to that, I was employed by the New York State Special Prosecutor's Office as a special investigator investigating corruption in the criminal justice system for three years. During my career, I have investigated hundreds of political corruption and fraud cases.

During the course of my duties with the District Attorney's Office, I was assigned in June 2004 to investigate reported violations of Government Code 1090 Conflict of Interest contracts, sales and purchases by members of the San Diego City Employee Retirement System (SDCERS) Board of Trustees, and other City employees who may come within the purview of Government Code Section 1090. It was determined that six SDCERS Board trustees participated in and voted on the contribution agreement later identified as Manager's Proposal 2 (MP2), which was tied to the City approving certain City employees receiving enhanced retirement benefits. The six trustees include Cathy LEXIN, Ronald L. SAATHOFF, John A. TORRES, Teresa (Terri) A. WEBSTER, Sharon K. WILKINSON and Mary E. VATTIMO.

In conducting the investigation I have learned the following information based upon my discussions with witnesses, and by reviewing the following categories of documents: (1) depositions taken during the civil case entitled Gleason v. San Diego City Employees Retirement System (GIC 803779); (2) minutes and tape recordings of SDCERS Board meetings; (3) minutes of open and closed sessions of the San Diego City Council; (4) memorandums of understanding signed in 2002 between the City of San Diego and various local unions; (5) email communications of Larry Grissom (SDCERS retirement

dministrator); (6) emails of various City employees, Cathy LEXIN, Mary E. VATTIMO, resa (Terri) WEBSTER, Ed Ryan, Patricia Frazier, Kelly Salt, Les Girard, Bruce Herring and s; (7) the Blue Ribbon Committee Report on City Finances; (8) City Attorney Interim Reports; (9) numerous City documents, including the "table books" utilized by City employees during the meet and confer process of 2002; (10) payroll records of City personnel, and (11) the report prepared by Vinson and Elkins LLP at the request of the City (authors Paul S. Maco and Richard C. Sauer).

During my investigation I determined that SDCERS is responsible for administering and managing the defined benefit retirement funds for the City of San Diego, the Unified Port District and the Airport Authority (the plan sponsors), and for their General members, Safety members, Elected Officers and Retirees. The San Diego City Council, as the Plan Sponsor, establishes benefits and makes contributions to support benefits; SDCERS invests the assets to reduce future City contributions, administers the benefits and provides the cost of these benefits. The SDCERS Board of Administration is compromised of 13 trustees, 3 representatives from the City (City Manager, City Auditor and City Treasurer, or designees); 4 citizens appointed by the City Council; 3 representatives elected by General Members; 2 representatives elected by police and fire safety members (one of each) 1 representative elected by the retired members.

Ronald L. SAATHOFF is a Fire Captain with the San Diego Fire Department and has been the President of the Firefighters International Association of Firefighters Local 145 e 1980. He has represented the Firefighter's on the SDCERS' Board since 1985 and as on the Board during the negotiation and vote of MP2.

Cathy LEXIN is the City of San Diego Human Resources Director and was appointed to represent the City Manager's Office on the SDCERS' Board in June 2001. She is also a General Member of SDCERS as a city employee.

Teresa (Terri) A. WEBSTER was the Assistant Auditor and Comptroller for the City of San Diego and was appointed to SDCERS' Board to represent the City Auditor and Comptroller. She has been on the SDCERS' Board since approximately October 1995.

Mary E. VATTIMO is the Treasurer of the City of San Diego and was appointed to SDCERS' Board when she became the City Treasurer in June 2001. She has been a City employee since 1987 and is a General Member of SDCERS.

Sharon K. WILKINSON has been a City employee since 1975 and is currently a Management Analyst for the City. She was elected to SDCERS' Board in 1992 by the General Members and has served three consecutive terms. She is a member of the Municipal Employees Association.

John A. TORRES is a latent fingerprint examiner for the San Diego Police partment Crime Laboratory and is a General Member of the SDCERS. He is a member

-nd the Vice President of the Municipal Employee Association and is serving his second -erm on the SDCERS' Board.

SDCERS was established by the City, essentially as a trust. It is administered by the Board and not the City or the City Council. The Board acts as a fiduciary as to the beneficiaries of SDCERS (its members) and its duties towards these beneficiaries in carrying out its administrative functions take precedence over any other duties that the Board may have to other entities involved in SDCERS, including the City. The City Charter directs the City Treasurer to hold SDCERS funds separate from the funds of the City and payments may only be made at the direction of the Board.

The California Constitution requires members of the Board to act as fiduciaries and to act solely in the interest of and for the exclusive purpose of protecting and preserving benefits of its members while minimizing employer contributions. The duty to its members takes precedence over all other duties. The constitution provides board members must act "with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims."

A pension system derives its ability to pay benefits from three sources: employer contributions, employee contributions and earnings generated from such contributions. Under SDCERS, both the City and its members must contribute certain amounts as -escribed by the City Charter and applicable municipal statutes in order to fund the benefits. Employees make contribution rates as a percentage of compensation, and are based on the age of a member upon entry into SDCERS and actuarial calculations that are approved by the Board.

The City is to contribute annually an amount certified by the actuary that is determined to be the actuarially required contribution for the City. Each year the Board selects an actuary to perform an actuarial valuation of the plan to determine whether the plan currently has the funds necessary to satisfy it's current and future benefit obligations. The annual actuarial valuation of a defined benefit plan is based on various actuarial assumptions, such as investment performance, employee retention rates, mortality tables, expected increases in compensation and expected cost-of-living adjustments. This analysis permits the Board to determine the necessary contributions made by the City and its employees to satisfy the annual cost under the City's defined benefit plan with SDCERS and the overall funding status of the plan.

The SDCERS Board of Trustees voted to approve and accept the City of San Diego's proposal, (MP2), on July 11, 2002. The Board's approval of MP2, which deferred a percentage of City of San Diego employer contributions and avoided the City's obligation of having to make a balloon payment to SDCERS as negotiated under the terms of Manager's Proposal 1 (MP1), was tied to a negotiated enhanced retirement benefits agreement that had been negotiated during the 2002 "meet and confer" labor negotiations

tween the City of San Diego and three of the City of San Diego Employee bargaining ions. These unions included the San Diego Firefighter's Local 145, Municipal Employees ociation and Local 127 American Federation of State County, and Municipal Employees. Cathy LEXIN, Teresa (Terri) A. WEBSTER, John A. TORRES, Ronald L. SAATHOFF, Sharon K. WILKINSON and Mary E. VATTIMO, all San Diego City employees and SDCERS Trustee Board members, personally benefited as a result of their involvement with MP2.

Government Code Section 1090 provides in part:

> "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity..."

By the fall of 2001, it was apparent that the investment markets were continuing to suffer a downturn in returns, which eroded the SDCERS earnings. In February 2002 a draft actuarial report for the fiscal year ended 06/30/01 became available from the SDCERS actuary Richard Roeder. The report showed the funded ratio had dropped to 89.9 % and appeared to be on a downward spiral. This caused significant concerns for the City of San ego as demonstrated by a series of internal emails. The City had an obligation under the 1996 MP1 agreement to ensure the funding ratio would not go below 82.3%. If and when this occurred the City would be required to increase the percentage of the payments made to the SDCERS and to make a balloon payment which was estimated at the time to be between $25 million to $100 million, depending upon various interpretations of MP1. Deputy City Manager Bruce Herring was interviewed on April 12, 2005. He stated that the City was quite concerned about making the balloon payment, which would have had a significant negative impact on the City budget.

In the spring of 2002, the City engaged in the "meet and confer" process with the City employee unions. During that process a number of improved benefits were negotiated and offered to the unions. The benefits included salary increases and enhanced retirement benefits. The City's labor negotiators informed the unions in the meet and confer process that the enhanced retirement benefits were contingent upon the SDCERS Board approving a modification to the existing City contributions agreement (MP1). The modification to this agreement subsequently became known as MP2. The nexus between the enhanced retirement benefits and MP2 was confirmed during the March 24, 2005 interview of Daniel Kelley, former City of San Diego Labor Relations Manager, the April 1, 2005 interview of Michael McGhee, City of San Diego Labor Relations Manager, and the April 15, 2005 interview of current City Manager Lamont Ewell. This nexus is also documented in various City documents and the Memorandums of Understanding between the City and the three

ıployee bargaining Unions, Firefighter's Local 145, MEA and Local 127 AFSCME that ultimately approved by the San Diego City Council on November 18, 2002.

On May 29, 2002 according to SDCERS' Board minutes, City Manager Michael Uberuaga made a presentation to the SDCERS' Board, requesting the Board modify the existing contribution schedule under MP1, which was a binding agreement between the City and SDCERS.

MP1 had been approved by the SDCERS' Board in July 1996. It was also tied to enhanced retirement benefits and changed how the City funded SDCERS. MP1 permitted contribution to be made by the City to SDCERS at actuarial rates below the rates of more conventional funding methods.

In a memorandum dated June 10, 2002, from City Manager Uberuaga and directed to SDCERS, Uberuaga outlined MP2, which would reduce the funding ratio from 82.3% to 75% and establish other criteria that had the net effect of reducing the immediate need to pay substantial funds to SDCERS. It was referred to as a contribution rate stabilization plan, or, in other words, a method to eliminate the peaks and valleys in payments to SDCERS. Bruce Herring subsequently acknowledged to Vinson & Elkins that MP1's purpose was to push into the future current City costs of its retirement obligations. MP1 was drafted by Cathy LEXIN and she was also significantly involved in drafting MP2.

On June 12, 2002, fiduciary counsel for SDCERS, Robert Blum and Constance Hiatt, prepared a draft opinion letter which expressed serious reservations with MP2. The draft opinion noted that under its interpretation of MP1, prior to any modification, that if the funded ratio of 82.3% was reached it would require the City to pay at least $75 million to SDCERS. The letter opined that there was a "material risk" if the City's modification of MP1 were to be litigated that the court would find that approval by the Board of the amendment was not a prudent exercise of their fiduciary duties.

In response to the fiduciary counsels' concerns, a further modification was made to the City's proposal, which addressed some of the issues raised in the draft letter. Uberuaga generated another memorandum, dated June 18, 2002, to reflect the changes to the proposal. The final version of this memorandum was sent via email from LEXIN to the secretary of the Board on June 19, 2002. The email chain indicates it was drafted at least in part by LEXIN.

On June 21, 2002, SDCERS held its monthly public meeting. The major topic was the City's proposal to modify its funding obligations to SDCERS. Individuals who attended the meeting included all 12 trustees (Vattimo was not present), Herring, Blum and Hiatt, and Richard Roeder. Herring presented MP2 to the Board, advising the Board that this proposal had substantial improvements over MP1. Prior to any discussion by the Board, or any remarks by fiduciary counsel or Roeder, LEXIN made a motion to adopt the proposal as presented by Herring. WEBSTER seconded the motion. This motion and its second were

·ade prior to Blum and Roeder expressing their respective concerns. Blum's and Roeder's ncerns about the proposal were known to both LEXIN and WEBSTER. However, before ote was taken on the motion Blum and Roeder both made presentations to the Board, expressing several concerns regarding the City's proposal. Although Herring encouraged the Board to vote on the proposal at the meeting, the Board tabled the discussion until additional information could be obtained.

A memorandum dated July 8, 2002 was prepared by LEXIN and addressed to the Mayor and City Council in preparation of the Council's closed session hearing on July 9th. The memorandum advises the Mayor and Council that the initial reaction of the SDCERS' Board to the City's proposal to modify the funding arrangement was "quite negative" in light of the fiduciary counsels' position. The memorandum indicated that the City Manager's office wanted to be prepared to offer another modification, by eliminating the request to lower the funding ratio from 82.3% to 75% and adding a five year phase in if the 82.3% level is reached. The memorandum also stated "based upon our conversations with the Retirement Administrator [Lawrence B. Grissom], we anticipate a motion from a Board member which would further modify the proposal before the board..." On July 9th the City Council voted in closed session to approve the additional modification, if it was necessary to obtain approval. Present in the closed door session were, among others, LEXIN, Herring and City Auditor and Comptroller Edward Ryan. Ryan was the supervisor of VATTIMO during this time period.

On April 21, 2005, and May 4, 2005, Lawrence Grissom was interviewed and confirmed that he was aware of the added change to the proposal and identified Ronald SAATHOFF as the Board member referenced in the LEXIN memorandum of July 9, 2002.

On July 11, 2002, a special public meeting of the SDCERS Board was held to address the City's proposal regarding the modification to the City's contribution to SDCERS. All 13 trustees were present, as were Blum, Hiatt, Roeder, Herring, and others. Herring made a presentation in support of MP2 and also encouraged the Board to act immediately on the matter. Roeder and Blum also addressed the Board. During public comment various labor union representatives spoke in favor of the City's proposal. One former Board trustee spoke in opposition and asked the rhetorical question "Would you as a Board vote for this or would the City Manager even be here if there wasn't this quid pro quo going on where there was an increase of benefits tied to this proposal? LEXIN thereafter made a motion to support the City Manager's request to adopt MP2. it was seconded by WEBSTER. After lengthy discussion SAATHOFF offered a substitute motion, consistent with the motion described in the LEXIN memorandum of July 9, which kept the funding ratio at 82.3% along with the other changes. This is the substitute motion which LEXIN was already aware of, and had briefed the City Council regarding two days earlier. It was to be made if her initial motion appeared to be unsuccessful. The Board ultimately passed the substitute motion 8-2, with one abstention. Two appointed Board members Richard Vortmann and Diann Shipione left prior to the vote due to expressed time

nstraints. The two individuals who opposed the motion were Thomas Rhodes, Police ...ers Association representative and David Crow, retiree elected official.

The six trustees who benefited from the enhanced retirement benefits all voted in favor of the motion.

Ronald L. SAATHOFF benefited as one of the enhanced retirement benefits of the 2002 "meet and confer" was to allow SAATHOFF to receive an increase in his retirement allowing him to add his union salary as the President of Firefighter's Local 145 to his Fire Department Captain's salary (which was collectively capped at the City's Labor Relations Manager salary) for use in his retirement benefit calculations. SAATHOFF subsequently retired and entered the Deferred Retirement Option Plan (DROP) on 7/02/2003 at age 55.356. His monthly pension benefit without the 2002 increase would have been $7,173.43. As a result of his actions and the passage of MP2 he is receiving $9,703.66 monthly.

John A. TORRES benefited as a general member of SDCERS. He received the general member retirement factor increase from 2.25% to 2.5% at age 55. TORRES subsequently retired on 1/22/2005 at age 55.869 and entered the DROP program. His monthly pension benefit without the 2002 increase would have been $3,630.29. As a result of his actions and the passage of MP2 he is receiving $4,016.81 as a monthly pension benefit.

Sharon K. WILKINSON benefited as a general member of SDCERS. She received the general member retirement factor increase from 2.25% to 2.5 % at age 55. WILKINSON subsequently retired on 2/20/2005 at age 55 and entered the DROP program. Her monthly pension benefit without the 2002 increase would have been $4,618.66. As a result of her actions and the passage of MP2 she is receiving $5,096.26 as a monthly pension benefit.

Cathy LEXIN benefited as a general member of SDCERS. She received the general member retirement factor increase from 2.25% to 2.5% at age 55. LEXIN has not attained 55 years of age. However, at age 55 she will eligible to retire and receive $5,636.06 monthly under the 2002 increase. Had she retired without the enhanced retirement benefits derived from MP2, her monthly pension benefit would have been $5,098.61. These calculations are based upon the assumption her highest one year salary was $128,518, which was her salary as of 07/19/2002. Subsequent salary increases since July 2002 act to increase the differential further.

Mary E. VATTIMO benefited as a general member of SDCERS. She received the general member retirement factor increase from 2.25% to 2.5% at age 55. VATTIMO has not attained 55 years of age. However, at age 55 she will be eligible to retire and receive $7,108.21 monthly under the 2002 increase. Had she retired without the enhanced retirement benefits derived from MP2, her monthly pension benefit would have been

404.51. These calculations are based upon the assumption her highest one year salary $120,426, which was her salary as of 7/19/2002. Subsequent salary increases since 2002 act to increase the differential further.

Teresa (Terri) A. WEBSTER benefited as a general member of SDCERS. She received the general member retirement factor increase from 2.25% to 2.5% at age 55. In addition, she is able to exceed the 90% salary cap because she was hired before she was 24 years of age. This option to exceed the salary cap was "grand parented" in the 2002 enhanced retirement benefits. WEBSTER has not attained 55 years of age. However, at age 55 she will be eligible to receive $10,862.41 monthly under the 2002 increase. Had she retired without the enhanced retirement benefits derived from MP2, her monthly pension benefit would have been $9,788.74. These calculations are based upon the assumption her highest one year salary was $136,296, which was her salary as of 7/19/2002. Subsequent salary increases since July 2002 act to increase the differential further.

A chart summarizing the above-referenced calculations follows:

NAME	RETIREMENT DATE/AGE	MONTHLY PENSION BENEFIT W/O 2002 INCREASE	MONTHLY PENSION BENEFIT W/ 2002 INCREASE
SAATHOFF	Retired 07-02-03 at age 55.356	$7,173.43	$9,703.66
TORRES	Retired 01-22-05 at age 55.869	$3,630.29	$4,016.81
WILKINSON	Retired 02-20-05 at age 55	$4,618.66	$5,096.26

NAME	ANNUAL SALARY AS OF 07-19-02	MONTHLY PENSION BENEFIT W/O 2002 INCREASE (Assumes retirement at age 55)	MONTHLY PENSION BENEFIT W/ 2002 INCREASE (Assumes retirement at age 55)
LEXIN	$128,518	$5,098.61	$5,636.06
VATTIMO	$120,426	$6,404.51	$7,108.21
WEBSTER	$136,296	$9,788.74	$10,862.41

On February 18, 2004, a class action suit entitled Gleason, et al v San Diego City Employees Retirement System (SDCERS), case number GIC 803779, was filed in Superior Court of the State of California for the County of San Diego. The plaintiff, James F.

ason, a member of the SDCERS, contended that a 2002 contract referred to as MP2 ed into between the City of San Diego and the Board of Administration of SDCERS, d be voided because six of the 13 trustees on the Board had a financial interest in that contract. He alleged that six trustees' action violated Government Code section 87100, a statue contained in the Political Reform of 1974, and Government Code section 1090. SDCERS and the City of San Diego litigated the matter for over a year, then, in August 2004, entered into a settlement with the plaintiff class on terms that bolstered the financial stability of the retirement systems. The settlement essentially obviated any future operation of MP2.

The discovery process included the taking of several depositions. SAATHOFF was deposed on January 23, 2004, TORRES was deposed on January 27, 2004, WEBSTER was deposed on January 29, 2004, LEXIN was deposed on January 30, 2004, WILKINSON was deposed on February 5, 2004 and VATTIMO was deposed on February 9, 2004.

TORRES and WILKINSON in their respective depositions acknowledged that the enhanced retirement benefits were contingent upon the SDCERS Board approval of MP2.

Diann Shipione, a SDCERS Board trustee, was interviewed on March 30, 2005. She said it was quite evident to her that the enhanced retirement benefits were contingent upon the SDCERS' Board approval of the modification of the City's contribution to the ement system. She specifically recalled Uberuaga addressing the Board and explaining that these retirement enhancements were conditioned upon the Board approving the under funding. She said there was never any attempt to disconnect the two and it was apparent to her that the Board members that were affected by these benefits wanted them to be granted. She said it made absolutely no sense to under fund the retirement system. She further reported that she attempted to have MP2 nullified, but was unsuccessful. She said she recalled a number of the Board members telling her that they did not want to nullify the proposal but she specifically recalled Sharon WILKINSON telling her that she (WILKINSON) did not want to give up her benefits.

The above information is made in support for the arrest of [redacted] for Conflict of Interest in violation of Government Code 1090.

The description of is as follows:

[redacted]

This declaration has been reviewed by Deputy District Attorney Stephen R. Robinson.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Diego County, California, on the 17TH day of May, 2005.

Vincent Glaisie
Declarant

Declaration read: 5/17/05
Warrant to issue: ISSUE 5/17/05 → HOLD TO 5/18/05 AT 2:00 PM IN D-11

The defendant is to be admitted to bail in the sum of $5,000.

Peter C. Deddeh
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

E PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

THY LEXIN,
dob 12/21/50;

NALD LEE SAATHOFF,
dob 02/21/48;

HN ANTHONY TORRES,
dob 03/11/49;

ARY ELIZABETH VATTIMO,
dob 08/09/60;

RESA AJA WEBSTER,
dob 04/22/62;

HARON KAY WILKINSON,
02/20/50;

Defendants

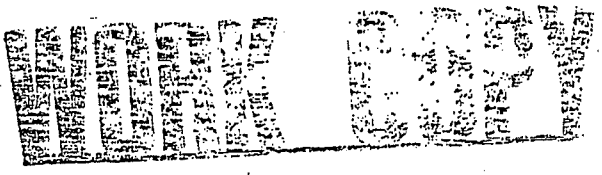
CT No. CD190930
DA No. ABM833

COMPLAINT-FELONY

FILED
Clerk of the Superior Court
MAY 17 2005
By: Marcee Wheaton, Deputy

INFORMATION

Date: _____



PC296 DNA TEST STATUS SUMMARY

Defendant	DNA Testing Status
LEXIN, CATHY	DNA Sample Not Required
SAATHOFF, RONALD LEE	DNA Sample Not Required
TORRES, JOHN ANTHONY	DNA Sample Not Required
VATTIMO, MARY ELIZABETH	DNA Sample Not Required
WEBSTER, TERESA AJA	DNA Sample Not Required
WILKINSON, SHARON KAY	DNA Sample Not Required

CHARGE SUMMARY

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
	GC1090	Felony	16-2-3/$1,000		
	LEXIN, CATHY				

CHARGE SUMMARY (cont'd)

Ill	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
1	GC1090	Felony	16-2-3/$1,000		
	SAATHOFF, RONALD LEE				
	TORRES, JOHN ANTHONY				
	VATTIMO, MARY ELIZABETH				
	WEBSTER, TERESA AJA				
	WILKINSON, SHARON KAY				
2	GC1090	Felony	16-2-3/$1,000		
	LEXIN, CATHY				
	SAATHOFF, RONALD LEE				
	TORRES, JOHN ANTHONY				
	VATTIMO, MARY ELIZABETH				
	WEBSTER, TERESA AJA				
	WILKINSON, SHARON KAY				
	GC1090	Felony	16-2-3/$1,000		
	SAATHOFF, RONALD LEE				
	TORRES, JOHN ANTHONY				
	VATTIMO, MARY ELIZABETH				
	WEBSTER, TERESA AJA				
	WILKINSON, SHARON KAY				
	PC1054.3		INFORMAL REQUEST FOR DISCOVERY		

e undersigned, certifying upon information and belief, complains that in the County of San Diego, State of California, Defendant(s) did commit the following crime(s):

CHARGES

1 - CONFLICT OF INTEREST - SPECIFIED OFFICIALS

On or about and between May 29, 2002 and November 15, 2002, CATHY LEXIN, RONALD LEE SAATHOFF, JOHN ANTHONY TORRES, MARY ELIZABETH VATTIMO, TERESA AJA WEBSTER, and SHARON KAY WILKINSON , being a city officer and employee, and thus an officer and person prohibited by the laws of this state (Government Code Section 1090) from being financially interested in contracts made by him in his official capacity, and by a body or board of which he was a member; and from being a purchaser at any sale made by him in his official capacity; and from being a vendor at any purchase made by him in his official capacity, did willfully and unlawfully violate the provisions of such laws, by participating in the deliberative process and/or creation of Manager's Proposal 2, in violation of GOVERNMENT CODE SECTION 1090.

UNT 2 - CONFLICT OF INTEREST - SPECIFIED OFFICIALS

On or about July 11, 2002, CATHY LEXIN, RONALD LEE SAATHOFF, JOHN ANTHONY TORRES, MARY ELIZABETH VATTIMO, TERESA AJA WEBSTER, and SHARON KAY WILKINSON , being a city officer and employee, and thus an officer and person prohibited by the laws of this state (Government Code Section 1090) from being financially interested in contracts made by him in his official capacity, and by a body or board of which he was a member; and from being a purchaser at any sale made by him in his official capacity; and from being a vendor at any purchase made by him in his official capacity, did willfully and unlawfully violate the provisions of such laws, by participating in the deliberative process and/or creation of Manager's Proposal 2, in violation of GOVERNMENT CODE SECTION 1090.

OUNT 3 - CONFLICT OF INTEREST - SPECIFIED OFFICIALS

On or about November 15, 2002, RONALD LEE SAATHOFF, JOHN ANTHONY TORRES, MARY ELIZABETH VATTIMO, TERESA AJA WEBSTER, and SHARON KAY WILKINSON , being a city officer and employee, and thus an officer and person prohibited by the laws of this state (Government Code Section 1090) from being financially interested in contracts made by him in his official capacity, and by a body or board of which he was a member; and from being a purchaser at any sale made by him in his official capacity; and from being a vendor at any purchase made by him in his official capacity, did willfully and unlawfully violate the provisions of such laws, by participating in the deliberative process and/or creation of Manager's Proposal 2, in violation of GOVERNMENT CODE SECTION 1090.

OTICE: Any defendant named on this complaint who is on criminal probation in San Diego County is, by receiving this omplaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and multaneously, the People are seeking a revocation of the defendant's probation, on any and all such probation grants, ...ing the same evidence, at the preliminary hearing. Defenses to either or both procedures should be considered and ...d as appropriate at the preliminary hearing.

ant to PENAL CODE SECTION 1054.5(b), the People are hereby informally requesting that defendant's counsel liscovery to the People as required by PENAL CODE SECTION 1054.3.

eserve the right to amend the accusatory pleading to further allege any and all facts in aggravation in light of ly v. Washington (6/24/2004) ___ U.S. ___ [124 S.Ct. 2531, 2004 WL 1402697].

ff's records indicate that as of the booking date one or more defendants have not yet provided a DNA sample to the database. Pursuant to Penal Code Section 296(e), the court shall order collection of DNA from the defendant(s) if ed by the prosecuting attorney that a sample is required but has not been provided by the defendant. Pursuant to l Code sections 296/296.1, if not already required from a past conviction, any defendants who have not done so will quired to provide a sample upon conviction of this felony offense.

CLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND T THIS COMPLAINT, CASE NUMBER CD190930, CONSISTS OF 3 COUNTS.

uted at San Diego, County of San Diego, State of California, on May 17, 2005.

COMPLAINANT

ORMATION

BONNIE M. DUMANIS
District Attorney
County of San Diego
State of California
by:

Deputy District Attorney

e

Exhibit 50

Securities Lawyer's Deskbook

published by The University of Cincinnati College of Law

Securities Act of 1933

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Section 10 -- Information Required in Prospectus

a. **Information in registration statement; documents not required**

Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e)--

1. a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of Schedule A;

2. a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of Schedule B;

3. notwithstanding the provisions of paragraphs (1) and (2) of this subsection (a) when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

4. there may be omitted from any prospectus any of the information required under this subsection (a) which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

b. **Summarizations and omissions allowed by rules and regulations**

In addition to the prospectus permitted or required in subsection (a), the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 5 which omits in part or summarizes information in the prospectus specified in subsection (a). A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 11. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection (b), if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

c. **Additional information required by rules and regulations**

Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

d. **Classification of prospectuses**

In the exercise of its powers under subsections (a), (b), or (c), the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

e. **Information in conspicuous part of prospectus**

The statements or information required to be included in a prospectus by or under authority of subsections (a), (b), (c), or (d), when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

f. **Prospectus consisting of radio or television broadcast**

In any case where a prospectus consists of a radio or television broadcast, copies thereof

shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this title.

Legislative History

May 27, 1933, ch 38, Title I, § 10, 48 Stat. 81; June 6, 1934, ch 404, Title II, § 205, 48 Stat. 906; Aug. 10, 1954, ch 667, Title I, § 8, 68 Stat. 685.

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Contact: joseph.hodnicki@uc.edu

Exhibit 51

Securities Lawyer's Deskbook

published by The University of Cincinnati College of Law

Securities Exchange Act of 1934

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Section 17A -- National System for Clearance and Settlement of Securities Transactions

---

a. **Congressional findings; facilitating establishment of system**

1. The Congress finds that--

   A. The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

   B. Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

   C. New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

   D. The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

2.

   A. The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies,

and transfer agents, to use its authority under this title--

i. to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

ii. to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

B. The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System.

b. **Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings**

1. Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c).

2. A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 19(a), by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

3. A clearing agency shall not be registered unless the Commission determines that--

   A. Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2)) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

   B. Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

   C. The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

   D. The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

   E. The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

   F. The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

G. The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2)) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

H. The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

I. The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

4.

A. A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person to participation, if the clearing agency knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

B. A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

5.

A. In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth--

i. any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

ii. the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

iii. the sanction imposed and the reasons therefor.

B. In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

C. A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and protection of investors.

6. No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

7.

A. A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security futures products that is a national securities exchange registered pursuant to section 6(g), and that would be required to register pursuant to paragraph (1) only because it performs the functions of a clearing agency with respect to security futures products effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that if such a clearing agency performs the functions of a clearing agency with respect to a security futures product that is not cash settled, it must have arrangements in place with a registered clearing agency to

effect the payment and delivery of the securities underlying the security futures product.

B. Any clearing agency that performs the functions of a clearing agency with respect to security futures products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security futures products, in order to permit, as of the compliance date (as defined in section 6(h)(7)(C)), security futures products to be purchased on one market and offset on another market that trades such products.

8. A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

c. **Registration of transfer agents**

1. Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 12 or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

2. A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent and any persons associated with the transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective 45 days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

3. The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such

transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated--

A. has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

B. is subject to an order entered pursuant to subparagraph (C) of paragraph (4) of this subsection barring or suspending the right of such person to be associated with a transfer agent.

4.

A. Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

B. A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

C. The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding twelve months or bar any such person from being

associated with the transfer agent, if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.

d. **Activities of clearing agencies and transfer agents; enforcement by appropriate regulatory agencies**

1. No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

2. With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 1818 of Title 12, enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 17 and 19, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 1818(b) or 1818(c) of Title 12, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be "depositors" as that term is used in section 1818 (c) of Title 12.

3.

   A. With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and

cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective--

i. the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

ii. such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 17 and 19.

B. Nothing in the preceding subparagraph or elsewhere in this title shall be construed to impair or limit (other than by the requirement of notification) the Commission's authority to make rules under any provision of this title or to enforce compliance pursuant to any provision of this title by any clearing agency, transfer agent, or person associated with a transfer agent with the provisions of this title and the rules and regulations thereunder.

4. Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a clearing agency, transfer agent, or person associated with a transfer agent, to make and enforce rules governing such person which are not inconsistent with this title and the rules and regulations thereunder.

5. A registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, to facilitate the equitable treatment of financial institutions which issue such guarantees, or otherwise in furtherance of the purposes of this title.

e. **Physical movement of securities certificates**

The Commission shall use its authority under this title to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce.

f. **Rules concerning transfer of securities and rights and obligations of involved or affected parties**

1. Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning--

   A. the transfer of certificated or uncertificated securities (other than government securities issued pursuant to chapter 31 of title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book entry regulation) or limited interests (including security interests) therein; and

   B. rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

2.

   A. The findings described in this paragraph are findings by the Commission that--

      i. such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

      ii. in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

      iii. to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

   B. In making the findings described in subparagraph (A), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

3. Any State may, prior to the expiration of 2 years after the Commission adopts a rule

under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

4.

A. Within 90 days after the date of enactment of this subsection [enacted Nov. 16, 1990], the Commission shall (and at such times thereafter as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.). The Advisory Committee shall be directed to consider and report to the Commission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related Federal laws concerning the transfer of certificated or uncertificated securities, limited interests (including security interests) in such securities, or the creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers, owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

B. The Advisory Committee shall consist of 15 members, of which -

i. 11 shall be designated by the Commission in accordance with the Federal Advisory Committee Act; and

ii. 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

C. The Advisory Committee shall conduct its activities in accordance with the Federal Advisory Committee Act. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System.

Legislative History

June 6, 1934, c. 404, Title I, § 17A, as added June 4, 1975, Pub.L. 94-29, § 15, 89 Stat. 141, and amended Dec. 4, 1987, Pub.L. 100-181, Title III, § 322, 101 Stat. 1257; Oct. 15, 1990, Pub.L. 101-429, Title II, § 206, 104 Stat. 941; Oct. 16, 1990, Pub.L. 101-432, § 5, 104 Stat. 973; Nov. 15, 1990, Pub.L. 101-550, Title II, § 203(c)(1), 104 Stat. 2718; Dec. 21, 2000, Pub.L. 106-554, § 1(a)

(5) [Title II, §§ 206(d), 207], 114 Stat. 2763, 2763A-431, 2763A-434; July 30, 2002, P.L. 107-204, Title VI, § 604(c)(1)(C), 116 Stat. 796.

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Exhibit 52

Kroll Report Q&A - August 8, 2006

AGUIRRE : We are here today to find the truth. We have spent $20M of taxpayers' funds on Mr. Levitt and his team and we have spent over $4.5M on KPMG in order to get an audit opinion that was supposed to cost $800,000 when KPMG was first retained in their April of 2004. Over the course of the last 18 months during which the $20M bill was run up, I've made a number of comments about the fact that Mr. Levitt was not independent from the people who were writing his checks. The best evidence of his independence are the conclusions that he's reached. The people of San Diego can evaluate those conclusions which I'll drive in just a moment in terms of whether they serve the interest of the People that were paying for this services or whether they do not serve those interests. Essentially what Mr. Levitt has told us is that council members only acted negligently, they did not knowingly, they did not recklessly, they were just negligent, when they sat through all those months of deliberations on how to increase benefits and decrease contributions in closed sessions from February of 2002 until November of 2002, they acted just negligently. We're also told that we have to keep all the illegal benefits. There were laws violated but it doesn't make any difference because we have to keep the illegal benefits and then Mr. Turner says we need to raise taxes in order to pay for the illegal benefits. That's essentially their report. The public can guess or the public can assess whether the people that paid the $20M whether their interests, their alliances, their allies are served by such a finding or set of findings or they're not. The proof is in the results. Only negligent, keep all the illegal benefits and keep the same attorney in place at the SDCERS Board. In other words, just keep doing the same thing you've been doing in the past. All the monitoring, all the outside folks, all that, you know, that's all well and good but the fundamental recommendations are negligence only, keep all the illegal benefits, SDCERS keeps the same attorney, same situation that got us in trouble to begin with and tax the taxpayers to pay for it, that's the message. Now, I would like Mr. Romano, if you would, well, first of all. Are we limited in the questions that we can ask you today or are you limiting us in what we can ask you about today?

ROMANO: I believe that pursuant to letters that were exchanged between the audit committee, the Mayor, the President of the Council are here to discuss the substance of the report.

AGUIRRE : I mean are you limiting my questions.

ROMANO: I can't limit your questions I can only limit our answers

AGUIRRE : Well, that's what I'm saying, are you refusing if I ask you something that is not in the report, are you refusing to answer?

ROMANO: Yeah, well, why don't we hear the question.

AGUIRRE : Why don't you step up to this microphone up here, if you will, if you don't mind.

ROMANO: Who are you talking to?

AGUIRRE : You, Mr. Romano.

ROMANO: Actually, if it's all the same to you, I'll work …

AGUIRRE : Okay, that's fine. Mr. Romano could you tell us what Government Code section 1092 provides?

ROMANO: It's described in the report, I have not committed it to memory, but it essentially prohibits transactions in which a person has a financial interest.

AGUIRRE : Well, that section 1090,

ROMANO: What were you referring?

AGUIRRE : Government Code section 1090, that's what prohibits government decision makers from making decisions in contrast in which they have a financial interest.

ROMANO: So what are you asking me?

AGUIRRE : I am asking you could you tell us what government code section 1092

ROMANO: 1092?

AGUIRRE : Yes,

ROMANO: I cannot. It's in the report that the relevant

AGUIRRE : What page is it in the report?

ROMANO: Let me find out. It is not in the report.

AGUIRRE : Government code section, so you don't discuss the applicability of government code section 1092 to the 1090 violations that you find, correct?

ROMANO: Right

AGUIRRE : Government Code section 1092 is the set aside provisions. In other words if a person acts, who is a government official in connection with a public contract such as MP1 and MP2 and they have a financial interest in those contracts, Government code section 1092 provides that they are void because of that financial interest. Are you familiar with the case of, ah the Carson, City of Carson case?

ROMANO: I believe we discussed that issue at pages 93 and 94 and 95 and I do understand the thrust of your questions.

AGUIRRE : Well, actually I don't know, you don't discuss the set aside provisions in any of those pages

ROMANO: No, no, we don't discuss the set aside provisions, but we discuss the legality or the forfeitibility of those benefits.

AGUIRRE : Right, but you don't discuss them in terms of whether 1092 supersedes the discussion that you have, correct?

ROMANO: That's correct. If I may add something because you have selected and I think mischaracterized our analysis.

AGUIRRE : I haven't mischaracterized it you've agreed with me what essentially …

ROMANO: No, no I'm referring to your earlier comments about the benefits and whether they can be forfeited or pulled back.

AGUIRRE : You said that they can be.

ROMANO: To be more precise, analyzed it and tried to understand your arguments that you made that they should be examined the authorities that we thought relevant, not 1092 and concluded that it would be very unlikely that a court, given the interest involved, would roll back or forfeit the benefits.

AGUIRRE : Right,

ROMANO: We do not, this is a matter before the court and we do not purport to advise the court or you but that was the best conclusion we could come to after looking at the evidence.

AGUIRRE : Right, but in looking at your analysis, you did not analyze the fundamental

ROMANO: You don't get to 1092 it seems to me unless you conclude that the benefits and their sufficient relationship that they're forfeitable. I think our analysis was that there was sufficient independence for purposes of … sufficient independence and a lack of a linkage between the illegality MP1 and the granting of the benefits so that a court would be hesitant to deprive employees or retirees of their benefits simply because there was a tainted process. I'm not suggesting, and I don't want to mischaracterize the report that you don't have a pliable argument

AGUIRRE : I'm not asking let's just go back to your report for a minute for a second, okay. What I'm asking you is under 1092, Government Code section 1092, you didn't even mention that section in your report, right, that's what you've already told us.

ROMANO: I believe that's the case, yes.

AGUIRRE : And you didn't mention the Thomas v. Call case, did you?

ROMANO: Let me just look, because I've …

AGUIRRE : I was hoping this would be fresh in your mind

ROMANO: Well, the report is 280 pages long plus

AGUIRRE : But you've exhausted $20M and you're not familiar with the seminal case, California Supreme Court case right on point on the primary hearing that we are pursuing in the courts to set it aside and you don't seem to have a familiarity with that case, is that true?

ROMANO: Would you consider seminal is not what we regarded as critical to the report.

AGUIRRE : Well, let me ask you this, do you have a familiarity with the California Supreme Court case of Thomas v. Call? I'm not asking you to look for something I'm asking do know what that case is about?

ROMANO: I think I've seen it, I think I've read a reference to it, I think I have reviewed a document that discussed it

AGUIRRE : I think the public can draw their own conclusion about that issue.

ROMANO: Well, let me, before you beat it there, let me say that this document is a product is the work of many, many lawyers, and I haven't interrupted you, I hope, and I hope you won't interrupt me. And because of the time constraints we were working under and because of the importance of accuracy and because of importance of completeness, you can well imagine with 1,300 footnotes we had a number of people specializing in focusing on a number of areas. I'm, I'm not finished

AGUIRRE : Well, I would … okay,

ROMANO: and so my lack of command over a particular case cited in one footnote should not in any sense derogate from the work of those people.

AGUIRRE : Well, it's not cited in the footnote, that's the point I'm trying to make. But just let me go on. Do you find that the SDCERS Board violated 1090 in approving MP1 and MP2? I'm just asking without looking at the report, can you just tell me that?

ROMANO: If you're going to be testing my memory, I think this is not an approved line of questioning. I mean we have a number of different recommendations related to the SD Board

AGUIRRE : No, I know but I'm just asking if you're prepared today to tell me based upon your actual knowledge of what's in the report if it violated MP1, well, let me help you. Do you conclude that? You do conclude that?

ROMANO: We do,

AGUIRRE : Okay, that was it, you do conclude that. Now having determined that there was a violation of 1090 then why didn't you take the next step and analyze 1092

ROMANO: Because we looked at the benefits and there seemed to us at least the cases and the statute protects those interests in a very powerful way and the notion that a court would in a wooden fashion apply 1090 and then 1092 without stopping to consider the importance of the interests involved, we regarded as unlikely. Now, I'm not saying it's not, I don't want to quibble with you over something that we may not have, it may be that it's relevant but we regarded the simpler and the more, to us, the more persuasive analysis is that it is unlikely a court would do this.

AGUIRRE : Well, I mean I know that's your conclusion,

ROMANO: No it's not just a conclusion. The analysis is set forth in these pages. We don't dwell on 1092 because we reached the conclusion that it's not forfeitable.

AGUIRRE : Well, what I'm trying to get to though is in order for you to determine that there's not a sufficient nexus, you have to determine if there was a sufficient nexus under 1090, correct. Yes?

ROMANO: Yes, we examined …

AGUIRRE : What's the rule ..

ROMANO: We examined, we examined, as you have in your own report the connection between the pension system that was adopted and the benefits that were granted and we recognize that there is a taint in the process but there was sufficient separateness …

AGUIRRE : But that's what I'm saying, what is the standard by which you evaluated whether there was separateness or not.

ROMANO: What I'd like to do is refer you to the report, I don't think I can do this by memory, from memory, I would run the risk of being inaccurate. We have 300 pages and footnotes

AGUIRRE : Would you consider the case People v. Honig in which the court said "We may not restrict our consideration to the parties named in the written instrument but must consider as a whole all of the dealings of the various parties involved." Are you familiar with that case?

ROMANO: I do not remember it off the top of my head.

AGUIRRE : So, the point is that you're analysis was based upon your assumption that there was a separateness between what went on before the SEC.

ROMANO: No, either I'm not communicating it then, because we described why we concluded there was a distinction or separateness between the benefits ..

AGUIRRE : That's what I'm trying to get to, hold on

ROMANO: it's in the report

AGUIRRE : No, no I'm asking you, so you don't know what that is either?

ROMANO: No, it's described in the report.

AGUIRRE : But I'm asking you, what I'm asking

ROMANO: The report is a written report, not an oral report

AGUIRRE : Well, that's okay but you're here to answer the questions I have for you so if you don't, if you want to evade

ROMANO: I'm not trying to evade the questions, I'm saying the report speaks for itself.

AGUIRRE : I'm asking about your understanding ..

ROMANO: My understanding comes from the work I did on the report. I have no independent understanding, okay, and the report that we wrote is in writing.

AGUIRRE : Okay, our folks will evaluate that as well, let's move on

ROMANO: I hope they do, I hope they read the report.

AGUIRRE : I hope that they do read the report, but I hope that you would have had a little better familiarity with it to be able to answer what I consider to be very fair questions. But let's go on to the next issue. You conclude that the council members only acted negligently.

ROMANO: When you say "you", I assume you are meaning the audit committee.

AGUIRRE : Well, whoever it was, you're the lawyer that made the legal analysis, right?

ROMANO: As I explained in my remarks, I'm the lawyer that explained what the legal standards were and we assembled the factual work and then tried to present the questions so the audit committee could intelligently come to a fair and impartial conclusion.

AGUIRRE : So who made the decision that it was negligent as opposed to reckless or knowing.

ROMANO: I don't know how you could answer that question. It was a process the audit committee went through before reaching a conclusion.

AGUIRRE : No, but who, but who specifically, who participated in that process?

ROMANO: Who specifically in addition to the audit committee is that what you're asking?

AGUIRRE : I'm asking who specifically on the audit committee participated in the process of deciding it that was negligent and not reckless or knowing, the audit, all members of the audit

committee participated in reviewing the evidence, reviewing the factual record that was compiled and ..

AGUIRRE : So Mr. Levitt helped to determine if they acted negligently and not recklessly and knowingly, correct?

ROMANO: As I think I just said, every member of the audit committee separately and together considered the evidence and …

AGUIRRE : Hold on one second

ROMANO: And there was a consensus on this conclusion.

AGUIRRE : Okay, hold on, Mr. Levitt, did you participate in the decision to find only negligence?

LEVITT: Yes, I did.

AGUIRRE : Okay, what did you base it on?

LEVITT: I based that on advice of counsel.

AGUIRRE : And which counsel advised you to do that?

LEVITT: Ah, Mr. Romano, let me comment

AGUIRRE : I'm not asking you to comment, sir I have a question for you, you are here to answer our questions, it's as simple as this, which counsel

LEVITT: I say that what we are witnessing now …

AGUIRRE : I'm not interested in …

LEVITT: is characteristic of what the process that brought us here today …

AGUIRRE : Mr. Levitt, I'm not …

LEVITT: your harping, your contentiousness, your bullying, your frequent playing to the press

AGUIRRE : the public will decide that, I'm just asking simple questions

(audience clapping)

AGUIRRE : Mr. Levitt …

LEVITT: let me say this, until now the Mayor has characterized the future as the path to getting this City back on the right track …

AGUIRRE : Mr. Levitt, if you don't understand …

LEVITT: You're taking us back to the past, you are continuing to disregard the process to embarrass your colleagues, to embarrass yourself in a way which I think is demeaning and we're not here to argue with you, we're not here to subject ourselves to your carping, to your criticism, to your pettiness. I just want you to understand that …

AGUIRRE : We're, we're, I'm not talking about

LEVITT: right up front.

AGUIRRE : Mr. Levitt, I just asked you a simple question, which counsel did you rely upon to reach the conclusion

PETERS: He answered, he answered that question

AGUIRRE : He didn't he said "counsel"

PETERS: He said Mr. Romano

AGUIRRE : Okay, is that right Mr. Levitt, is that who you replied upon?

LEVITT: That's correct.

AGUIRRE : Okay, then Mr. Romano, then coming back to you then, what did you take into consideration when you arrived at the conclusion of only negligence versus reckless or knowing?

ROMANO: The actual record that we complied.

AGUIRRE : Okay, what was that?

ROMANO: It was the interviews we conducted and documents we received.

AGUIRRE : But I mean the specifics, what were they?

ROMANO: They are laid out in the report.

AGUIRRE : You don't know what they are?

ROMANO: Off the top of my head, I haven't committed to memory

AGUIRRE : Okay, did you consider the closed sessions that took place between February and June of 2002?

ROMANO: We considered the information we obtained about the closed sessions, of course. If the matter and I believe it was at least one that the matter was relevant to, yes, we of course considered it.

AGUIRRE : Okay, what factors from that did you discern.

ROMANO: What factors from what?

AGUIRRE : From those closed sessions, what were the factors from those closed sessions that you felt illuminated knowledge or a lack of knowledge on the part of the council?

ROMANO: It's laid out in our report. I mean, I can tell you what I remember because,

AGUIRRE : Okay, tell us what you remember.

ROMANO: I recall a closed session meeting which there was a presentation of this memorandum from Brian Cays for example we refer to it in our remarks.

AGUIRRE : Well, that took place in November 2001.

ROMANO: I thought you were generally asking about closed sessions.

AGUIRRE : No, I said during the closed sessions of February, from that period we were actually discussing the under funding of the pension plan …

ROMANO: I'm not sure I understand your question.

AGUIRRE : During the meet and confer process and then the discussions about the negotiations with the pension system from February of 2002 until November 18 when the final decision was made, that's what I'm talking about, during that period.

ROMANO: We considered all closed session material that we could obtain. I think there were times when there was some we requested and we could not get.

AGUIRRE : From that closed session material, can you identify the factors that you took into consideration to arrive at negligence versus knowing.

ROMANO: We're not speaking, we're not communicating. I'm not sure what closed session you're referring to. If we considered a closed session material as referred to and described in the report and I'm going to direct you to the report and that will explain whether we, because if it was a closed session material we would have described it.

AGUIRRE : Okay, but then you have no working knowledge as you sit here right now that …

ROMANO: I have a working knowledge of a different closed session that bears on this question, but it's probably not the closed session you're interested in hearing about.

AGUIRRE : What I'm talking about is the closed sessions, there were closed sessions that took place during 2002 that dealt with meet and confer at which the idea of increasing benefits and decreasing contributions were discussed, would you agree with that?
ROMANO: I agree that there was, my recollection is that there was but I, but I would really refer to the report for more details.

AGUIRRE : So that's what I'm saying so all I said to you is that you don't have any working knowledge, personally of those closed sessions that that was discussed.

ROMANO: By working knowledge personally, I have a memory of this, it's a fact a million of facts that are described and analyzed and discussed in the report. I do have a memory of a closed session in which there were some slides shown to the City Council which there was a description of the pending, what was estimated at the time to be the pension under funding.

AGUIRRE : In order to have …

ROMANO: and that was among, you may find that critical, but I, there were other things that we regarded as important on the determination of negligence versus willfulness or recklessness.

AGUIRRE : But, do you agree that that which was required to be disclosed was the debt that the city had to SDCERS then that was not properly disclosed, correct:

ROMANO: Among many other things, it's described in extreme, excruciating detail in our report

AGUIRRE : Right, no what I'm saying is

ROMANO: No, not right, you have to put it in context

AGUIRRE : Lets just take, one, what we are talking about, we are talking about violations

PETERS: Mr. Aguirre I've just observed and I'm not going to tell you what you can and what you can't ask, but what he keeps say is you have got to read the productive

AGUIRRE: Mr. Peters, please

PETERS: So, I'm not sure how productive this is

AGUIRRE : lets see if we can make it more productive, please, you said that I would have an opportunity to examine; I'm going to have an opportunity to examine

PETERS: I said that you could talk about, you asked about moving forward and about the audit

AGUIRRE : Yes, I will agree

PETERS: I haven't heard that yet. Okay

AGUIRRE : We agreed that, we verbally agreed that material facts are required to be disclosed in connection with the sale of bonds by the city. Correct?

ROMANO: Yes, of course

AGUIRRE : And the, one of the material, and if there is, the failure to disclose a material fact in connection with the offer and sale of a security, and that's done either knowingly or recklessly and that could be in violation of Rule 10(b)(5) Section 10(b) of the 34 Securities Act. Correct

ROMANO: Correct.

AGUIRRE : And then if there is a negligence that can be a violation of Section 17 with the SEC as the complaining party, correct?

ROMANO: That's correct.

AGUIRRE : Alright. So now, did you determine that the City Council violated Section 17 of the Securities Fraud?

ROMANO: We really did not, what we did was that we looked at, as I said in my opening remarks, we looked at the conduct that was used to determine what level of culpability, of mental culpability were we comfortable assigning to the council members who approved those offering documents

AGUIRRE : So

ROMANO: If I could just finish,

AGUIRRE : Go ahead

ROMANO: Me, and eh to conclude that the violated Section 17 (a) would have required an analysis that we didn't regard as absolutely necessary for the report. We were focusing on whether, and the standard we applied em, was whether there was evidence which supports the charge, and there is, but that doesn't mean that the evidence that we found fully makes it out.

AGUIRRE : You were supposed to do an illegal acts analysis right

ROMANO: Well, we were supposed to do an analysis of sufficient independent scope to satisfy KPMG's needs. We did not understand that to require us to establish to the satisfaction of some third party whether a statute was violated in all of its elements in that, or whether a crime has been committed, in order to tell _____ that, and for one reason that I think I mentioned in my opening statement which is we did not want to get meyered down in defenses and all the

things that you and I might regard as interesting and important, but wasn't necessary for the purposes of what we were engaged to perform.

AGUIRRE : Mr.

ROMANO: Now, so, I don't want you to, I want you to try, its kind of a complicated, we found evidence of consistent with and would support such a charge, we didn't feel that it was necessary to establish all the elements.

AGUIRRE : Okay

ROMANO: Thank you.

AGUIRRE : Mr. DeVetter, how are you doing this morning?

DeVETTER: Well I hope.

AGUIRRE : Can you do me a favor, can you go to your August 9th, 2004 letter. Do you have that in front of you?

DeVETTER: I do.

AGUIRRE : Now, Mr. DeVetter, you are with the firm of KMPG and you have been on this audit from almost the beginning I think, haven't you?

DeVETTER: Correct.

AGUIRRE : Okay, you might want to speak into your microphone a little better. Correct. Okay. On August 9, 2004, you wrote the City Attorney's Office a letter in which you detail questions that had to be answered by the attorney who was conducting the illegal acts analysis on behalf of, or at least in reference to KPMG's audit of the 2003 financial statement of the city, correct?

DeVETTER: Correct

AGUIRRE : Okay, and may I invite your attention to page 3 of that letter.

DeVETTER: Yes, sir.

AGUIRRE : And would you be kind enough to read paragraph 2.

DeVETTER: I think I'd rather share it in a general way

AGUIRRE : Well, hold on, hold on. Then I'll read it. Paragraph number 2, you say in your letter quote "We believe that the investigation being conducted by V&E, which means Vinson & Elkins, should address and resolve the following questions. Number 2: Did the City enter into

any agreement including the Mangers 2 Agreement or otherwise take any actions that resulted in the under funding or misuse of pension funds that is in violation of state, city or other laws." Correct?

DeVETTER: That's what it says, correct.

AGUIRRE : So you were looking for a determination if the law was violated, right? That's what your letter says.

DeVETTER: That's what it says

AGUIRRE : Okay. Now, with regard to, back to Mr. Romano, Mr. Romano, you did conclude that the SDCERS board violated Section 1090 right?

ROMANO: We concluded that and we concluded for example that the Board had violated some fiduciary duties

AGUIRRE : That's not what I asked you

ROMANO: No, I just want to get back to this, to this illegal act

AGUIRRE : Mr. Romano, its just dialogue, it's very simple; you don't have to add in a bunch of extra filler. Regardless

ROMANO: Its' not filler, it's called, cos I want my answer understood

AGUIRRE : So but when it came to the SDCERS board you made a determination that they violated Section 1090. Right?

ROMANO: The Audit Committee concluded that they violated 1090 among other things

AGUIRRE : So you, in that case you decided that you would make a judgment about whether a specific law was violated, correct?

ROMANO: Cos we had enough evidence and we were able to eliminate any other reasonable questions

AGUIRRE : and were you

ROMANO: With respect to 17a, since that's where we started

AGUIRRE : Before you give me the explanation, could you answer the question

ROMANO: I just answered the question

AGUIRRE : No, you didn't, you gave me the explanation

ROMANO: I just answered

AGUIRRE : You just answer yes

ROMANO: I just answered; I said that, I said that we concluded that 1090 was violated because we were able to eliminate all other reasonable hypothesis.

AGUIRRE : Okay, so in the case of the City Council, when it came time to decide if they violated the federal securities laws, you didn't make this determination, correct?

ROMANO: No, we concluded that they were negligent

AGUIRRE : No, but you didn't determine that they violated the securities law did you?

ROMANO: We did not

AGUIRRE : Okay, so that's what I'm trying to say. Why the different standard, why were you able to decide that there was a 1090 violation when it came to the SDCERS board, but you were unable to decide if there was a section 17(a) violation when it came to the City Council.

ROMANO: We were not unable to decide

AGUIRRE : Why couldn't you do it then?

ROMANO: Because we didn't need to do it. We didn't feel that it was necessary to reach that conclusion to render a conclusion that would be relevant to the auditors

AGUIRRE : Why did you

ROMANO: From our perspective we think the auditors would be most interested in learning whether the city council members, learning from us, whether the City council members acted with a culpable state of mind or were negligent, that would be in our view, important for them to know.

AGUIRRE : Did you have

ROMANO: Whether the other elements of the 17(a) violation could be made out, could conceivably be made out, could someone prove it, I don't, we didn't regard it as necessary for us to go that far to satisfy what we felt what we needed to do in order to meet our obligation in the report.

AGUIRRE : Did you have a discussion with KMPG that you were not going to reach the conclusion whether the council violated the securities laws

ROMANO: No, we did not have a discussion, we, we gave them drafts of our report that set out our conclusions and we did discuss it at the very end, comments that they had on our report.

AGUIRRE : Did you find that other, did you find that the SDCERS board violated other laws?

ROMANO: Em, if I could just, there are just so many, so many conclusions; I'm just going to have to refer to my notes.

AGUIRRE : Okay.

AGUIRRE : When you said a moment ago that you found that they violated the fiduciary laws right?

ROMANO: Correct

AGUIRRE : Okay, now

ROMANO: In

AGUIRRE : Just one second, now Mr. DeVetter, can you please go to your October 11th, 2004 letter if you wouldn't mind. This is another letter that you sent to the City of San Diego correct?

DeVETTER: Correct

AGUIRRE : And in this letter, you further elaborated in what had to be found by the law firm or the group that was going to do the illegal acts investigation, correct?

DeVETTER: Correct.

AGUIRRE : And in that letter on page 8 you said quote "The City needs to determine whether the City's public disclosures including its financial statements likely violate the anti-fraud provisions of the securities laws, correct? And that's on page 8.

DeVETTER: Correct.

AGUIRRE : Okay, so Mr. Romano does your report determine whether the City's public disclosures including the financial statements likely violated the anti-fraud provisions of the securities laws?

ROMANO: We did with respect, yes we did.

AGUIRRE : What did you determine?

ROMANO: We determined that the disclosures were deficient and

AGUIRRE : No, no. I'm asking you, its says here "likely violated the securities laws". Did you make a determination that the council likely violated the securities laws?

ROMANO: The Council

AGUIRRE : Yes

ROMANO: No, we didn't, we did not make that determination. We, we focused on the element that we felt was most important to KMPG

AGUIRRE : And who gave you that understanding?

ROMANO: Em, I don't know if anyone gave me that understanding, that was the premises that we proceeded on.

Voice in background

AGUIRRE : Of course, Mr. Young, come on up.

YOUNG: Michael Young of Wilkie Farr Law Firm, co-counsel for Peter Romano. I gave Mr. Romano that understanding.

AGUIRRE : Now, you are with the Wilkie Farr firm.

YOUNG: I am.

AGUIRRE : And the Wilkie Farr firm has previously represented KMPG.

YOUNG: We represent the accounting profession including Price Waterhouse Group, Deloitte and Touche, KMPG, BDOC

AGUIRRE : And you represented KPMG in connection with the criminal sub committee's investigations of the tax shelter fraud that KPMG was involved in?

YOUNG: We did.

AGUIRRE : Okay. And that's okay, did you have anything else that you wanted to say.

YOUNG: I just wanted to answer the question as to the dis, you were talking about the anti-fraud provisions of the securities laws, with regard to the city council. The negligence based elements, the negligence based aspects of Section 17(a) are not antifraud provisions, and the reason that the auditor is less interested in the negligence is that people make mistakes all the time, and if somebody makes a mistake it doesn't mean that they have to be fired, it doesn't mean that they have to resign, so an auditor is less interested in that and that's why KPMG was careful to talk about the anti-fraud provisions, that's why we came to the determination as to the fraud provisions of the securities holds and that's why we didn't need to

AGUIRRE : Okay, let's go back for a second. So,

PETERS: We are going back,

AGUIRRE : What was your, what was your

PETERS: This is great for the City Council, the more questions you ask, we are not getting any closer to finding out the questions that you said you were going to talk about

AGUIRRE : Excuse me

PETERS: when the audit is going to be completed.

AGUIRRE : What we

PETERS: If you have questions about that,

AGUIRRE : What was the conclusion that you reached about whether the council violated the anti-fraud provision of the federal securities laws.

YOUNG: We did not find a violation of the anti-fraud provisions of the federal securities laws by the City council. We did not find that.

AGUIRRE : Okay, now going back to KPMG, is that satisfactory to you, is that finding satisfactory to you for purposes of your audit.

DeVETTER: Just a second, to clarify the process. I think Mr. Morris characterized a general reaction to the court. The important thing in this letter is to lay out the responsibilities of the City. So our goal here was to push the city to do the right thing, so the City has to access the report of the investigators and we will tell you if your assessment is now complete or not, we are not judging, we did not hire the audit committee.

AGUIRRE : So you don't know if that's sufficient for your purposes then.

DeVETTER: That is part of our general reaction, and we are anxious to see the City's response to the report.

AGUIRRE : Okay, but what I'm saying to you is that, under, the illegal acts analysis that we are talking about is set forth in AU Section 317 is that correct?

DeVETTER: That is correct.

AGUIRRE : Okay, and then under AU Section 317, you actually quoted that section, a portion of that section in your August 9th report, correct, your August 9th letter.

DeVETTER: Correct.

AGUIRRE : Okay, and in that section you said that "when the auditor becomes aware of information concerning a possible illegal act, the auditor should obtain an understanding that the nature of the act, the circumstances in which it occurred, and sufficient other information to evaluate the effect on the financial statements." And that's what you did here, right?

DeVETTER: Correct.

AGUIRRE : So, what we are trying to determine… sorry, let me continue "in doing so the auditor should enquire of management at a level above those involved if possible", okay so in this case, the people that might have been involved were the council members themselves, right?

DeVETTER: Correct.

AGUIRRE : Okay, so that's what created the problem of having to get this audit committee, or some outside person you needed to consult with. Correct?

DeVETTER: Correct.

AGUIRRE : Okay. If management does not provide satisfactory information that there has been no illegal act, in this case they were not able to provide it to you, right?

DeVETTER: I don't think I said that.

AGUIRRE : No, what I'm saying is that we were not able to show you that we had not violated the law when you first started originally.

DeVETTER: Correct.

AGUIRRE : Then here is what you are supposed to do "The auditor should (a) consult with the client's legal council or other specialist about the application of relevant laws". And you have done that here?

DeVETTER: That is part of the process.

AGUIRRE : And who did you consult with with regard to the application of the relevant laws?

DeVETTER: We expect your input on the city's financial statements before we are done.

AGUIRRE : Okay, so you expect me to give you that consultation, correct?

DeVETTER: Correct.

AGUIRRE : Okay how I have already consulted with you and said that in my opinion the council did violate the securities laws, and you have received that, have you received, with regard to Kroll you have now been told that they haven't violated the securities laws, correct?

AGUIRRE : Correct?

YOUNG: The anti-fraud provisions, that's what we are talking about, correct.

AGUIRRE : Okay, so if that's the case then what do you do with that.

DeVETTER: Well why don't you show me how you can describe that in the City's financial statements and I will evaluate whether that's GAS or not.

AGUIRRE : Okay, so in other words, we can put that in as a footnote disclosure and we in other words we can

DeVETTER: We can evaluate your reactions to the report and what the city is going to do.

AGUIRRE : Okay, but what I'm saying to you is that in terms of satisfying your needs, what we can do is put in detail in a disclosure to make sure that the user of the financial statement has all of the relevant information they need with regard to this issue and that should be sufficient, correct?

DeVETTER: I'm not sure I understood the question, but if there is disclosure you feel is important to be in the financial statements, I would encourage you to put that in the financial statements.

AGUIRRE : No, my question to you is, in terms of, for you to issue your opinion that these financial statements fairly reflect, that they are done under GAS and that there was an audit done consistent with GAS, for you, that you would be able to do that, you need to know that there has proper disclosures in the footnotes with regard to any potential contingent liabilities that might arise as a result of a securities laws violations, correct?

DeVETTER: Correct.

AGUIRRE : Okay, so, so where we are right now though is that we now have had one party determine that there was violations, one party determine that there weren't violations, so is one way that we can solve this problem is simply describe that in the footnote and then let the reader judge from that whatever that they want to take on it.

[Gentleman to the right of Mr. DeVetter]: Speaking out of singular judgment, amongst many judgments that we are going to have to make with respect to the closing process. Em, and I don't think that we are prepared to give you that simple yes or no that you like with respect to this particular answer. We are going to sit there and look at both of these information, we have yet to read the final copy of this report and we will form a judgment based on advising council that we

will also receive with respect to this matter. You correctly point out that disclosure is very very critical here and I have every reason to believe the city will do that.

AGUIRRE : Alright, will you agree with me that what we are talking about in, what I want to now focus on, is how we can get the working understanding, you can sit down for now cos I don't have any more questions for you sir.

YOUNG: Thank you.

AGUIRRE : What I want to focus on is how can we get an understanding, excuse me

Clapping, a number of people walk to the front seats.

AGUIRRE : What I'm trying, what I'd like to see us do now, is see if we can get an understanding of the limited, and a set number of, of questions, excuse me, could you call them to order please. Him, yes

PETERS: I'm sorry; he wants me to call order to the meeting. Let me just say that I think it would be helpful if we concentrate on moving forward and I'm reluctant to cause a rift between Kroll and KPMG

AGUIRRE : We are not creating a rift between Kroll and KPMG what we are trying to do is

PETERS: I'd love you to get to the point of your question to see how we can get our audits completed

AGUIRRE : That's what we are doing

PETERS: and we can get back as of October 19th, we can get going.

AGUIRRE : Okay, so let's get back to that Mr. Morris and Mr. DeVetter's. Right now we are, we started the process of doing the audit in April of 2004. Correct?

DeVETTER: Correct.

AGUIRRE : Okay, so the question that would naturally be before us, is how can we bring the audit process to a successful conclusion, give you the reasonable basis that you need for issuing your audit opinion correct? That's what you need.

DeVETTER: Correct.

AGUIRRE : Is that true?

DeVETTER: Correct.

AGUIRRE : And that, in other words you need sufficient evidential matter under 326 to have sufficient, to have a sufficient basis for your opinion that the financial statements fairly state the financial condition of the city essentially. Correct?

DeVETTER: Correct.

AGUIRRE : Okay, so let's look at, in terms of the big picture issue. What is the major concern that you have right now with regard to issuing your opinion?

DeVETTER: The City needs to complete its financial statements as to disclosures so we can evaluate.

AGUIRRE : Okay, but

DeVETTER: As an overview our opinion is that the financial statements are fairly presented. In order to have that opinion there need to be financial statements with appropriate disclosures. Management will tell us that they are done with the disclosures, that they believe the investigation is adequate, they believe the illegal acts are disclosed. Once they have made those judgments and disclosures we will evaluate that and form our opinion.

AGUIRRE : Okay, so now, is it your understanding that what we are going to do, from the City's perspective, is basically draft up the financial statements, put in the footnotes, and then send a draft to you.

DeVETTER: Correct.

AGUIRRE : Okay, and will you assist us in doing the footnotes, or is that something that we will do on our own?

DeVETTER: You do them on your own, we share our questions and concerns along the way.

AGUIRRE : Okay, so we

DeVETTER: They are not surprise questions.

AGUIRRE : Okay, have we, have we give, have we given you a draft of our financial statement with the footnotes?

DeVETTER: The current draft that we have seen of the financial statements does not include the disclosures regarding and related to the investigations.

AGUIRRE : Okay. Alright. Other than that, is there anything else that is missing from the financial statements themselves?

DeVETTER: There are a number of corrections and changes, that are still being run through that we are aware of.

AGUIRRE : Okay, so let's take the next step now. What do you see as the process, the specific process by which we need to go through to satisfy your needs mechanically? How do you see this working? Are we going to meet on a daily basis? Are we going to have eh weekly conferences over the phone? How do you see this playing its way out so we can get it done?

DeVETTER: We are discussing the financials with the city daily. We have a staff onsite performing that audit. We meet with the leadership of the city weekly to discuss the open items on the list and next steps.

AGUIRRE : And are you right how satisfied with the process that we are following and with the information that you are receiving, are you satisfied with that?

DeVETTER: I believe you have a process in place and we are moving forward yes.

AGUIRRE : As far as the illegal acts analysis concerns, that now for your purposes becomes a disclosure issue on the financial statements.

DeVETTER: It is at least a disclosure issue, yes.

AGUIRRE : Okay, what's the, what might it be that is more than just a disclosure issue.

DeVETTER: Well the illegal acts disclosure requirements, the AU 317 requirements are in addition to other normal accounting requirements, disclosures of contingent liabilities,

AGUIRRE : Okay, but that would be the "Fasby 5" analysis.

DeVETTER: Correct.

AGUIRRE : Okay, that would be handled in the representation letter that the attorney, that I will be issuing to you, correct, that is where that appears?

DeVETTER: That is our key source document, yes.

AGUIRRE : Okay, so we have got, we have got the fasby 5 letter, we have got the disclosure of the illegal acts in the footnotes, and then what, any other major item?

MORRIS: We already discussed the list of items that are open and pending

AGUIRRE : Right, but those, I consider those more in the nature of routine kinds of things that need to be done in any audit.

MORRIS: I think we have set forth pretty clearly, and the professional literature also sets forth pretty clearly the judgments that we as a firm have to go through

AGUIRRE : Right

MORRIS: And em, yes we have our audit programs that include some of those steps, but at the end of the day its going to be a collective judgment amongst ourselves and the firm in support of Steve and just trying to come up with a specific itemization of those is eh, is not, is just not possible.

AGUIRRE : Well okay but here is my point. I think that we are prepared to do and the Mayor can correct me if I am wrong. What we are prepared to do is to work with you on this, to get it done you know 24/7. In other words that, because, let me, and obviously you know the reasons why. We don't, without our financial statement we can't do anything, we are stuck dead in the water. So what we would like to do, what we would like you to do is to work with us with great emergency, and I'm not saying that you haven't been, but work with us now that we have the Kroll issue out of the way. As far as you are concerned the illegal acts investigations side is over. Correct?

MORRIS: Correct.

AGUIRRE : So we are have got that out of the way, so now what we need to do is translate all that information into the disclosures for the footnotes, we need to do the 2005 analysis on the outstanding possible violations and do the Fasby 5, these are liabilities. Our auditor needs to get the numeric information, the data that you need, get that plugged in. Let me ask you this question, do you think that it would be possible, possible, do get this done in the next 30 days?

AGUIRRE : I'm not asking you to commit yourself to that. I'm just saying that is there information that you know of right now that would tell you that there is no way that we could get all that done in 30 days.

MORRIS: The Mayor has already said that the city's position is that they are going to take this report, receive it, digest it, which is absolutely appropriate in all its significance with respect that those items at minimum that you have just recommended. In any event, then come back to this council with a way forward, starting September 19th. That itself is over 30 days from now.

AGUIRRE : Are you talking about the 319 internal control issue, is that what, we are going to do some things with internal controls, is that what you are talking about, in contemplating terms, when you say follow up, you mean remediation and those sort of things. Is that what you are talking about, that we would establish a better set of internal controls, and you need to wait for that?

MORRIS: I guess that's part of it, but its only part of it.

AGUIRRE : What else, what else, but what I don't understand, it may take years for us to implement all the remedial changes, how do you, I mean I can understand you saying something like internal controls, but what about the rest of it.

MORRIS: I think that you are getting the cart before the horse. The first thing to do is to receive the report, digest it, determine whether, the City needs to determine whether or not additional

financial accruals need to be made, as you appropriately say whether or not eh various disclosures need to be made regarding potential violations of the law, em and once you do that, we will look at it as expeditiously as possible

AGUIRRE : Okay

MORRIS: As Steve has said, we will look at them, if you want to give it to us a piece at a time, we will look at it and review it as expeditiously as possible. I think the next 30 days is eh uh, impossibility. I don't think it's on anybody's calendar

AGUIRRE : Okay

MORRIS: I just don't think it's possible.

AGUIRRE : Okay.

MORRIS: This is a very extensive report.

AGUIRRE : I understand that and I think its fair, I appreciate that and I think it's a fair response. What I understand is that what you are telling us though, as far as the accruals are concerned, is that we may have to reserve money in reference to possible contingent liabilities, is that what you are saying.

MORRIS: That's an evaluation that you need to make.

AGUIRRE : Okay, that's what you meant when you said accruals then.

MORRIS: Yes.

AGUIRRE : Now the flip side of this, is that say for example I, that I've reached the conclusion that under 1092 that maybe that some of the benefits are set aside, that could have a positive impact on our NPO which would actually improve our situation. Correct.

MORRIS: I presume that if you come up with a statement with respect whether it's a liability or not, that's defined by some sort of legal standard, that would be persuasive to the city and to our judgment as well, whether or not a liability it needs to be approved.

AGUIRRE : Okay now even on the other side of it, if you lets say take the City Attorney's position and say that there were federal securities laws violations, that doesn't necessarily translate into an actual liability if there is no lawsuit, if there is no damages, correct?

MORRIS: Now you are into fasby 5 and probably those are judgments that would have to be made in respect to that information.

AGUIRRE : Right, so in other words, lets say for example I conclude that there was a securities law violation, however, given the fact that we seem to be able to pay all of our bond payments as

they become due, that under those circumstances the likelihood of an investor actually suing us, that they had actually incurred damages, that there is no possibility and that could be reflected on the financial statements in that way as well.

MORRIS: That's a judgment that we would seek our own counsel with respect to the making our determination, an independent determination of whether or not that's true.

AGUIRRE : Okay, and that would go into the issue, I mean one of the primary issues this far, involving the Kroll issue would be that kind of analysis in other words, would you agree?

MORRIS: Yes

AGUIRRE : Alright, well listen, eh I appreciate KPMG's responses today, I do feel that KPMG is going to move forward here in a positive way and I would tell you that the City Attorney's office with the permission of the Mayor will be working with you very carefully to get this done as rapidly as possible, all of our responses at least. Thirty days may be too quick, but we sure would like to shoot for that as at least, a goal. I know we may not get there, but I would tell you that I think that the Mayor, and I want to confer with the Mayor, but I think that with regard to wrapping up the financial statements, the disclosures, the accruals, all of that, we should be able to get you a draft on an expedited basis and then get revisions of that draft as quickly as you can get back to us with the idea of getting this thing done. As far as you are concerned by the end of the year, it would be realistic for us to set a goal by the end of the year to get this done, correct?

MORRIS: I would that's true, I think that was consistent with both what the Mayor and Kroll have said.

AGUIRRE : Thank you both very much, thank you

THE END

Exhibit 53

U.S. Securities and Exchange Commission

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 8213 / March 21, 2003

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 47552 / March 21, 2003

Admin. Proc. File No. 3-10022

In the Matter of

THE CITY OF MIAMI, FLORIDA

OPINION OF THE COMMISSION

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Fraud in the offer and sale of securities

Municipal securities issuer distributed offering documents and an annual financial report that contained material misstatements and omitted material facts concerning its financial condition. Held, it is in the public interest to order the municipal securities issuer to cease and desist from committing or causing any violation or future violation of the antifraud provisions of the federal securities laws.

APPEARANCES:

Thomas Tew, and Daniel S. Newman of Tew Cardenas Rebak Kellogg Lehman DeMaria Tague Raymond & Levine, LLP, for the City of Miami, Florida.

Teresa J. Verges, for the Division of Enforcement.

Appeal filed: October 16, 2001

Last brief received: December 10, 2001

I.

The City of Miami, Florida ("City"or "Miami") appeals from the decision of an administrative law judge. The law judge found that the City willfully violated Section 17(a) of the Securities Act of 1933,[1] Section 10(b) of the Securities Exchange Act of 1934,[2] and Exchange Act Rule 10b-5[3] with respect to its offer and sale of three municipal bond issues. The law judge ordered the City to cease and desist from committing or causing any violation or any future violation of the antifraud provisions. We base our findings on an independent review of the record, except with respect to those findings that are not challenged on appeal.[4]

II.

A. The City

During the period under review, the City had an annual budget of approximately $250 million and about 3,300 employees. The City had an elected City Commission form of government, consisting of the Mayor, Vice Mayor, and three Commissioners. The City Commission delegated the responsibility for the day-to-day management of the City's affairs to a City Manager, appointed by the Mayor. The City Manager had responsibility for all City departments and supervision of all City employees.

Cesar Odio was the City Manager from 1985 until his resignation in September 1996. At the time, Manohar Surana was the City's Director of Management and Budget.[5] In February1995, when Carlos E. Garcia retired as the City's Director of Finance, Odio consolidated the Departments of Finance and of Management and Budget and named Surana Director. Although not an accountant, Surana was directly responsible for preparation of the City's fiscal year ("FY") 1995 financial statements and the FY 1995 budget.

B. Miami's Financial Reporting

Miami's fiscal year began on October 1 and ended on September 30 the following year (e.g., the City's FY 1995 began on October 1, 1994 and ended on September 30, 1995). The largest component of the City's operating budget was the General Fund. The General Fund accounted for most of the City's core activities, such as the fire and police departments. Miami also maintained a series of separate funds. The Enterprise Funds recorded the operations that were supposed to be financed through the collection of user fees. The Internal Service Funds accounted for goods or services provided by one department or agency to another. The Capital Projects Funds accounted for the acquisition and construction of major capital facilities. During the period under review, Miami used "pooled accounting," that is, the City deposited cash for all funds in one account. No records were maintained to identify the amount of cash belonging to each fund.

C. The Gates Judgment

Further complicating the City's finances was a 1985 consent decree, the so-called "Gates Judgment," requiring Miami to repay money transferred from

City pension funds. The City's obligation under the Gates Judgment was projected to total $473 million through 2012. Payments under the Gates Judgment and other annual pension payments totaled approximately $32 million per year. The City made these payments from the General Fund. Odio testified that in 1985, his first year as City Manager, he calculated that, unless the Gates Judgment was refinanced, by the mid-1990s Miami would face a fiscal crisis and experience a $66.5 million deficit.

D. Miami's FY 1994 - 1995 Financial Condition

1. The FY 1995 Budget

Under Florida law, Miami's annual budget was required to be balanced.[6] The City had sustained deficits in the General Fund for several years and had borrowed from other funds to satisfy operating expenses. The record demonstrates that, by the end of FY 1994, Miami's ongoing financial problems were well known to City officials.

On September 22, 1994, Miami's City Commission approved a $222 million budget for FY 1995.[7] This budget included $9 million dollars that were to come from the federal government in the form of a Crime Bill grant and $3 million in revenue to be generated from the sale of land fill. Earlier that month, City officials and City Commissioners had been informed that Miami should expect to receive the Crime Bill funds "starting in FY 1996." On September 21, 1994, the day before the budget was approved, Surana sent a memo to the City's Police Chief, with a copy to Odio, stating that program authorization for the Crime Bill would not begin until 1996.[8] Dipak Parekh ("D. Parekh"), the City's then Revenue Management Administrator who drafted the memo, testified that he gave this information to Odio. D. Parekh further testified that prior to the first bond offering, there was "no basis to believe that the City would ever get that $9 million."[9]

2. Financial Advisers Warn Miami Of A Deficit

Miami retained two financial advisers: Howard Gary & Company ("HG & Co.") and Raymond James & Associates, Inc., ("Raymond James"). Kishor Parekh ("K. Parekh"), a partner of HG & Co. and D. Parekh's brother, was the HG & Co. primary contact with Miami.[10] By letter dated September 30, 1994, addressed to Garcia, then Director of Finance, the financial advisers warned Miami that "the City's general credit rating will experience a downgrade in the near future." The letter highlighted Miami's "low level of unreserved General Fund balances, the City's reliance on non-recurring revenue initiatives, asset sales, basic infrastructure maintenance needs, as well as the City's overall revenue inflexibility." The financial advisers believed that Miami's fiscal health was approaching a "precarious situation."[11]

According to K. Parekh, Garcia chastised him for sending the letter and instructed that in the future any similar concerns should be raised only orally. Less than three weeks following the financial advisers' warning, Standard & Poor's ("S & P") downgraded Miami's outstanding general obligation bonds from A+ to A. S & P cited "continuing fiscal stress arising primarily from revenue inflexibility, which has caused the City to utilize nonrecurring sources to support operations."[12]

3. Auditor Tells Miami That It Will Run Out Of Cash

Deloitte & Touche, LLP ("Deloitte") was Miami's outside auditor from 1989 through 1995. Francisco Paredes was the partner who supervised the City's account for FY 1994 and FY 1995. During the FY 1994 audit, Deloitte determined that Miami faced a potential shortfall of $35 - $40 million for FY 1995, and that the City could run out of cash by May 1995. During a meeting in December 1994 or early January 1995, Paredes informed Garcia and Odio of Miami's cash flow problems. This conversation alerted Odio to the increased seriousness of the City's cash flow deficiency because it was the first time that Paredes had ever discussed Miami's finances directly with him.

4. Operation Right Size

Shortly after being confronted with Deloitte's warnings, Odio, Surana, Paredes, one of the City's Commissioners, and representatives of "all the City staff" met at the Orange Bowl to discuss the $35-$40 million deficit projected by Deloitte. Odio testified that those in attendance did not consider increasing taxes or service fees to raise needed revenue because they knew that the City Commission had rejected this option in the past for "political reasons."[13] Following the Orange Bowl meeting, Miami initiated a program called Operation Right Size, which required every city department to review its budget for possible savings, according to Odio to "salvage the situation." Operation Right Size, starting June 1, 1995, was expected to reduce City expenditures by $15 million to $25 million in succeeding years by, among other things, reducing the number of City employees and introducing a two-tiered salary structure that would replace long-time workers with lower-cost employees. However, in February 1995, Odio informed Paredes that, despite the City's best efforts to reduce expenditures through Operation Right Size, Miami would be expected to save only $5 million from the program in FY 1995. Odio testified that Miami's cash flow problems for FY 1995 could not be solved solely by implementing Operation Right Size. He added that making up a $35 million deficit in a $222 million budget would have been "kind of a miracle."

Deloitte debated whether it had to qualify its opinion on Miami's FY 1994 financial statements with respect to whether Miami would remain a going concern.[14] A Deloitte work paper, dated March 1995, stated that "it appears the City is approximately $20 to $40 million behind in cash flows," and projected that "the City will definitely have a deficit cash flow deficit in the General Fund at September 30, 1995." The work paper also included best-case and worst-case analyses of Miami's finances for FY 1995, based on projections prepared by Garcia using actual revenues through November 1994.[15] Both analyses assumed that Miami would sell bonds.

Paredes testified that Miami's leadership was "well aware" of Deloitte's prognosis for the City's finances, and that the City officials planned to issue $20 million in Self Insurance Bonds "if cash flow [] necessitated."[16] Odio admitted that Miami had to sell bonds to survive FY 1995 stating, "[T]hat's the only choice we had, to borrow money."

Deloitte did not qualify its opinion on Miami's financial statements.[17] According to Paredes, Miami avoided issuance of a going concern

qualification on its FY 1994 financial statements because the City intended to sell bonds. Paredes testified that he also based his decision on his view that the City was "progressing as planned," many City employees hadagreed to take early retirement, and there had been discussions about the sewer and pension bonds.[18]

5. 1994 CAFR

During the period under review, the City prepared and disseminated a yearly Comprehensive Annual Financial Report ("CAFR") containing the City's yearly audited General Purpose Financial Statements and a transmittal letter from the City Manager and other city officials to the Mayor and the City Commission. Miami sent its CAFR biannually to credit rating agencies, and widely disseminated the CAFR to bond insurers, and investors.

The 1994 CAFR included the independent auditor's report on the City's financial statements, and a transmittal letter to the Mayor and City Commissioners from the City Manager and Finance Director. The transmittal letter stated that:

> To the best of our knowledge and belief, the enclosed data is accurate in all material respects and is reported in a manner designed to present fairly the financial position and results of operations of the various funds and account groups of the City. All disclosures necessary to enable the reader to gain an understanding of the City's financial activities have been included.

Note 9 to the financial statements discussed a deficit of about $80 million in the City's Enterprise and Internal Service Funds. Note 9, titled "Fund Equity," stated that:

> The following schedule lists fund deficits for Governmental and Trust and Agency type funds as of September 30, 1994 (in thousands):
>
> Rescue Services Special Revenue ($285)
>
> Self Insurance Trust Fund ($6,472)
>
> Pension Administration Trust Fund ($34)
>
> In addition to the above fund deficits, the City also experienced cash deficits in several of its operating funds which were temporarily remedied by loans from other funds. See Note 5.[19] It is management's intention to replenish these deficits and, accordingly, in February 1995, the City initiated a review process to "right-size" its operations with the goal of reducing its FY 95-96 budget by $30 million. As part of this initiative, significant concessions obtained from the sanitation union are expected to reduce the Solid Waste Department's FY 95-96 budget by $10 million. In addition, several departments are being consolidated and certain operations not directly related to

the City's basic services are expected to be discontinued by September 30, 1995. Early retirement plans have been agreed to in principle by the City's administration and union's leadership with the purpose of reducing the City's workforce by approximately 400 employees by September 30, 1995. The implementation of the proposals discussed above are expected to strengthen the City's financial condition.

6. Miami's Financial Condition Continues to Deteriorate

In March 1995, Surana directed Miami's financial advisers to explore various financing alternatives that would raise cash immediately. Ultimately, K. Parekh informed Surana that none of the proposed options was feasible. On May 9, 1995, K. Parekh was summoned to a meeting with Surana, Odio, other City officials, and representatives of the financial advisers. K. Parekh testified that the participants discussed "the City's inability to meet its obligations. They were running out of money." According to K. Parekh's contemporaneous handwritten notes, Surana stressed that, it was imperative that the City's "[a]ctual cash deficit must be solved by Mid-June [1995]" and that "[a]ll GF/Budget must be solved by [September 1995]" (emphasis in original). Surana warned that, if the cash crunch was not resolved prior to this date, City employees' paychecks would bounce.

In advance of the May 9 meeting, K. Parekh and Miami's Debt Service Coordinator prepared an analysis demonstrating that, although Miami's financial statements showed a positive $3.167 million General Fund balance as of September 30, 1994, in reality, the account had a $3.156 million deficit.

7. The Bond Issues

a) Sewer Bonds

On May 25, 1995 the City Commission authorized the sale of the $22.5 million general obligation Sewer Bonds for improvements to the City's sewer system and to pay pensionliabilities for the fiscal year ending September 30, 1995. The Official Statement[20] for the Sewer Bonds included the City's FY 1994 audited financial statements, including Note 9, and incorporated a certificate executed by Miami's City Manager stating that the Official Statement was free of misstatements and omissions of material facts, and that there had been no material adverse change in Miami's financial condition since September 30, 1994, the close of the prior fiscal year.[21] The Official Statement also contained a summary of Miami's $222 million FY 1995 budget, claiming that the City anticipated receiving $9 million in Crime Bill monies and the $3 million proceeds from the sale of land fill, and represented that the City's "Revenues and Other Financing Sources" equaled "Expenditures and Other Uses" (the "balanced budget summary").

The Sewer Bonds were sold on June 27, 1995. Following the bond sale, Miami transferred $8.8 million, or 39 percent, of the bond proceeds into the General Fund in order to address the impending operating fund deficiency. The Sewer Bonds were insured by Financial Guaranty Insurance Company

("FGIC").

On June 9, 1995, Surana, Odio, K. Parekh, representatives of the City's employees, and representatives of Rauscher Pierce Refsnes, Inc. ("Rauscher Pierce"), an underwriter, met to discuss the City's cash flow problems. K. Parekh testified that, although the attendees expressed concern that Miami "was running out of money," it was "obvious" that the City had found a solution to its cash flow crunch because, in contrast to the prior month's meeting, "people weren't running around as crazy as they used to before" and no one talked about the City running out of cash by mid-June.

b) FP & L Bonds

On August 24, 1995, the City sold the $22 million Special Obligation Non-Ad Valorem Revenue Bonds ("FP & L Bonds"). According to the Official Statement, proceeds from the bond sale were to be used to purchase property, to make capital improvements, and to acquire an administration building. Financial disclosures in the Official Statement for the FP & L Bonds were the same as those for the Sewer Bonds. The FP & L Bonds were also insured by FGIC. The City transferred $21 million of the bond proceeds to the General Fund for an ending balance of $26 million on September 30, 1995.

c) Pension Bonds

Miami asked Rauscher Pierce to examine refinancing strategies that would provide immediate cash flow. In a letter to Deloitte dated June 14, 1995, Rauscher Pierce made clear that Miami was looking for a "big bang" to solve the City's fiscal problems. On the same day, Rauscher Pierce's Sarasota, Florida office faxed a document to its Miami office concerning a proposed issuance of Pension Bonds. The Sarasota office concluded that, if the bond proceeds were used directly for operating expenses, the City's liability would in essence be doubled, and the financing would be "pure deficit financing," which was prohibited by Florida law. The document also noted that "[t]his instrument is a deferral of the budget problem from one year to the next. So in essence, it buys one year's time."[22]

On July 13, 1995, the City Commission adopted a resolution that gave the City Manager authority to issue bonds totaling $309 million between 1995 and 2008 (the "pension bonds resolution"). Pursuant to this resolution, the City Manager had sole authority to issue bonds up to $22 million annually in order to make payments under the Gates Judgement and for other pension costs.[23]

On October 19, 1995, K. Parekh again met with Surana and others to discuss the City's cash flow needs.[24] In a follow-up letter dated November 7, 1995, K. Parekh reminded Suranathat one aim of the July 1995 pension bonds resolution was to "reduce (to the maximum possible extent) the amount of 'fiscal stress' upon the City." K. Parekh testified that later in November Surana telephoned him at home and reported that Miami was "out of money."

On December 12, 1995 the City's sold its first offering pursuant to the July

13, 1995 pension bonds resolution, a negotiated offering of $72 million Non-Ad Valorem Revenue Bonds (the "Pension Bonds"). The Official Statement declared the bond proceeds would be used to pay accrued and future liabilities to City pension plans and to reimburse the City for payments made in FY 1995. Financial disclosures in the Official Statement for the Pension Bonds were the same as those for the Sewer Bonds and the FP & L Bonds. The Pension Bonds were insured by AMBAC Insurance.

8. Appointment of the Oversight Board

On September 13, 1996, following the resignations of Odio and Surana, the City appointed an Interim City Manager. In December 1996, the Mayor and City Commissioners declared a fiscal emergency, causing Florida's Governor to put the City under the aegis of a Financial Emergency Oversight Board ("Oversight Board"). The Oversight Board was to have "continuous existence until three years after the City has produced two successive years of balanced operations and none of the statutory conditions for determining a local government financial emergency exists."

III.

Antifraud Violations

The antifraud provisions of the securities laws prohibit fraudulent and deceptive acts and practices in connection with the offer, purchase, or sale of a security.[25] In 1989, when the Commission adopted Exchange Act Rule 15c2-12, "Municipal Securities Disclosure," the Commission noted that municipal "issuers are primarily responsible for the content of their disclosure documents and may be held liable under the federal securities laws for misleading disclosure."[26] We have long emphasized the need for adequate disclosure in the sale of municipal securities.[27]

Early in FY 1995, Miami learned that it was facing an unprecedented cash flow shortage and would not be able to meet its obligations by May 1995, unless it took drastic steps both to generate cash flow and reduce expenses. To survive the year, Miami had to sell bonds and use the proceeds to meet its operational expenses. Miami officials knew that Operation Right Size would not turn around the City's financial crisis in FY 1995. Contrary to the "balanced budget" summary included in the Official Statements, before the first of the three bond issues was sold the City knew that it faced at least a $12 million deficit because it would not receive either the land fill or Crime Bill monies, and that the City would experience a deficit in FY 1995.

Note 9 to Miami's financial statements, included in the 1994 CAFR and Official Statements, failed to reveal Miami's cash flow problem and, instead, gave the misleadingimpression that the City was taking steps that would allow it to finish FY 1995 in a stronger financial position than in FY 1994. Miami did not disclose that the City was facing such severe cash flow challenges that, absent borrowing funds, it might be unable to pay municipal workers in FY 1995. Nor did it disclose that Deloitte had informed Miami of a projected $35 - $40 million deficit for FY 1995.

Miami claims that "Note 9 made it absolutely clear that the majority of the

savings from the right-sizing efforts were not anticipated to be realized until FY 1996, and this fact was obvious to any reader, as were the consequences of the right-sizing efforts not being successful." The disclosures regarding Operation Right Size were anything but "obvious." Note 9 did not disclose that Operation Right Size would generate only $5 million in savings in FY 1995. It also did not state that Miami would have to sell bonds to stay afloat in FY 1995. Paredes admitted that Note 9 only "implied" that Miami would incur cash deficits in FY 1995.[28]

The certificate stating that there was no material change in Miami's financial condition included in the Official Statements for the bond offerings was false because it did not represent the financial facts that existed at the time of the bond sales. Soon after September 30, 1994, City officials became aware that the City's finances were deteriorating significantly. Odio testified that FY 1995 was the worst threat to City finances he had confronted in his fifteen years with the City. Although it appeared that the City had met payroll and paid other ongoing expenses, and had achieved a positive General Fund balance in FY 1995, in reality, the ever-growing budget deficit was masked by transfers from other funds and the use of bond proceeds. The Interim City Manager concluded that in the summer of 1995 the City's financial situation:

> had to be shaky, certainly because of the cannibalization, if you will, of storm water trust money, of unfunded liabilities, utilizing pension bond issue proceeds to meet annual budget requirements for the pension funds. So you've got clear indications of fiscal shortfalls and questionable accounting, official policy.

In light of the City's critical cash flow shortfall, the certification was a material misrepresentation. The balanced budget summary[29] was misleading because, throughout FY 1995, Miami's operating expenses exceeded budgeted operating revenues by millions of dollars and Miami knew that it would not receive some of the projected revenues.

Miami's cash flow crisis and the consequent possibility that it would not meet its operating expenses would be viewed by a reasonable investor as a material factor in deciding whether to purchase Miami's debt.[30] A reasonable investor would have considered it important to know that Miami could not generate sufficient revenues to pay its bills or its employees. The fact that Miami needed to use bond proceeds to satisfy operational expenses demonstrated the gravity of its cash flow deficit, and, thus, the City's need to disclose this fact to public investors and the marketplace. Miami's financial disclosures would be no less important to investors, who held previously issued City bonds, and were entitled not to be mislead about Miami's current financial condition in deciding whether to hold or sell their bonds. "Information about the issuer and other obligated persons is as critical to the secondary market . . . as it is in primary offerings."[31]

Miami argues that it was excused from disclosing that the City was experiencing cash flow stress and would be unable to meet its obligations because Deloitte did not issue a "going concern" qualification.[32] Miami erroneously equates the absence of a going concern qualification with the absence of adverse financial conditions that should have been disclosed. A

going concern qualification discloses that the client will not meet its obligation in the coming twelve months. Paredes testified that, although Miami's cash position was "very tight," the City avoided a "going concern" qualification only because City officials represented that bonds would be issued to address any cash needs - - the very bonds at issue here. Although Miami's plan to survive the fiscal year by selling bonds may have removed the need for a going concern qualification, it did not relieve Miami of its obligation to disclose adequately the City's cash crisis or the role of those bonds in remedying the crisis. We have previously found antifraud violations where a municipal issuer failed to disclose that its cash flow position had materially declined (since the close of the prior fiscal year's financial statements included with its Official Statements) and misrepresented that there had been no material change in its financial condition.[33]

Miami asserts that the law judge erred in concluding that the balanced budget summary, included in the Official Statements, was a material misrepresentation because the summary "reflected historical information." Although the City Commission's approval of the FY 1995 budget was "historical," publication of the budget summary in the Official Statement was misleading. Before the first offering, City officials knew that Miami's FY 1995 budget was not balanced and that the City would not receive the Crime Bill Funds or much, if any, revenue from the sale of landfill. We conclude that the misrepresentations, false statements and omissions made by Miami in the Official Statements and 1994 CAFR were material.[34]

Scienter is a necessary element of a violation of Section 17(a) (1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.[35] Proof of scienter need not be direct, but may be "a matter of inference from circumstantial evidence."[36] Scienter has been defined by the Supreme Court as "a mental state embracing intent to deceive, manipulate, or defraud."[37] A showing of recklessness or actual knowledge can satisfy the scienter requirement.[38]

Miami argues that the Division failed to meet its burden of proving scienter because the Division failed to establish that Miami "did not act in good faith." As made clear above, in the face of obvious indicators to the contrary, Miami was at least reckless in misstating that its FY 1995 budget was balanced, downplaying its cash flow crisis, failing to disclose that Miami needed to issue debt to resolve its crisis, and misrepresenting that there were no material changesin its financial condition. Miami's officials ignored the City's disclosure responsibilities. Odio admitted that he was not familiar with Miami's disclosure requirements and dismissed the importance of the bond offering documents.

> Let me ask you this, does anybody read this [Official Statement]? I mean, only experts read this . . . . [M]ost people don't read this, nobody reads this. They go by what the raters, that is Moody's, Standard & Poor's, saying that these bonds are safe to buy. By rating them AAA, they're a very good buy. Therefore, they wouldn't go reading through this. Nobody does.

Bond insurance did not give Miami license to misrepresent its financial condition or withhold material information from the marketplace.[39]

Miami further asserts that the City relied on Deloitte, and other professionals who participated in the bond offerings, to advise the City on its disclosure in the Official Statements.[40] Primary responsibility for the accuracy of information filed with the Commission and disseminated among investors rests upon the municipality.[41] A city does not discharge this obligation by the employment of independent public accountants or other professionals.[42] As we have repeatedly emphasized, issuers of municipal securities "are primarily responsible for the content of their disclosure documents and may be held liable under the federal securities laws for misleading disclosure."[43] Municipal issuers have an affirmativeobligation to know the contents of their securities disclosure documents, including their financial statements.[44]

Moreover, the record is unclear as to whether and to what extent Miami consulted with or relied on professionals.[45] Miami does not point to any professional advice that it received with respect to its certificate of no material change or its budget summary. Miami claims that Deloitte drafted Note 9 to its 1994 financial statements. However, Paredes testified that he recommended that Miami disclose the "cash deficits that were being funded by other funds," and that as the result of a "consultative type process" Miami decided to add Note 9. Paredes further testified that he could not "specifically recall exactly who wrote the first draft of Note 9."

Even if Paredes drafted Note 9, however, Miami knew that Note 9 did not disclose the scope of its cash flow predicament or the necessity to issue debt to remedy that problem. If a company officer knows that "financial statements are false or misleading and yet proceeds to file them, the willingness of an accountant to give an unqualified opinion with respect to them does not negative the existence of the requisite intent or establish good faith reliance."[46]

Accordingly, we find that Miami willfully violated Sections 17(a)(1)-(3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of the three bond issues. We further find that Miami willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with its outstanding bonds by makingmaterially false and misleading statements and omitting material information in its 1994 CAFR.[47]

IV.

Sanctions

In assessing whether a cease-and-desist order is an appropriate sanction, we focus on the risk of future violations.[48] "This inquiry is a flexible one and no one factor is dispositive. This inquiry is undertaken not to determine whether there is a 'reasonable likelihood' of future violations but to guide our discretion."[49] In the ordinary case, and absent evidence to the contrary, a finding of past violation raises a risk of future violation sufficient to support our ordering a respondent to cease and desist. "To put it another way, evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering to cease and desist."[50] We also consider:

> the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the respondent's opportunity to commit future violations. In addition, we consider whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceeding.[51]

We further may consider the function a cease-and-desist order will serve in alerting the public that a respondent has violated the securities laws.[52]

Miami argues that the cease-and-desist order is inappropriate because the violative conduct giving rise to the sanction occurred approximately seven years ago, and the officials involved with that conduct are no longer with the City. The Division emphasizes that the mere passage of years alone cannot determine whether Miami will commit violations in the future, and that the departure from City government of officials responsible for Miami's financial misrepresentations and omissions is not determinative of the appropriateness of a cease-and-desist order. We agree with the Division. The departures of Odio and Surana from City government provide no assurance that Miami will not commit similar violations in the future.

Miami's actions were not the result of an isolated incident but were recurrent and stretched from one fiscal year and into the next. In the three bond issues, the City used financial statements that failed to warn investors about its ongoing financial stress; falsely certified that there had been "no material adverse change" in its financial condition since FY 1994, even though Miami faced a cash shortfall of over $30 million; and depicted a balanced budget, knowing that $12 million in revenue would not be forthcoming. These violations were committed with at least recklessness.

Miami argues that its conduct did not result in harm to either public investors or the market place. This is not true. Because Miami failed to make full and accurate disclosures about its financial condition, investors purchased the City's debt without full information.

Miami also asserts that appointment of the Oversight Board negates the need for a cease-and-desist order. The Oversight Board was not a permanent watchdog over Miami's finances. Miami has not adduced evidence of what changes in policy and financial controls have been introduced to eliminate the "possible risk" of future violation. We disagree with Miami's contention that a cease-and-desist order will serve no remedial purpose. We believe that the order will help prevent future violations.

Miami still maintains that it did nothing wrong. The fact that Miami has pointed its finger at Deloitte, and other bond professionals, without taking any responsibility for its own conduct, suggests that Miami has not accepted fully its responsibility for the City's financial disclosures. It is likely that Miami will sell bonds in the future. The City must be given the clear message that Miami is responsible for the adequacy of its financial disclosures when seeking

money from the investing public. Accordingly, we will order Miami to cease-and-desist from committing or causing any violations or future violations of the antifraud provisions of the securities laws.

An appropriate order will issue. 53

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID and ATKINS); Commissioner CAMPOS not participating.

Jonathan G. Katz
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No.

Admin. Proc. File No. 3-10022

In the Matter of

THE CITY OF MIAMI, FLORIDA

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that the City of Miami cease and desist from committing or causing any violations or future violations of Section 17 (a) of the Securities Act of 1933, Section 10 (b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5.

By the Commission.

Jonathan G. Katz
Secretary

1 15 U.S.C. § 77q.

2 15 U.S.C. § 78j.

3 17 C.F.R. § 240.10b-5.

4 Miami requests that we conduct a de novo review of the record and "reject" the law judge's decision. Rule of Practice 410 requires the petitioner to "set forth the specific findings and conclusions of the initial decision as to which

exception is taken." In our discretion, we may deem that the petitioner waived any exception not stated in the petition for review.

Under Rule of Practice 411, we "make any findings or conclusions that in [our] judgment are proper and on the basis of the record." We give "considerable weight and deference" to the trier of fact's credibility determinations and reject them only where there is substantial evidence for doing so. Jay Houston Meadows, 52 S.E.C. 778, 784 (1996), aff'd, 119 F. 3d 1219 (5th Cir. 1997).

5 Odio and Surana, who were respondents in this proceeding, resigned their positions as theresult of a joint state/federal investigation of corruption in Miami's municipal government, known as Operation Green Palm. The Commission subsequently accepted Odio's and Surana's Offers of Settlement. Without admitting or denying liability, Odio and Surana agreed to cease and desist from committing or causing any violations or future violations of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Our findings here with respect to Odio and Surana are solely for the purpose of this opinion. Manohar Surana, Securities Act Rel. No. 1110 (Sept. 22, 2000) 73 SEC Docket 869; Cesar Odio, Securities Act Rel. No. 7851 (Apr. 14, 2000) 72 SEC Docket 614.

6 The governing body of each municipality "shall make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources." Fla. Stat. Ann. § 166.241(3).

7 According to minutes of the Commission meeting at which the budget was approved, the Vice-Mayor observed: "This is the same method of budget balancing we do each year. OK? Now, you see it; now, you don't. OK? That nine million dollars will never show up anyplace but on paper, and it will be shifted around from place to place []. You will never see nine million dollars." Another Commissioner responded: "Tell my colleague it goes back to his old saying of 'voodoo economics.'"

8 During his testimony at the hearing, Odio could not recall receiving the document.

9 Miami asserts that D. Parekh's statement about when Miami found out that the Crime Bill had changed from a block grant to a discretionary program was impeached by his prior investigative testimony. D. Parekh initially testified that in January or February 1995, after the FY 1995 budget had been approved, the City learned that the nature of the program had changed. Miami concludes that this is also when the City came to know the timing of its receipt of funds under the Crime Bill. We find no connection between the two events. D. Parekh testified that, before the FY 1995 budget had been approved, City officials learned that the Crime Bill monies would not be received until FY 1996. The law judge found D. Parekh to be a credible witness; D. Parekh's hearing testimony is consistent with substantial documentary evidence in the record including the Suranamemo and the discussion at the City Commission meeting. See nn.4, 7 *supra.*

10 Howard Gary, the president, CEO, and principal of HG & Co., was Miami's City Manager prior to Odio. Miami terminated its contract with HG & Co. in late 1996.

11 K. Parekh testified that the financial advisers put their concerns in writing to ensure that Miami understood that the City's "deteriorating fiscal condition" would continue to decline, and was "extremely important" to address. K. Parekh further testified that in deviation from their usual practice, the financial advisers captioned the letter to Miami, "PRIVILEGED AND CONFIDENTIAL," in order to stress the sensitivity of the issues raised.

12 For example, in September 1994, the City issued $18 million Pension Bonds to finance payments under the Gates Judgement. The financial advisers had informed Miami that they opposed issuing these bonds because they felt it was

inappropriate to fund an operating expense (like a legal settlement) with municipal securities having a 20-year maturity.

13 For example, from 1990 through 1995 Miami charged each citizen $160 annually for garbage fees when the service actually cost over $380 per year. This shortfall, which cost Miami between $12 million and $15 million per year, was paid from the General Fund.

The Florida Constitution permitted the City to levy ad valorem taxes up to $10 per thousand dollars of assessed valuation for general governmental services. For the FY ending September 30, 1995, the rate was $9.5995 per thousand dollars; the same level since 1988. Witnesses testified that raising the rate would not have been sufficient to close the deficit.

For the six years prior to the period under review, Miami issued Tax Anticipation Notes ("TAN") in October to finance operations until the subsequent year's tax revenues were collected in December. Miami could not issue additional TANs until October 1, 1995.

14 Pursuant to Statement of Auditing Standards No.59, an auditor must conduct a "going concern" review to determine a client's ability to meet its operating expenses and debt service for the twelve months following the date of the audited financial statements. Where there is doubt about the client's ability to do so, the auditor must evaluate management's plans to mitigate those concerns, and determine whether to issue a "going concern" qualification on the audit report.

15 Deloitte's work papers noted that Miami's projected FY 1995 budget "included the Federal Crime Bill, land sales and others, whose realizeability was not assured." Miami knew that it would not realize the $3 million from the sale of land fill included in its budget for FY 1995. In his "Best Case" projection, Paredes assumed that Miami would receive only $500,000 from the sale of land fill. Ultimately, no revenue was realized from the sale of land fill in FY 1995.

16 Miami did not issue the Self Insurance Bonds but sold the three bonds at issue here.

17 Paredes testified that: "Because the City had plans and was instituting processes . . . . They had the capacity to issue debt and sell assets which all generate resources to make their ends meet. I think we need to understand that this analysis was done to see if there was a going-concern need in the opinion. We concluded clearly that there was no need for that."

18 Deloitte completed its fieldwork for the FY 1994 audit on February 28, 1995, the date appearing on the signed audit opinion. However, the record is unclear as to when the City received the FY 1994 audit. Miami asserts that the law judge improperly concluded that the City received the FY 1994 audit in February or March 1995.

Odio testified that he received Deloitte's Management Letter on February 28. However, Paredes testified, based Deloitte's Record of Report Issuance, that the audited financial statements were delivered to the City on May 31, 1995. Notwithstanding the dispute about the date of Miami's receipt of the audit opinion, the record is clear that the City was aware of its serious cash flow problems by February 1995.

19 Note 5 to the financial statements showed that almost $20 million of the $23.8 million "Due from Other Funds" came from five Capital Improvement Funds.

20 An Official Statement is the "municipal equivalent of a corporate prospectus." It constitutes "financial disclosure by a state or local government planning a municipal securities offering that states the purpose for the issue and . . .

discloses pertinent information on the issuer's financial condition." Barron's Dictionary of Finance and Investment Terms, 318, 408, 475 (4th ed. 1995).

21 The certificate was required for the Official Statement for each of the three bond issues, as well as for the bond purchase agreements for the FP & L and Pension Bonds. K. Parekh testified that none of the bond transactions could have closed without the representations in the certificate.

22 On September 27, 2001, pursuant to Rauscher Pierce's Offer of Settlement, the Commission issued an Order Instituting Proceedings and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions ("Order") against Rauscher Pierce in connection with its role as underwriter of Miami's Pension Bonds in December 1995. The Order required Rauscher Pierce to cease-and-desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 15B (c)(1) of the Exchange Act, and MSRB Rule G-17, and ordered Rauscher Pierce to pay a civil penalty in the amount of $200,000. See Rauscher Pierce Refsnes, Inc., Exchange Act Rel. No. 44864 (Sept. 27, 2001), 75 SEC Docket 2510, 2516.

23 Griffith Pitcher, Miami's bond counsel on the Pension Bonds, testified that it would be "very unusual" for any City Commission to delegate to the City Manager discretion as to the timing and amount of debt to issue.

24 K. Parekh testified that Surana had suggested a number of novel transactions, including "Yankee bonds, issuing Yen-denominated securities, to securities issued in Austrian shillings, to currency swaps to interest rate swaps, and lots of innovative and interestingstructures." According to K. Parekh, during the October 19 meeting, he advised Surana that some of those financing scenarios were "illegal" or "extremely improper." K. Parekh further testified that in response Surana berated him for two hours and told him that he was "incompetent."

In an attempt to discredit K. Parekh's testimony about Miami's ongoing cash deficiency, the City asserts that K. Parekh fabricated the October 19 dispute between Surana and himself because he had an "ax to grind" with Surana. Miami claims that Griffith Pritcher, bond counsel, contradicted K. Parekh's testimony that Surana berated Parekh by testifying that he had no recollection of the incident. Regardless of what occurred at this meeting, K. Parekh's overall testimony regarding Miami's financial condition is corroborated independently by other testimony and substantial record evidence. See e.g., pp. 5-6 *supra* and 10-11 *supra*.

25 See U.S. v. Naftalin, 441 U.S. 768 (1979).

26 17 C.F.R. § 240.15c2-12. See Release Adopting Exchange Act Rule 15c2-12, 54 FR 28799, 28811 n.84 (July 10, 1989). See also County of Nevada, Securities Act Rel. No. 7535 (May 5, 1998), 67 SEC Docket 256 (settlement to cease-and-desist order finding violations of Sections 17(a)(2) and (a)(3) in sale of municipal bonds); Maricopa County, Securities Act Rel. No. 7354 (Oct. 3, 1996), 62 SEC Docket 2834 (settlement to cease-and-desist order finding violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule l0b-5 thereunder); County of Orange, California, Exchange Act Rel. No. 36761 (Jan. 24, 1996), 61 SEC Docket 487 (public issuers are primarily liable for the content of their disclosure documents and are subject to proscriptions under the antifraud provisions); and County of Nevada, Initial Decision Rel. No. 153 (Oct. 29, 1999), 70 SEC Docket 3303 (municipal bonds subject to Section 17(a) of the Securities Act and Section 10 (b) of the Exchange Act and Rule l0b-5 thereunder).

27 See Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Securities Act Rel. No. 7049, 59 FR 12748 (March 17, 1994) (municipal issuer that releases information that is

reasonably expected to reach investors and the trading markets is subject to the antifraud provisions).

28 In contrast, in its 1995 CAFR (issued after the sale of the subject three bond issues), Miami admitted that it had initiated Operation Right Size because a net deficiency of $26 million "became apparent in February 1995 and the City immediately began the process of correcting the deficiency through several actions including workforce reductions, cost reductions and operating efficiencies."

29 See pp.11-12 *supra*.

30 See, e.g., Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988) (in order to be material, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available") (quoting TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)).

31 "Municipal Securities Disclosure," Exchange Act Rel. No. 34961 (Nov. 10, 1994), 57 SEC Docket 2993, 2993-94.

32 Miami's argument would not be a defense to the City's affirmatively misrepresenting in the three bond sales that there had been no material adverse change in Miami's financial condition since the prior fiscal year, and that its budget was balanced.

33 See Maricopa County, 62 SEC Docket at 2836.

34 The law judge found that Miami's failure to disclose in the Official Statements that S & P had downgraded the City's general obligation bonds from A+ to A was a material omission. Miami argues that the Order Instituting Proceedings did not allege this violation. We do not reach the question of whether Miami's failure to disclose the downgrade constituted a material omission.

35 See Aaron v. S.E.C., 446 U.S. 680, 695 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976); Steadman v. S.E.C., 603 F.2d 1126, 1132 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981). Scienter need not be found to establish a violation of Section 17(a)(2) or (3) of the Securities Act. Aaron v. SEC, 446 U.S. at 697; SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 193 (1963); Steadman, 603 F.2d at 1134.

36 Herman & MacLean v. Huddleston, 459 U.S. 375, 390 n.30 (1983); Pagel, Inc. v. SEC, 803 F.2d 942, 946 (8th Cir. 1986); In re Meyer Blinder, 50 S.E.C. 1215, 1230 (1992).

37 Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976).

38 See Howard v. Everex Systems, Inc., 228 F. 3d 1057, 1063 (9th Cir 2000). The Ninth Circuit defined recklessness as: "an extreme departure from the standards of ordinary care [] which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." Id.

39 See Release Adopting Exchange Act Rule 15c2-12, 54 FR at 28812 and n.89 ("The presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds.").

40 Courts have held that, in order to successfully assert a reliance-on-professionals defense, an issuer must demonstrate that it: (1) made complete disclosure to its counsel or accountant; (2) requested the professional's advice as to the legality of the contemplated action; (3) received advice that the conduct was legal; and (4) relied in good faith on that advice. See SEC v. Goldfield Deep Mines, 758 F.2d 459, 467 (9th Cir. 1985) (accountant and counsel). See also, SEC v. Caserta, 75 F. Supp.2d 79, 95 (E.D.N.Y. 1999) (accountants).

41 See nn.26 and 27 *supra*.

42 See Kahler Corp., 55 SEC Docket 24, 36 n.8 (Sept. 17, 1993) (settlement) (Unqualified opinion from independent auditors did not relieve issuer liability because "financial statements are management's responsibility.").

43 In re Citisource, Inc. Sec. Lit., 694 F. Supp. 1069, 1072-75 (S.D.N.Y. 1988) (municipality can be held liable under Section 10(b) of the Exchange Act); In reWashington Public Power Supply Syst. Sec. Lit., 673 F. Supp. 411 (W.D. Wash. 1987), aff'd, 823 F.2d 1349 (9th Cir. 1987) (issuers of municipal securities can be held liable under Section 10(b) of the Exchange Act and Rule l0b-5 thereunder); In re Washington Public Power Supply System Sec. Lit, 650 F. Supp. 1346 (W.D. Wash. 1986); New York City Municipal Sec., 507 F. Supp. 169, 184-85 (S.D.N.Y. 1980) (issuers of municipal securities must comply with antifraud provisions of the federal securities laws).

44 County of Orange, California, 61 SEC Docket at 501. See also County of Nevada, 67 SEC Docket at 259.

45 Miami's financial advisers expressly disavowed responsibility for any of the financial information contained in the Official Statements. A disclaimer in the Official Statements stated that:

> The Financial Advisors are not obligated to undertake, and have not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement or any exhibits, schedules, or appendices hereto.

K. Parekh testified that, although it was "unusual" to include such a disclaimer, he did so because he "did not have any comfort as to the accuracy of any of the information that I was receiving from the City."

In his investigative testimony, Griffith Pritcher, bond counsel, denied any role in Miami's financial disclosures. Pritcher testified that: "[my legal] opinion doesn't go to the financial aspect of it [the Official Statement] . . . ." The audit opinion letter declared that "no opinion is expressed as to . . . any financial, demographic, or statistical data set forth therein." Robert Moore, the analyst at AMBAC Insurance, noted during his investigative testimony that AMBAC relied on financial information provided by Miami in performing its credit analysis for the Pension Bonds. Moore further testified that he did not speak with anyone in connection with performing the credit analysis and relied solely on the Official Statements and the FY 1994 financial statements.

Paredes admits that he carried out certain "due diligence procedures" for Miami prior to each bond offering. However, Paredes testified that this "subsequent events analysis" was not extensive and consisted of obtaining assurances from Miami officials that there had been no changes that impacted City's FY1994 financials. Paredes noted that Miami provided Deloitte a letter confirming that "[n]o events have occurred subsequent to September 30, 1994 that have a material effect on the financial statements that should be disclosed." Paredes testified that he had no interaction with the City's financial advisers, underwriters, or bond counsel. Paredes further testified that Deloitte did not look at any interim financial information and did not make any inquiries regarding Miami's cash flow. The City sued Deloitte claiming that each and every financial statement from 1989 through 1995, including the financial statement used to sell the three bond issues in 1995, was false and misleading.

We do not reach the issue of whether these bond professionals fulfilled their responsibilities with respect to these offerings.

46 See U.S. v. Erickson, 601 F.2d 296, 305 (7th Cir. 1979) (criminal case); See U.S. v. Colasurdo, 453 F.2d 585, 594 (2nd Cir. 1971). See also Mishkin v. Peat, Marwick, Mitchell & Co., 744 F. Supp. 531, 538 (S.D.N.Y. 1990) (management is responsible for entity's financial statements).

47 The Order Instituting Proceedings charged only that the CAFR violated Exchange Act Section 10(b) and Rule 10b-5 thereunder.

48 Exchange Act Section 21C(a) authorizes the Commission to order persons to cease and desist from committing securities laws violations or future securities law violations if it finds that "any person is violating, has violated, or is about to violate any provision" of the Exchange Act. 15 U.S.C. § 78u-3 (a).

49 KPMG Peat Marwick LLP, Exchange Act Rel. No. 43862 (Jan. 19, 2001), 74 SEC Docket 384, 436, motion for reconsideration denied, Exchange Act Rel. No.44050 (Mar. 9, 2001), 74 SEC Docket 1351, petition denied, 289 F.3d 109 (D.C. Cir. 2002).

50 74 SEC Docket at 430.

51 Id. at 436.

52 Id. at n.148.

53 We have considered all of the arguments and contentions made by the parties. We reject or accept these arguments and contentions to the extent that they are inconsistent or in accord with the views expressed in this opinion.

http://www.sec.gov/litigation/opinions/33-8213.htm

Exhibit 54

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Exhibit 55

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8751 / November 14, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54745 / November 14, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12478

In the Matter of **City of San Diego, California,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against the City of San Diego, California (the "City" or "Respondent").

II.

In anticipation of the institution of these proceedings, the City has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, the City consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and the City's Offer, the Commission finds that:[1]

A. SUMMARY

This matter involves the City of San Diego's violations of the antifraud provisions of the federal securities laws in connection with the offer and sale of over $260 million in municipal bonds in 2002 and 2003. At the time of these offerings, City officials knew that the City faced severe difficulty funding its future pension and health care obligations unless new revenues were obtained, pension and health care benefits were reduced, or City services were cut. The City's looming financial crisis resulted from (1) the City's intentional under-funding of its pension plan since fiscal year 1997; (2) the City's granting of additional retroactive pension benefits since fiscal year 1980; (3) the City's use of the pension fund's assets to pay for the additional pension and retiree health care benefits since fiscal year 1980; and (4) the pension plan's less than anticipated earnings on its investments in fiscal years 2001 through 2003.

Despite the magnitude of the problems the City faced in funding its future pension and retiree health care obligations, the City conducted five separate municipal bond offerings, raising more than $260 million, without disclosing these problems to the investing public. In each of these offerings, the City prepared disclosure documents that are used with municipal securities offerings—that is, preliminary official statements and official statements—and made presentations to rating agencies.[2] In addition, in 2003 it prepared and filed information pursuant to continuing disclosure agreements under Exchange Act Rule 15c2-12 with respect to $2.29 billion in outstanding City bonds and notes.[3] Although the City provided some disclosure about its pension and retiree health care obligations, it did not reveal the gravity of the City's financial problems, including that:

- The City's unfunded liability to its pension plan was expected to dramatically increase, growing from $284 million at the beginning of fiscal year 2002 and $720

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[1] The findings herein are made pursuant to the City's offer of settlement and are not binding on any other person or entity in this or any other proceeding.

[2] An official statement is a document prepared by an issuer of municipal bonds that discloses material information regarding the issuer and the particular offering. A preliminary official statement is a preliminary version of the official statement that is used to describe the proposed new issue of municipal securities prior to the determination of the interest rate(s) and offering price(s). The preliminary official statement may be used to gauge interest in an issue and is often relied upon by potential purchasers in making their investment decisions.

[3] Continuing disclosures are disclosures of material information relating to prior years' municipal bond offerings that are periodically provided to the marketplace by the bonds' issuer pursuant to contractual agreements and Exchange Act Rule 15c2-12.

million at the beginning of fiscal year 2003 to an estimated $2 billion at the beginning of fiscal year 2009;

- The City's total under-funding of the pension plan was also expected to increase dramatically, growing tenfold from $39.2 million in fiscal year 2002 to an estimated $320 to $446 million in fiscal year 2009;
- The City's projected annual pension contribution would continue to grow, from $51 million in 2002 to $248 million in 2009; and
- The estimated present value of the City's liability for retiree health benefits was $1.1 billion.

The City's enormous pension and retiree health liabilities and failure to disclose those liabilities placed the City in serious financial straits. When the City eventually disclosed its pension and retiree health care issues in fiscal year 2004, the credit rating agencies lowered the City's credit rating. The City also has not obtained audited financial statements for fiscal years 2003, 2004, and 2005.

Consequently, the City violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit the making of any untrue statement of material fact or omitting to state a material fact in the offer or sale of securities.[4]

B. THE RESPONDENT

City of San Diego, California is a California municipal corporation with all municipal powers, functions, rights, privileges, and immunities authorized by the California Constitution and laws, including the power to issue debt. The City is the seventh most populous city in the country, with approximately 1.3 million residents.

C. RELATED PARTY

San Diego City Employees' Retirement System ("CERS") is a defined benefit plan[5] established by the City to provide retirement, disability, death, and retiree benefits to its members,

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[4] The Commission acknowledges that in the City's offering documents for sewer revenue bonds issued in 1995, 1997, and 1999 and sewer revenue bonds that were offered but not issued in 2003, in its continuing disclosures, and in its communications with rating agencies, the City failed to disclose that the City's wastewater fee rate structure did not comply with certain federal and state clean water laws, that the City was not in compliance with the terms of certain government grants and loans, and that the City could have been required to repay those grants and loans due to such non-compliance. The offerings in the 1990s, however, predate the offerings that are the subject of this Order, and the City did not consummate the 2003 offering because issues arose regarding the adequacy of its pension disclosure. In addition, in 2004, the City came into compliance with the federal and state clean water laws and the grant and loan covenants by adopting a new fee rate structure. The City thereby avoided having immediately to repay the government grants and loans.

[5] A defined benefit plan is a traditional pension plan under which pre-determined retirement benefits are based on a formula established by factors such as age, years of service, and

i.e., City employees and their beneficiaries. CERS is administered by the CERS Board, which during the relevant period included eight City employees, including the City Treasurer and the Assistant City Auditor and Comptroller, one retiree, and three non-employee City citizens appointed by the City Council as CERS Board members.

D. FACTS

1. Background

a. Structure of the City's Government

Until January 2006, the City's form of government was a city manager system.[6] Legislative powers of the City were vested in the City Council ("Council"), which made policies and appointed a professional city manager to carry out those policies. The Council was composed of nine full-time Council members who served for staggered four-year terms. Eight of the Council members represented the City's eight districts. The Mayor, who was elected at large, presided at the meetings of the Council and served as the official head of the City for ceremonial purposes. The Mayor and each Council member had one vote; the Mayor had no veto power.

Prior to 2006, the City Manager ("Manager") was the City's chief administrative officer and had substantial control over local government decisions. The Manager, appointed by the Mayor and Council, advised the Council of the City's present and projected financial condition, appointed and removed all city department heads (except the City Auditor and Comptroller ("City Auditor"), City Attorney, and City Clerk), prepared the City's budget, and carried out the Council's budget plan. During the relevant time period, the City's general fund budget was less than $900 million. The City Manager had several Deputy City Managers, one of whom was in charge of the Financing Services Department, which had responsibility for overseeing the City's issuance of municipal securities.

Prior to 2006, the City Auditor was also appointed by the Council, and was required to file at least monthly with the City Manager and Council a summary statement of revenues and expenses for the preceding accounting period.[7] The Auditor was the City's chief financial officer and was responsible for the preparation and issuance of the City's Comprehensive Annual Financial Reports, also referred to as CAFRs. The City's Comprehensive Annual Financial Reports included audited financial statements prepared pursuant to standards established by the

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compensation, and in which the employer bears risk if the employer and employee contributions and the investment return on those contributions are not sufficient to fund the pension benefits.

[6] In January 2006, the City transitioned from a City Manager / Council form of government to a strong Mayor form of government. Under the new system, the Mayor became the City's chief executive officer and the City Manager's position was eliminated. The Council continues to act as the legislative body. City of San Diego City Charter, Article XV.

[7] City of San Diego City Charter, Article V, Section 39.

Government Accounting Standards Board ("GASB")[8] and various statistical, financial, and other information about the City. Portions of the Comprehensive Annual Financial Reports for the years ended June 30, 2001, and June 30, 2002 were attached as appendix B to the preliminary official statements and the official statements. The Comprehensive Annual Financial Reports for 2001 and 2002 were also filed as continuing disclosures.

The elected City Attorney served as the chief legal officer for the City. The City Attorney's office advised the Council, City Manager, and all City departments on legal matters, including disclosure in the City's securities offerings. The City Attorney was responsible for preparing all ordinances, resolutions, contracts, and other legal documents.

b. The City's Pension Plan

The City provided a defined benefit pension plan and retiree health care benefits to its employees through CERS. CERS functioned as a trust for the benefit of its members (i.e., approximately 18,500 current and former City employees and officials). The City was the creator of the trust and determined its terms, including the members' required contributions and the levels of benefits. CERS was administered by a Board of Administration, which controlled the investment of CERS's funds and which owed fiduciary duties to CERS members. CERS's assets consisted of past contributions by the City and CERS members and investment earnings on those funds. CERS's liabilities consisted of operating expenses and the future pension benefits that were owed to members.

Each year, CERS hired an actuary to determine the value of the plan's assets and liabilities based on certain actuarial assumptions and the amount that needed to be contributed to the plan so that the plan accumulated sufficient assets to pay pension (but not health care) benefits when due.[9] Pursuant to the City Charter, the City was to contribute half of that amount, which was expressed in terms of a percentage of payroll expenses, with the other half to be contributed by the employees, which amount was determined as a percentage of compensation based on the employee's age upon entry into CERS.

At least three concepts were particularly important in the disclosure to the public of the City's pension obligations and funding of those obligations: (1) CERS's funded ratio; (2) the

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[8] GASB is the organization that establishes standards of state and local governmental accounting and financial reporting.

[9] An actuarial valuation is a determination by an actuary, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets, and other relevant values for a pension plan based on certain actuarial assumptions. The actuarial value of assets refers to the value of cash, investments, and other property belonging to a pension plan as used by the actuary for the purpose of preparing the actuarial valuation for the pension plan. The actuarial accrued liabilities are what is owed in connection with past services, as determined by one of the actuarial cost methods. Actuarial assumptions are estimates of future events with respect to certain factors affecting pension costs, including rates of mortality, disability, employee turnover, retirement, rates of investment income, and salary increases. Actuarial assumptions are generally based on past experience, often modified for projected changes in conditions.

City's unfunded liability to CERS; and (3) the City's net pension obligation, also called the NPO. CERS's funded ratio was the ratio of its assets to liabilities. The City's unfunded liability to CERS was the dollar shortfall between CERS's assets and liabilities. The City's net pension obligation was the cumulative difference between what the City actually contributed to CERS and the amount that the City would have contributed had it conformed to a funding method recognized by GASB.

2. The City's Pension and Retiree Health Care Benefits and Funding of CERS

The City failed to disclose material information regarding substantial and growing liabilities for its pension plan and retiree health care and its ability to pay those obligations in the future in the disclosure documents for its 2002 and 2003 offerings, in its continuing disclosures filed in 2003, and in its presentations to the rating agencies. As more fully described below, the City's substantial and growing pension and retiree health care liabilities resulted from several factors, including: (1) the City's intentional under-funding of its annual pension contribution; (2) the City's granting of new retroactive pension benefits; (3) the City's use of certain CERS earnings to pay for various additional pension and retiree health care benefits and to pay a portion of employees' pension contributions; and (4) CERS's earning less than anticipated returns on its investments.

a. The City's Historical Practice of Using "Surplus Earnings" to Fund Pension and Retiree Health Care Benefits

In fiscal year 1980, the City began instructing CERS to use "surplus earnings"—i.e., earnings above the actuarially projected 8% return rate[10]—to fund an ever-increasing amount of additional benefits for CERS members. Pension plans typically retain surplus earnings to support the plan's financial soundness and to make up for years in which earnings fall short of the assumed return rate. Rather than retaining its surplus earnings, the City began using surplus earnings in fiscal year 1980 to fund an annual extra or "13th check" to retirees. The City continued using surplus earnings to pay for retiree health care benefits in fiscal year 1982 and to pay an ever-increasing amount of the employees' CERS contributions in fiscal year 1998.[11]

In total, the City used surplus earnings to pay pension benefits and employees' contributions totaling $150 million as of the end of fiscal year 2001 and an additional $25 million as of the end of fiscal year 2002. According to a 2005 CERS audit, the City's use of surplus

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[10] Without regard to its actual historical rate of return on investments, the CERS Board assumed an annual rate of investment return of 8%, which the actuary incorporated into his calculations. CERS defined surplus earnings as the amount of realized investment earnings in excess of the actuarially projected 8% return rate.

[11] In fiscal years 2003 and 2004, the City used CERS's surplus earnings from prior years to pay up to 27% of the employees' contributions.

earnings accounted for 17% of the increase in the City's unfunded liability to CERS from fiscal year 1997 through fiscal year 2003.

b. Manager's Proposal 1: The City Proposes Additional Benefits in Exchange for Contribution Relief

In fiscal year 1996, the City agreed to increase significantly and retroactively all employees' pension benefits. The City, however, could not afford to fund the cost of the benefit increases. The City therefore made the pension benefit increases contingent on CERS's agreement to the City's under-funding of its annual contribution to CERS.

In fiscal year 1997, the City and CERS entered into an agreement, which was referred to as Manager's Proposal 1, that set the City's annual contribution at gradually increasing rates through fiscal year 2008. This funding method, which the City termed "Corridor" funding, was not recognized by GASB and set annual funding rates that were not actuarially determined and were projected to be below GASB-recognized funding rates through fiscal year 2006. In other words, under Corridor funding, the City would be intentionally under-funding its annual liability to CERS in fiscal years 1997 through 2006.[12] After fiscal year 2006, it was estimated that the funding rate of Manager's Proposal 1 would equal a GASB-accepted rate. Manager's Proposal 1 also contained a provision intended to protect CERS's financial soundness. Specifically, if CERS's funded ratio fell below 82.3%, the City would have to increase its CERS contribution rate.

In fiscal years 1996 and 1997, the City estimated that under Manager's Proposal 1, by the end of fiscal year 2008, the City's net pension obligation would be $110.35 million. Because the City's Corridor funding method was not GASB-recognized, GASB required that the City disclose its net pension obligation in its annual financial statements.

c. The *Corbett* Litigation Requires the City to Fund Additional Retroactive Benefits

In March 2000, the City again retroactively increased pension benefits. Specifically, the City and CERS settled a class action lawsuit brought by CERS members, with *Corbett* as the named class plaintiff.[13] Under the *Corbett* settlement, the City retroactively gave increased pension benefits to both current and retired City employees, increasing CERS's liabilities. Under

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[12] Manager's Proposal 1 was viewed skeptically by some members of the CERS Board who were not City employees. The majority of the CERS Board, however, consisted of City officials who received benefit increases that were contingent on the Board's approval of Manager's Proposal 1. Moreover, CERS's actuary informed the CERS Board that Manager's Proposal 1 was a sound proposal and CERS's fiduciary counsel opined that the Board would be acting within the ambit of its fiduciary discretion in approving Manager's Proposal 1.

[13] The *Corbett* plaintiffs raised various claims based on a 1997 California Supreme Court decision which held that an employee's salary for purposes of calculating basic pension benefits included the value of overtime and accrued leave.

Manager's Proposal 1, however, the City's contributions to CERS did not increase. As a result, the City's unfunded liability to CERS increased by $185 million.

In negotiating the *Corbett* settlement, however, the City purposefully structured certain of the increased *Corbett* benefits to avoid having those benefits adversely affect CERS's reported funded ratio and the City's reported unfunded liability to CERS. Specifically, the City structured the *Corbett* settlement so that the increased benefits for retired CERS members were to be paid in a given year only if there were sufficient surplus earnings from that year to pay the benefit. If there were insufficient surplus earnings in a given year to pay the increased benefit, then the cost of the increased benefit would become CERS's liability and would eventually be paid from future years' surplus earnings. The City and CERS treated the increased benefits to retired CERS members as contingent liabilities that were not taken into account in determining CERS's funded ratio or the City's unfunded liability to CERS. As of June 30, 2001, according to CERS's actuary, if the contingent portion of the *Corbett* settlement had been included in CERS's valuation, the City's unfunded liability to CERS would have increased by $70 to $76 million and CERS's funded ratio would have decreased by 2% to 2 ½ % from what was actually reported by the City. Thus, the City's pension situation was even more dire than the numbers, as they were reported by the City, indicated.

d. CERS's Actuary Report for Fiscal Year 2001 Shows a Dramatic Increase in the City's Pension Liabilities

In fiscal year 2001, CERS's investment return began to fall short of its anticipated 8% annual return. The City was informed of CERS's declining performance in February 2002, when it received CERS's annual actuarial valuation for fiscal year 2001. This report stated that as of the end of fiscal year 2001, CERS's funded ratio was 89.9% and the City's unfunded liability to CERS was $284 million, as compared to a funded ratio of 97.3% and an unfunded liability of $69 million only one year earlier. Moreover, the report noted that if the *Corbett* contingent benefit to CERS retired members were included, the City's unfunded liability to CERS would have increased to at least $354 million and CERS's funded ratio would have fallen to at least 87.9%.

CERS's actuary attributed these changes to a number of factors, including CERS's actuarial investment losses[14] of $95.6 million (and warned that there would be further actuarial investment losses in fiscal year 2002 unless the markets improved during the remaining five months of the fiscal year). In his report, CERS's actuary also warned that "all parties" should be "acutely aware that the current practice of paying less than the [actuarial] computed rate of contribution ... will help foster an environment of additional declines in the funded ratio in absence of healthy investment returns."

In May 2002, the City learned that CERS would likely not have any surplus earnings from fiscal year 2002 to pay for the contingent benefits—specifically, retiree health care benefits, the 13th check, and the *Corbett* increase to retirees.

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[14] Actuarial investment losses are the difference between the assumed investment rate, which in the City's case was 8% annually, and the actual investment results.

e. The Blue Ribbon Committee Report Puts the City on Notice about its Growing Pension and Retiree Health Care Liabilities

In April 2002, the City received a warning that the City's pension and retiree health care liabilities would continue to grow and that the City was not adequately planning to meet those liabilities. This came in the form of a report from the City's Blue Ribbon Committee to the City Council.[15] The report stated that the Blue Ribbon Committee had three principal concerns regarding CERS. First, the City was granting retroactive retirement benefit increases but pushing the cost of those benefit increases into the future, long after the individuals involved in the decisions were gone. Second, the City's budgetary process did not adequately comprehend the steadily growing annual expense of the pension contribution, "particularly given the uncontrollable and non-discretionary nature of this liability." The Committee stated that the City's pension contribution would substantially increase and warned that any future benefit increases, particularly retroactive increases, would "significantly exacerbate this problem." Third, the City's budgetary process did not recognize that retiree health care costs were a non-discretionary expense that would grow at an increasing rate and that the City was not paying out of its current year's budget the full cost for their future retiree health benefits. This report thus squarely put the City on notice that it had substantial future pension and healthcare liabilities it would probably be unable to pay under the current system.

f. Manager's Proposal 2: The City Again Proposes Additional Pension Benefits in Exchange for Relief from an Impending Lump Sum Payment

In fiscal year 2003, the City again increased its pension liability by granting additional retroactive benefits, used additional CERS assets to pay for additional pension and retiree health care benefits and an increased portion of the employees' contribution, and obtained additional time to under-fund its annual CERS contribution.

In the second half of fiscal year 2002, the City agreed to increase pension benefits for fiscal year 2003. From as early as October 2001, however, the City was concerned that CERS's funded ratio would fall below the 82.3% floor established by Manager's Proposal 1, which would require the City, at the very least, to increase its contributions to CERS by at least $25 million to be at a higher GASB-accepted rate.

Concerned about having to pay the additional $25 million, the City sought to condition the pension benefit increases on the City's obtaining from CERS relief from the floor of Manager's Proposal 1. In November 2002, the City and CERS agreed to Manager's Proposal 2 and the City

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[15] In April 2001, the Mayor had appointed a nine-member committee of San Diego citizens, known as the Mayor's Blue Ribbon Committee on City Finances, to independently evaluate the City's fiscal health and make any appropriate recommendations. In February 2002, the Blue Ribbon Committee presented its report to the Council's Rules Committee, identifying nine areas of concern, two of which related to the City's pension fund. The same report was made to the full Council in April 2002.

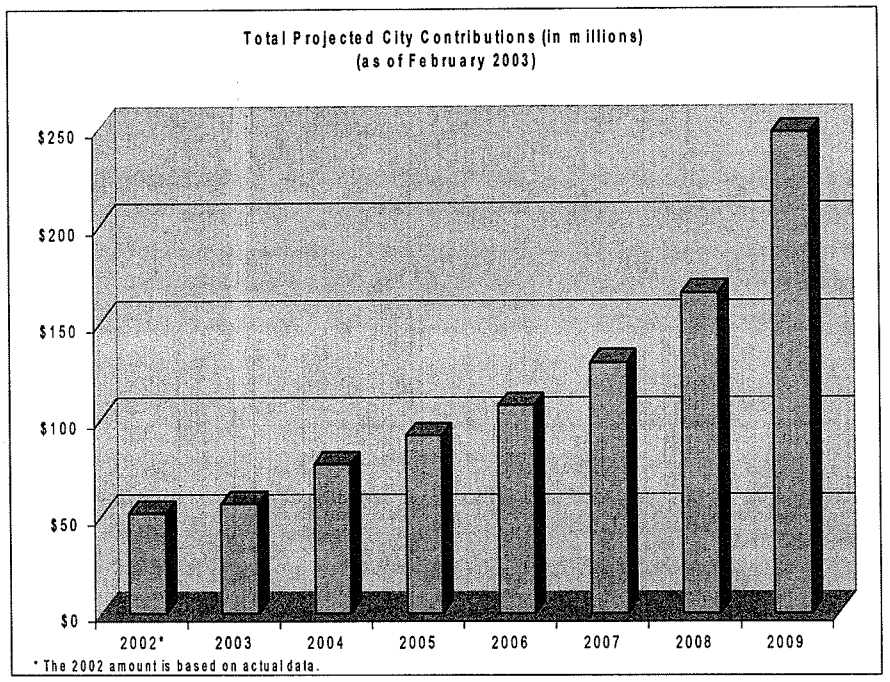
adopted the increased pension benefits as of July 2002. Under Manager's Proposal 2, once CERS's funded ratio fell below 82.3%, the City would have five years to increase its contributions to CERS to reach a GASB-recognized funding rate.

As a result of CERS's actuarial losses in fiscal year 2002, CERS did not have surplus earnings to pay the 13th check, the cost of retiree health care, and the *Corbett* benefit increase to retired CERS members. In conjunction with Manager's Proposal 2, however, the City directed CERS to use certain of its reserve accounts to pay the 13th check and the retiree health care benefits, and to pay an increased portion of certain City employees' CERS contributions. The reserve funds could have been used to increase CERS's funded ratio and decrease the City's unfunded liability to CERS; instead, the City directed that CERS use the reserve funds to pay additional benefits.

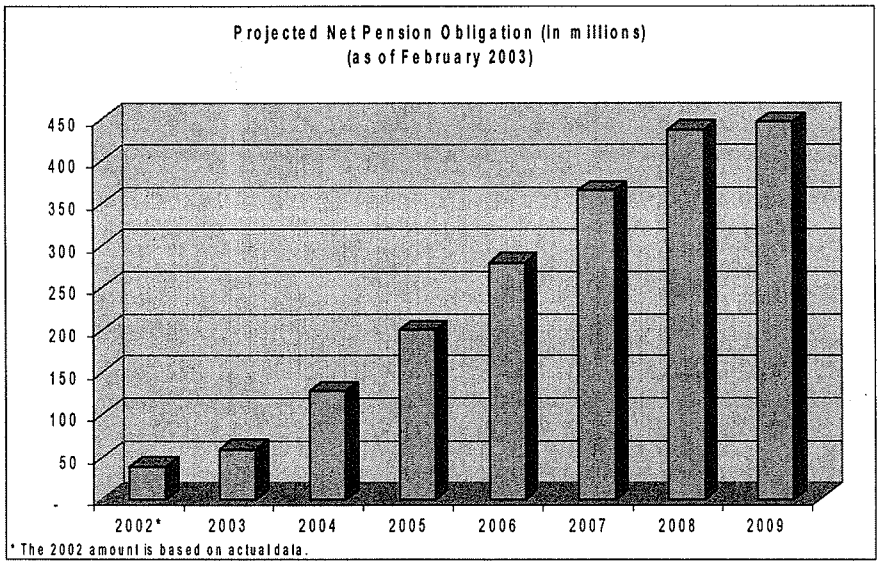
g. CERS's Actuary Report for Fiscal Year 2002 and Projections for the Future Show that the City Faces Substantial Problems Funding its Pension and Retiree Health Care Liabilities

In early 2003, the City received two reports from CERS's actuary. These reports provided the City with negative information regarding the present and projected status of CERS's funded ratio and the City's unfunded liability to CERS. First, in January 2003, the City received CERS's actuary report for fiscal year 2002. This report stated that during fiscal year 2002, CERS suffered an actuarial loss of $364.8 million and that as of the end of fiscal year 2002, CERS's funded ratio was 77.3% and the City's unfunded liability to CERS was $720 million, as compared to a funded ratio of 89.9% and unfunded liability of $284 million only one year earlier. The actuary's report further stated that if the *Corbett* contingent benefit to CERS retired members had been included, the City's unfunded liability to CERS would have been at least $790 million, and CERS's funded ratio would have been approximately 75.3%. In the concluding comment, the actuary stated that CERS was "in adequate condition," which was the first time that the actuary had not described CERS as "actuarially sound."

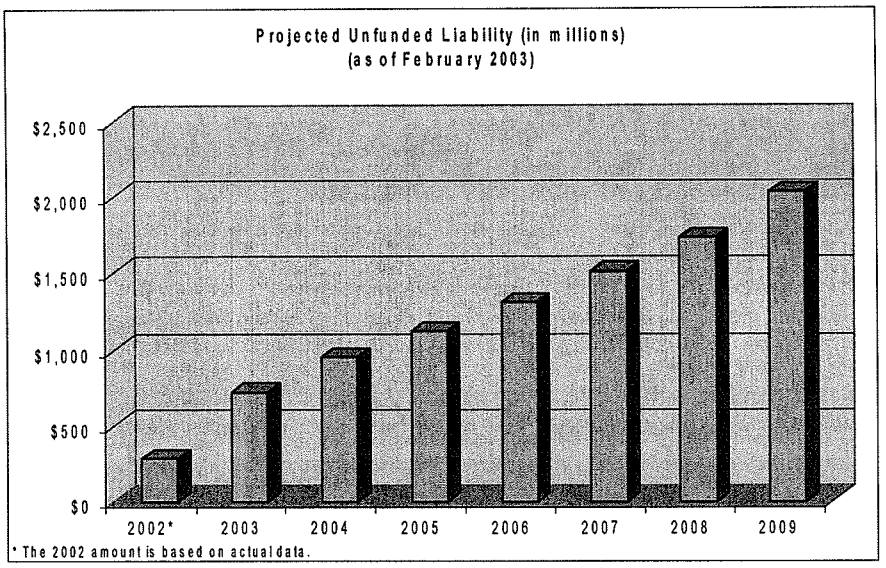
Second, in February 2003, CERS's actuary provided to the City projections of the City's contributions under Manager's Proposal 2, the City's net pension obligation, the City's unfunded liability to CERS, and CERS's unfunded ratio. Specifically, the City's contribution rate was projected to more than quadruple—from 9.83% of payroll in fiscal year 2002 ($51 million) to 35.27% of payroll in fiscal year 2009 ($248 million). The following chart illustrates the growth in the City's projected annual contribution to CERS:



The City's net pension obligation was projected to grow by tenfold—from $39.23 million in fiscal year 2002 to as much as $446 million in fiscal year 2009. The following chart illustrates the growth in the City's projected net pension obligation:



The City's unfunded liability was projected to increase more than seven fold—from $284 million at the beginning of fiscal year 2002 to $2 billion at the beginning of fiscal year 2009. CERS's funded ratio was projected to continue to fall—from 77.3% at the beginning of fiscal year 2003 to 65.6% at the beginning of fiscal year 2009. The following chart illustrates this dramatic increase in the City's projected unfunded liability to CERS:



The City had knowledge of these projections prior to all of its 2003 municipal securities offerings.

h. The *Gleason* Litigation: CERS Members Challenge Manager's Proposal 1 and Manager's Proposal 2

Further evidence that the City's under-funding of CERS was potentially threatening the City's future fiscal health came in January 2003, when CERS members filed a class action, with *Gleason* as the named class plaintiff, against the City and CERS alleging breaches in connection with the City's under-funding of CERS under Manager's Proposal 1 and Manager's Proposal 2. Among other things, the *Gleason* complaint alleged that by 2009, the City would owe approximately $2.8 billion to CERS, with an annual City budget expense of more than $250 million. In March 2003, the CERS attorney in the *Gleason* litigation advised CERS that (1) certain CERS Board members had breached their fiduciary duty by adopting Manager's Proposal 2; and (2) CERS should exercise its right to nullify Manager's Proposal 2. The CERS Board, which included the City Treasurer and the Assistant City Auditor and Comptroller, rejected this advice. If Manager's Proposal 2 had been nullified, the City would have been required to make an immediate potential payment to CERS of up to $159 million.

i. CERS's Response to the Blue Ribbon Committee Report Advises the City's Officials of the Growing Pension and Retiree Health Care Crisis.

In February 2003, additional detailed information about the City's pension funding crisis was presented to City officials when CERS responded to the Blue Ribbon Committee's report.[16] In its response, CERS advised the City that as of June 30, 2002, CERS's funded ratio had fallen to 77.3% and the City's unfunded liability to CERS had increased to $720 million. The response also stated that the falling funded ratio and the increasing unfunded liability resulted from three factors: a dramatic decline in CERS's investment performance in fiscal years 2001 and 2002; the City's granting of increased benefits; and the City's contributions to CERS at less than a GASB-recognized rate.

With respect to the City's under-funding, the response stated that the annual amount of the City's under-funding of CERS continued to increase in fiscal years 2002 and 2003, which was contrary to the initial projections from Manager's Proposal 1 that the annual amount of under-funding would decline beginning in fiscal year 2001. The response further stated that the City's net pension obligation would reach $102 million by the end of fiscal year 2003 and $423 million by the end of fiscal year 2009.

The response also discussed the City's future liability for retiree health care. CERS's actuary had estimated that the present value of the City's liability for future retiree health care was in excess of $1.1 billion. The response further stated that the City was not making any contributions to CERS to pay for this liability, that CERS had been paying for this liability with money in a reserve funded with CERS's surplus earnings from prior years, that the reserve would be depleted in fiscal year 2006, and that in fiscal year 2006, the City would have to pay an estimated $15 million for retiree health care. The response warned that absent a change in the benefit and a dramatic decrease in future health care costs, the City could be facing significant future funding obligations. The response recommended that the City consider funding this future health care liability as part of its annual contribution to CERS.

j. The City's Study of Its Pension Obligations Concludes that the City's Pension Liabilities Could Negatively Impact the City's Credit Rating

In April 2003, the City received additional information regarding the projected growth of its future pension liabilities and the possible negative effect those liabilities would have on the City's credit rating and ability to issue municipal securities. In February 2003, the City hired a financial adviser to analyze CERS's funding and to develop potential solutions. On April 16,

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[16] From February 9 through 13, 2003, the local newspaper wrote three front page, above-the-fold articles about the City's under-funded pension system and the CERS response. The newspaper articles explained that (1) by the end of FY 2009 the City's unfunded liability to CERS was projected to increase to almost $2 billion; and (2) the City's unfunded liability for retiree health care was estimated to be $1.1 billion.

2003, the financial adviser provided to the City a preliminary pension analysis. In its analysis, the financial adviser stated that because of the City's under-funding, the City's unfunded liability would continue to grow and CERS's funded ratio would continue to fall through fiscal year 2021 regardless of actuarial gains or losses. The financial adviser estimated that under Manager's Proposal 2, the City's unfunded liability to CERS would grow to $1.9 billion at the end of fiscal year 2009 and to $2.9 billion at the end of fiscal year 2021, and CERS's funded ratio would fall to 66.5% at the end of fiscal year 2009 and would be 67% at the end of fiscal year 2021.

The preliminary pension analysis also stated that the City's large unfunded liability to CERS would cause the City's contribution to CERS to increase dramatically. The analysis estimated that the City's contribution rate to CERS would more than double—from 18.87% of payroll (or $107.5 million) in fiscal year 2004 to 40.9% of payroll ($286.9 million) in fiscal year 2009.

The preliminary pension analysis also discussed the effect that the City's unfunded liability would have on the City's credit rating. The financial adviser stated that the City's current unfunded liability would not only trigger an adverse credit event but that the rating agencies would expect the City to develop a plan to reduce its unfunded liability by increasing its annual contributions and/or funding the unfunded liability by issuing bonds. The financial adviser further stated that if the City did not develop and implement such a plan, the City's unfunded liability could cause the City "significant credit and legal challenges." The City's disclosures in 2003 failed to inform investors of the financial adviser's analysis.

3. The Offerings, Continuing Disclosures, and Rating Agency Presentations

a. The Bond Offerings and the City's Preparation of the Offerings' Disclosure Documents

During 2002 and 2003, the City conducted the following five municipal securities offerings totaling $261,850,000 in par value:

- $25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002B (Fire and Safety Project) (June 2002)
- $93,200,000 City of San Diego, 2002-03 Tax Anticipation Notes Series A (July 2002)
- $15,255,000 City of San Diego/Metropolitan Transit Development Board Authority 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding (April 2003)
- $17,425,000 City of San Diego 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Park Refunding) (May 2003)
- $110,900,000 City of San Diego 2003-04 Tax Anticipation Notes Series A (July 2003)

A transactional financing team prepared the offering documents, that is, the preliminary official statement and the official statement, for each of the five municipal bond offerings. The

financing team consisted of outside consultants and officials from the City Manager's office (financing services division), Auditor and Comptroller's office, and the City Attorney's office. The outside consultants included, among others, bond counsel, disclosure counsel, and underwriters. The preliminary official statement and the official statement for each of the five offerings consisted of a description of the offering, a general description of the City, including financial, economic, statistical, and other information in appendix A, and audited annual financial statements from the City's Comprehensive Annual Financial Reports in appendix B. Information regarding its pension and retiree health care obligations was provided in both appendices A and B.

The outside consultants took the lead in drafting the description of the bond offerings. City officials in the financing services division were responsible for drafting appendix A. The financing services division updated Appendix A on an ongoing basis and at the time of a bond offering, forwarded the latest version of Appendix A to the entire financing team. The team met several times to review, comment on, and ultimately finalize the preliminary official statements and official statements at "page-turner meetings." Appendix B was prepared by the Auditor's office and the City's outside auditor. The Council approved all of the 2002 and 2003 offerings at open session meetings.

b. The Continuing Disclosures

During the relevant period, the City also filed annual continuing disclosures relating to its $2.29 billion in outstanding bonds for the purpose of updating investors on the state of the City's finances.[17] City officials in the financing services division coordinated, reviewed, and filed the 2002 and 2003 continuing disclosures. Almost all of these continuing disclosures included appendix A and portions of the City's Comprehensive Annual Financial Reports. The financing services division was responsible for ensuring that the most updated and accurate version of appendix A was attached to the continuing disclosures before they were filed.

c. The 2003 Rating Agency Presentations

The City made presentations to the rating agencies on a yearly basis, both in connection with specific bond offerings and to update the rating agencies on the City's general credit. The presentations were made orally with PowerPoints in meetings with representatives from Fitch Ratings, Moody's Investors Service, and Standard and Poor's. In 2003, the rating agencies specifically asked the City to address the pension plan as part of its annual presentations. These presentations were important because they directly affected the City's bond ratings. The 2003

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[17] An underwriter of municipal securities covered by Exchange Act Rule 15c2-12 may not purchase or sell municipal securities in connection with an offering unless the issuer has undertaken in a written agreement or contract for the benefit of the bondholders to provide its audited annual financial statements and certain other annual financial and operating information, to nationally recognized municipal securities information repositories and state information depositories designated by the Commission and to provide notices of certain material events and notices of any failures to file on the nationally recognized municipal securities information repositories or the Municipal Securities Rulemaking Board and state information depositories.

PowerPoint presentations were prepared and presented by officials from the City Manager's office, including the financing services division, and the City Auditor and Comptroller's office. The financing services division drafted the pension portion of the 2003 PowerPoint presentation. Officials from the City Auditor's office made the oral presentation on the pension plan and fielded numerous questions on that topic from the rating agencies.

4. The False and Misleading Disclosures

In the preliminary official statement and the official statements for the 2002 and 2003 offerings, the 2003 presentations to the rating agencies, and the 2003 continuing disclosures, the City made substantial disclosures regarding (1) the City's policies for funding CERS; and (2) the status of CERS's funding and the City's liability to CERS. Additionally, in the preliminary official statements, the official statements, and continuing disclosures, the City made certain representations regarding its retiree health care obligations. The disclosures (collectively "Disclosures"), however, were misleading because the City failed to include material information regarding the City's current funding of its pension and retiree health care obligations, the City's future pension and retiree health care obligations, and the City's ability to pay those future obligations.

First, with respect to the pension issues, the City failed in the Disclosures to reveal several material facts, including that (1) the City was intentionally under-funding its pension obligations so that it could increase pension benefits but push off the costs associated with those increases into the future; (2) because of the City's under-funding of its pension plan, its net pension obligation was expected to continue to grow at an increasing rate, reaching from $320 million to $446 million by the end of fiscal year 2009; (3) the City's unfunded liability was expected to continue to grow at a substantial rate, reaching approximately $2 billion by fiscal year 2009; (4) this growth in the City's unfunded liability resulted from the City's intentional under-funding of its pension plan, the City's granting of new retroactive pension benefits, the City's use of pension plan earnings to pay additional benefits, and the pension plan's less than anticipated investment return; (5) the City's annual pension contribution was expected to more than quadruple by fiscal year 2009; and (6) the City would have difficulty funding its future annual pension contributions unless it obtained new revenues, reduced pension benefits, or reduced City services. Moreover, the City falsely disclosed in Appendix B to its preliminary official statements and its official statements that its net pension obligation was funded in a reserve.

Additionally, with respect to retiree health care benefits, the City failed to disclose in its preliminary official statements, official statements, and continuing disclosures that[18] (1) the estimated present value of its liability for retiree health care was $1.1 billion; (2) the City had been covering the annual cost for retiree health care with pension plan earnings from prior years that were expected to be depleted in fiscal year 2006; (3) after fiscal year 2006, the City would have to pay for the retiree health care benefits from its own budget at an estimated annual cost of $15 million; and (4) the City had not planned for paying such additional costs.

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[18] The issue of retiree health care was not addressed in the rating agency presentations.

5. The City's Knowledge of the Misleading Disclosures

The City, through certain of its officials, knew that its Disclosures were misleading. The Mayor and Council were responsible for approving the issuance of the bonds and notes, including issuance of the preliminary official statements and official statements. The Mayor and Council delegated final approval of the official statements to the City Manager. The City Manager's office was responsible for the preparation of the preliminary official statements and the official statements, including appendix A. The City Auditor's office was responsible for the preparation of appendix B to the preliminary official statements and official statements. Through their designees on the CERS Board, among other things, both the City Manager's and the City Auditor's offices had knowledge about the City's use of CERS's surplus earnings, Manager's Proposals 1 and 2, CERS's actuary reports for fiscal years 2001 and 2002, and CERS's response to the Blue Ribbon Committee Report. Also, several representatives of the City Manager's office, City Attorney's office, and Auditor and Comptroller's office attended relevant closed session meetings of the Council where Manager's Proposals 1 and 2 and the *Corbett* and *Gleason* litigations were discussed. Moreover, the Blue Ribbon Committee Report and CERS's response to the Blue Ribbon Committee Report were both presented to a committee of the Council at which officials from the City Manager's and Auditor and Comptroller's office were present. Finally, the offices of the City Manager and the City Auditor were responsible for the City's study of its pension obligations that occurred in early 2003. Through their participation and involvement in the above-referenced matters, certain city officials knew or were reckless in not knowing that the Disclosures were false and misleading.

Specifically, by early 2002, the City, through its officials, knew, among other things, that (1) CERS's funded ratio would likely fall below the 82.3% floor set by Manager's Proposal 1; (2) the City was proposing Manager's Proposal 2 to avoid the effects of CERS's falling below the floor; (3) Manager's Proposal 2 allowed the City more time to under-fund CERS; and (4) the Blue Ribbon Committee had raised concerns about the City's under-funding of CERS and the future retiree health care liability. By early 2003, the City, through its officials, knew, among other things, that (1) the City's projected total contributions to CERS would grow from $77 million in fiscal year 2004 to $248 million in fiscal year 2009; (2) CERS had fallen below the 82.3% floor of Manager's Proposal 1; (3) the City and CERS had adopted Manager's Proposal 2 to allow the City more time to under-fund CERS; and (4) CERS was using reserved surplus earnings to pay certain benefits and to pay an increased portion of the employees' CERS contribution.

6. Materiality and the City's Voluntary Disclosure

The misleading Disclosures were material in view of the City's overall financial health. The Disclosures were also material given the magnitude of the City's projected annual CERS payments in the future and the potential consequences of those liabilities to the City, including inability to make the payments without reduction in other services.

The nature and level of under-funding brought into question the City's ability to fund the pension and health care benefits in the future as well as its ability to repay the bonds and notes. Under such a scenario, the City could be forced to choose between paying pension contributions, paying what the City owes on its bonds and notes, reducing services, and/or raising fees and taxes.

The materiality of the misleading Disclosures was demonstrated by the impact on the City's bond ratings when it finally disclosed key facts about the pension plan on January 27, 2004 in a voluntary report of information, after a non-employee CERS Board member raised concerns about the City's disclosure. The voluntary report provided information regarding (1) CERS's current and estimated future funded status; (2) the City's current and estimated future liabilities to CERS; (3) the reasons for the substantial decrease in CERS's funded ratio and increase in the City's liability to CERS; (4) the City's previous use of CERS funds to pay for retiree health care and the City's estimated future liabilities for retiree health care; and (5) the City's anticipated difficulty funding its increasing CERS contribution without new City revenues, a reduction in pension benefits, a reduction in City services, or other actions. Shortly after the disclosures in the voluntary report, the rating agencies lowered their ratings on the City's bonds and notes.

E. Legal Discussion

1. The Securities Act and Exchange Act Antifraud Provisions

State and local governments are exempt from the registration and reporting provisions of the Securities Act and the Exchange Act. Similarly, the Commission's authority to establish rules for accounting and financial reporting under Section 19 of the Securities Act and Section 13(b) of the Exchange Act does not extend to municipal securities issuers. The City and other municipal securities issuers, however, are subject to the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, the Commission has promulgated a broker-dealer rule, Exchange Act Rule 15c2-12, which in general limits market access for certain municipal securities issues to those offerings in which the issuer agrees to file annual financial disclosures of specified financial and operating information as well as notices of certain events, if material, and notices of any failures to file with repositories designated by the Commission. The antifraud rules apply to such disclosure and to any other statements made to the market.

Section 17(a) of the Securities Act prohibits misrepresentations or omissions of material facts in the offer or sale of securities. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit misrepresentations or omissions of material fact in connection with the purchase or sale of any security. These provisions prohibit the making of any untrue statement of material fact or omitting to state a material fact in the offer, purchase, or sale of securities. A fact is material if there is a substantial likelihood that its disclosure would be considered significant by a reasonable investor. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1987); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 require a showing that defendants acted with scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980). Scienter is "a mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, recklessness satisfies the scienter requirement. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990) (en banc). Recklessness is "an extreme departure from the standards of ordinary care, and which presents a danger of misleading [investors] that is either known to the defendant or is so obvious

that the actor must have been aware of it." Id., 914 F.2d at 1569. Scienter, however, need not be shown to establish a violation of Section 17(a)(2) or (3). Aaron v. SEC, 446 U.S. 680, 697 (1980). Violations of these sections may be established by showing negligence. SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997); SEC v. Steadman, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992).

2. The City's Violations of the Antifraud Provisions of the Securities Act and the Exchange Act

The City's public disclosures in the preliminary official statements and official statements for its 2002 and 2003 offerings, its 2003 continuing disclosures, and presentations to the rating agencies failed to disclose material information regarding the City's current funding of its pension and retiree health care obligations, the City's future pension and retiree health care obligations, and the City's ability to pay those future obligations. The omission of this information caused the information that was disclosed to be misleading.

This information was material to investors. The magnitude of the City's unfunded liabilities was enormous. For example, the City knew that by 2009 the unfunded liability would reach $1.9 billion and its actuarially required contribution would be approximately $240 million compared to $51 million in FY 2002. The City's under-funding of CERS and unfunded liabilities to CERS and for retiree health care were projected to continue to grow at an increasing rate. The increase in the City's under-funding and unfunded liabilities resulted, in part, from the City's decisions to increase pension and retiree health care benefits but push the costs of those increases into the future, to use CERS's prior earnings to cover additional benefits, and to pay a portion of the employees' contribution to CERS. All of this information raised a question whether the City could pay for these pension and retiree health care obligations and repay the bonds and notes issued by and on behalf of the City.

The City, through its officials, acted with scienter.[19] City officials who participated in drafting the misleading disclosure were well aware of the City's pension and retiree health care issues and the magnitude of the City's future liabilities. Moreover, even though the City officials knew that the City's pension issues were of concern to the rating agencies, they failed to disclose material information regarding the City's pension and retiree health care issues. In light of the City's officials' detailed knowledge of the magnitude of the City's pension and retiree health care liabilities and of the rating agencies' interest in those liabilities, the City officials acted recklessly in failing to disclose material information regarding those liabilities.

F. REMEDIAL EFFORTS AND UNDERTAKINGS

1. Since 2005, Respondent has implemented several remedial measures with a view to detect and prevent securities violations. Specifically, the City has terminated certain officials in the City Manager's and Auditor and Comptroller's offices or has allowed them to resign. The City has filled these positions with new employees generally having significant relevant experience with

[19] The City's scienter is based on the mental state of its officials. SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

other municipal governments or the private sector. The City has hired a full time municipal securities attorney who is responsible for coordinating the City's public disclosure and who has conducted continuing education for the City's deputy attorneys on the City's disclosure requirements.

2. The Mayor resigned and has been replaced by a former City police chief. In January 2006, pursuant to a public referendum, the City changed from a strong city manager form of government to a strong mayor form of government.

3. The City has hired new outside professionals including new auditors for its fiscal year audits. The City also hired individuals not affiliated with the City to act as the City's Audit Committee and charged the Committee with investigating the City's prior disclosure deficiencies and making recommendations to prevent future disclosure failures. The City has also hired new disclosure counsel for all of its future offerings, who will have better and more continuous knowledge on the City's financial affairs. This disclosure counsel has conducted seminars for City employees on their responsibilities under the federal securities laws.

4. The City has also enacted ordinances designed to change the City's disclosure environment. First, the City created a Disclosure Practices Working Group, comprised of senior City officials from across city government. The Working Group is charged with reviewing the form and content of all the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to securities issued by the City or its related entities; and conducting a full review of the City's disclosure practices and to recommend future controls and procedures. Second, the Mayor and City Attorney must now personally certify to the City Council the accuracy of the City's official statements. Third, the City Auditor must annually evaluate the City's internal financial controls and report the results to the City Council.

5. Respondent shall comply with the following undertakings to:

a. Retain, not later than 60 days after the date of this Order, at its expense, an independent consultant not unacceptable to the Commission's staff (the "Independent Consultant"). The City shall require the Independent Consultant to (a) conduct annual reviews for a three-year period of the City's policies, procedures, and internal controls regarding its disclosures for offerings, including disclosures made in its financial statements, pursuant to continuing disclosure agreements, and to rating agencies, the hiring of internal personnel and external experts for disclosure functions, and the implementation of active and ongoing training programs to educate appropriate City employees, including officials from the City Auditor and Comptroller's office, the City Attorney's office, the Mayor, and the City Council members regarding compliance with disclosure obligations; (b) make recommendations concerning these policies, procedures, and internal controls with a view to assuring compliance with the City's disclosure obligations under the federal securities laws; and (c) assess, in years two and three, whether the City is complying with its policies, procedures, and internal controls, whether the City has adopted any of the Independent Consultant's recommendations from prior year(s) concerning such policies, procedures, and internal controls for disclosures

for offerings, and whether the new policies, procedures, and internal controls were effective in achieving their stated purposes;

b. No later than 10 days following the date of the Independent Consultant's engagement, provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant's responsibilities pursuant to paragraph 5(a) above;

c. Arrange for the Independent Consultant to issue its first report within 120 days after the date of the engagement and the following two reports within 60 days following each subsequent one-year period from the date of engagement. Within 10 days after the issuance of the reports, the City shall require the Independent Consultant to submit to Kelly Bowers of the Commission's Pacific Regional Office a copy of the Independent Consultant's reports. The Independent Consultant's reports shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the policies, procedures, and internal controls adequate and address the deficiencies set forth in Section III.D of the Order. The City may suggest an alternative method designed to achieve the same objective or purpose as that of the recommendation of the Independent Consultant provided that the City's Mayor and City Attorney certify in writing to the Commission staff that they have a reasonable belief that the alternative method is expected to have the same objective or purpose as that of the Independent Consultant's recommendation;

d. Take all necessary and appropriate steps to adopt, implement, and employ the Independent Consultant's recommendations or the City's alternative method designed to achieve the same objective or purpose as that of the Independent Consultant's recommendation; and

e. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the City, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity; provided however, that the Independent Consultant may enter into an agreement with the City to serve as an independent monitor to oversee the City's remedial efforts with respect to enhanced accountability, greater transparency, increased fiscal responsibility, and independent oversight. Except as permitted above, the agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Pacific Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the City, or any of its present or former affiliates, directors, officers, employees, or agents acting in

their capacity as such for the period of the engagement and for a period of two years after the engagement.

6. In determining whether to accept the City's Offer, the Commission considered these undertakings and remediation measures.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the City's Offer.

Accordingly, it is hereby ORDERED that:

A. The City cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and

B. The City comply with the undertakings enumerated in paragraph 5 of Section III.F. above.

By the Commission.

Nancy M. Morris
Secretary

Exhibit 56

AU Section 319

Consideration of Internal Control in a Financial Statement Audit

Source: SAS No. 55; SAS No. 78; SAS No. 94.*

Effective for audits of financial statements for periods beginning on or after January 1, 1990, unless otherwise indicated.

Introduction

.01 This section provides guidance on the independent auditor's consideration of an entity's internal control in an audit of financial statements in accordance with generally accepted auditing standards. It defines internal control,[1] describes the objectives and components of internal control, and explains how an auditor should consider internal control in planning and performing an audit. In particular, this section provides guidance about implementing the second standard of field work: "A sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed."

.02 In all audits, the auditor should obtain an understanding of internal control sufficient to plan the audit by performing procedures to understand the design of controls relevant to an audit of financial statements and determining whether they have been placed in operation. In obtaining this understanding, the auditor considers how an entity's use of information technology (IT)[2] and manual procedures may affect controls relevant to the audit. The auditor then assesses control risk for the assertions embodied in the account balance, transaction class, and disclosure components of the financial statements.

.03 The auditor may determine that assessing control risk below the maximum level[3] for certain assertions would be effective and more efficient

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* This section has been revised to reflect the amendments and conforming changes necessary due to the issuance of Statement on Auditing Standards No. 78, effective for audits of financial statements for periods beginning on or after January 1, 1997. The amendments are made to recognize the definition and description of internal control contained in *Internal Control—Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO Report). This section has also been amended to reflect the issuance of Statement on Auditing Standards No. 94, effective for audits of financial statements for periods beginning on or after June 1, 2001. Earlier application is permissible.

[1] Internal control *also may be referred to as internal control structure.*

[2] Information technology (IT) encompasses automated means of originating, processing, storing, and communicating information, and includes recording devices, communication systems, computer systems (including hardware and software components and data), and other electronic devices. An entity's use of IT may be extensive; however, the auditor is primarily interested in the entity's use of IT to initiate, record, process, and report transactions or other financial data.

[3] Control risk may be assessed in quantitative terms, such as percentages, or in nonquantitative terms that range, for example, from a maximum to a minimum. The term *maximum level* is used in this section to mean the greatest probability that a material misstatement that could occur in a financial statement assertion will not be prevented or detected on a timely basis by an entity's internal control.

than performing only substantive tests. In addition, the auditor may determine that it is not practical or possible to restrict detection risk to an acceptable level by performing only substantive tests for one or more financial statement assertions. In such circumstances, the auditor should obtain evidential matter about the effectiveness of both the design and operation of controls to reduce the assessed level of control risk. Such evidential matter may be obtained from tests of controls planned and performed concurrent with or subsequent to obtaining the understanding.[4] Such evidential matter also may be obtained from procedures that were not specifically planned as tests of controls but that nevertheless provide evidential matter about the effectiveness of the design and operation of the controls. For certain assertions, the auditor may desire to further reduce the assessed level of control risk. In such cases, the auditor considers whether evidential matter sufficient to support a further reduction is likely to be available and whether performing additional tests of controls to obtain such evidential matter would be efficient.

.04 Alternatively, the auditor may assess control risk at the maximum level because he or she believes controls are unlikely to pertain to an assertion or are unlikely to be effective, or because evaluating the effectiveness of controls would be inefficient. However, the auditor needs to be satisfied that performing only substantive tests would be effective in restricting detection risk to an acceptable level. When evidence of an entity's initiation, recording, or processing of financial data exists only in electronic form, the auditor's ability to obtain the desired assurance only from substantive tests would significantly diminish.

.05 The auditor uses the understanding of internal control and the assessed level of control risk in determining the nature, timing, and extent of substantive tests for financial statement assertions.

Definition of Internal Control

.06 *Internal control* is a process—effected by an entity's board of directors, management, and other personnel—designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (*a*) reliability of financial reporting, (*b*) effectiveness and efficiency of operations, and (*c*) compliance with applicable laws and regulations.

.07 Internal control consists of five interrelated components:

a. *Control environment* sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.

b. *Risk assessment* is the entity's identification and analysis of relevant risks to achievement of its objectives, forming a basis for determining how the risks should be managed.

c. *Control activities* are the policies and procedures that help ensure that management directives are carried out.

d. *Information and communication* systems support the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.

e. *Monitoring* is a process that assesses the quality of internal control performance over time.

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[4] If the auditor is unable to obtain such evidential matter, he or she should consider the guidance in section 326, *Evidential Matter*, paragraphs .14 and .25.

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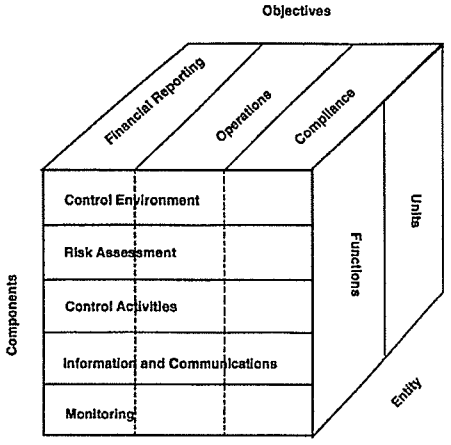
Relationship Between Objectives and Components

.08 There is a direct relationship between objectives, which are what an entity strives to achieve, and components, which represent what is needed to achieve the objectives. In addition, internal control is relevant to the entire entity, or to any of its operating units or business functions. This relationship is depicted as follows:



.09 Although an entity's internal control addresses objectives in each of the categories referred to in paragraph .06, not all of these objectives and related controls are relevant to an audit of the entity's financial statements. Also, although internal control is relevant to the entire entity or to any of its operating units or business functions, an understanding of internal control relevant to each of the entity's operating units and business functions may not be necessary to plan and perform an effective audit.

Financial Reporting Objective

.10 Generally, controls that are relevant to an audit pertain to the entity's objective of preparing financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles.[5]

Operations and Compliance Objectives

.11 The controls relating to operations and compliance[6] objectives may be relevant to an audit if they pertain to data the auditor evaluates or uses in applying auditing procedures. For example, controls pertaining to nonfinancial

[5] The term *comprehensive basis of accounting other than generally accepted accounting principles* is defined in section 623, *Special Reports*, paragraph .04. Hereafter, reference to generally accepted accounting principles in this section includes, where applicable, an other comprehensive basis of accounting.

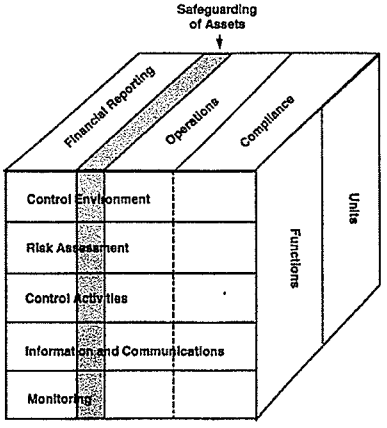
[6] An auditor may need to consider controls relevant to compliance objectives when performing an audit in accordance with section 801, *Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance.*

data that the auditor uses in analytical procedures, such as production statistics, or pertaining to detecting noncompliance with laws and regulations that may have a direct and material effect on the financial statements, such as controls over compliance with income tax laws and regulations used to determine the income tax provision, may be relevant to an audit.

.12 An entity generally has controls relating to objectives that are not relevant to an audit and therefore need not be considered. For example, controls concerning compliance with health and safety regulations or concerning the effectiveness and efficiency of certain management decision-making processes (such as the appropriate price to charge for its products or whether to make expenditures for certain research and development or advertising activities), although important to the entity, ordinarily do not relate to a financial statement audit. Similarly, an entity may rely on a sophisticated system of automated controls to provide efficient and effective operations (such as a commercial airline's system of automated controls to maintain flight schedules), but these controls ordinarily would not be relevant to the financial statement audit and therefore need not be considered.

Safeguarding of Assets

.13 Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition may include controls relating to financial reporting and operations objectives. This relationship is depicted as follows:



In obtaining an understanding of each of the components of internal control to plan the audit, the auditor's consideration of safeguarding controls is generally limited to those relevant to the reliability of financial reporting. For example, use of a lockbox system for collecting cash or access controls, such as passwords, that limit access to the data and programs that process cash disbursements may be relevant to a financial statement audit. Conversely, controls to prevent the excess use of materials in production generally are not relevant to a financial statement audit.

Application of Components to a Financial Statement Audit

.14 The division of internal control into five components provides a useful framework for auditors to consider the impact of an entity's internal control in

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an audit. However, it does not necessarily reflect how an entity considers and implements internal control. Also, the auditor's primary consideration is whether a specific control affects financial statement assertions rather than its classification into any particular component. Controls relevant to the audit are those that individually or in combination with others are likely to prevent or detect material misstatements in financial statement assertions. Such controls may exist in any of the five components.

.15 The five components of internal control are applicable to the audit of every entity. The components should be considered in the context of—

- The entity's size.
- The entity's organization and ownership characteristics.
- The nature of the entity's business.
- The diversity and complexity of the entity's operations.
- Applicable legal and regulatory requirements.
- The nature and complexity of the systems that are part of the entity's internal control, including the use of service organizations.[7]

Effect of Information Technology on Internal Control

.16 An entity's use of IT may affect any of the five components of internal control relevant to the achievement of the entity's financial reporting, operations, or compliance objectives, and its operating units or business functions. For example, an entity may use IT as part of discrete systems that support only particular business units, functions, or activities, such as a unique accounts receivable system for a particular business unit or a system that controls the operation of factory equipment. Alternatively, an entity may have complex, highly integrated systems that share data and that are used to support all aspects of the entity's financial reporting, operations, and compliance objectives.

.17 The use of IT also affects the fundamental manner in which transactions are initiated, recorded, processed, and reported.[8] In a manual system, an entity uses manual procedures and records in paper format (for example, individuals may manually record sales orders on paper forms or journals, authorize credit, prepare shipping reports and invoices, and maintain accounts receivable records). Controls in such a system also are manual and may include such procedures as approvals and reviews of activities, and reconciliations and follow-up of reconciling items. Alternatively, an entity may have information systems that use automated procedures to initiate, record, process, and report transactions, in which case records in electronic format replace such paper documents as purchase orders, invoices, shipping documents, and related accounting records. Controls in systems that use IT consist of a combination of automated controls (for example, controls embedded in computer programs) and manual controls. Further, manual controls may be independent of IT, may use information produced by IT, or may be limited to monitoring the effective functioning of IT and of automated controls, and to handling exceptions. An entity's mix of manual and automated controls varies with the nature and complexity of the entity's use of IT.

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[7] See section 324, *Service Organizations*, for guidance if an entity obtains services that are part of its information system from another organization.

[8] Paragraph 12 of the appendix [paragraph .110] defines *initiation, recording, processing*, and *reporting* as used throughout this section.

.18 IT provides potential benefits of effectiveness and efficiency for an entity's internal control because it enables an entity to—

- Consistently apply predefined business rules and perform complex calculations in processing large volumes of transactions or data.
- Enhance the timeliness, availability, and accuracy of information.
- Facilitate the additional analysis of information.
- Enhance the ability to monitor the performance of the entity's activities and its policies and procedures.
- Reduce the risk that controls will be circumvented.
- Enhance the ability to achieve effective segregation of duties by implementing security controls in applications, databases, and operating systems.

.19 IT also poses specific risks to an entity's internal control, including—

- Reliance on systems or programs that are inaccurately processing data, processing inaccurate data, or both.
- Unauthorized access to data that may result in destruction of data or improper changes to data, including the recording of unauthorized or nonexistent transactions or inaccurate recording of transactions.
- Unauthorized changes to data in master files.
- Unauthorized changes to systems or programs.
- Failure to make necessary changes to systems or programs.
- Inappropriate manual intervention.
- Potential loss of data.

.20 The extent and nature of these risks to internal control vary depending on the nature and characteristics of the entity's information system. For example, multiple users, either external or internal, may access a common database of information that affects financial reporting. In such circumstances, a lack of control at a single user entry point might compromise the security of the entire database, potentially resulting in improper changes to or destruction of data. When IT personnel or users are given, or can gain, access privileges beyond those necessary to perform their assigned duties, a breakdown in segregation of duties can occur. This could result in unauthorized transactions or changes to programs or data that affect the financial statements. Therefore, the nature and characteristics of an entity's use of IT in its information system affect the entity's internal control.

Limitations of an Entity's Internal Control

.21 Internal control, no matter how well designed and operated, can provide only reasonable assurance of achieving an entity's control objectives. The likelihood of achievement is affected by limitations inherent to internal control. These include the realities that human judgment in decision-making can be faulty and that breakdowns in internal control can occur because of human failures such as simple errors or mistakes. For example, errors may occur in designing, maintaining, or monitoring automated controls. If an entity's IT personnel do not completely understand how an order entry system

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processes sales transactions, they may erroneously design changes to the system to process sales for a new line of products. On the other hand, such changes may be correctly designed but misunderstood by individuals who translate the design into program code. Errors also may occur in the use of information produced by IT. For example, automated controls may be designed to report transactions over a specified dollar limit for management review, but individuals responsible for conducting the review may not understand the purpose of such reports and, accordingly, may fail to review them or investigate unusual items.

.22 Additionally, controls, whether manual or automated, can be circumvented by the collusion of two or more people or inappropriate management override of internal control. For example, management may enter into side agreements with customers that alter the terms and conditions of the entity's standard sales contract in ways that would preclude revenue recognition. Also, edit routines in a software program that are designed to identify and report transactions that exceed specified credit limits may be overridden or disabled.

.23 Internal control is influenced by the quantitative and qualitative estimates and judgments made by management in evaluating the cost-benefit relationship of an entity's internal control. The cost of an entity's internal control should not exceed the benefits that are expected to be derived. Although the cost-benefit relationship is a primary criterion that should be considered in designing internal control, the precise measurement of costs and benefits usually is not possible.

.24 Custom, culture, and the corporate governance system may inhibit fraud, but they are not absolute deterrents. An effective control environment, too, may help reduce the risk of fraud. For example, an effective board of directors, audit committee, and internal audit function may constrain improper conduct by management. Alternatively, the control environment may reduce the effectiveness of other components. For example, when the nature of management incentives increases the risk of material misstatement of financial statements, the effectiveness of control activities may be reduced.

Obtaining an Understanding of Internal Control

.25 In all audits, the auditor should obtain an understanding of each of the five components of internal control sufficient to plan the audit. A sufficient understanding is obtained by performing procedures to understand the design of controls relevant to an audit of financial statements and determining whether they have been placed in operation. In planning the audit, such knowledge should be used to—

- Identify types of potential misstatement.
- Consider factors that affect the risk of material misstatement.
- Design tests of controls, when applicable. Paragraphs .65 through .69 of this section discuss factors the auditor considers in determining whether to perform tests of controls.
- Design substantive tests.

.26 The nature, timing, and extent of procedures the auditor chooses to perform to obtain the understanding will vary depending on the size and complexity of the entity, previous experience with the entity, the nature of the

specific controls used by the entity including the entity's use of IT, the nature and extent of changes in systems and operations, and the nature of the entity's documentation of specific controls. For example, the understanding of risk assessment needed to plan an audit for an entity operating in a relatively stable environment may be limited. Also, the understanding of monitoring needed to plan an audit for a small, noncomplex entity may be limited. Similarly, the auditor may need only a limited understanding of control activities to plan an audit for a noncomplex entity that has significant owner-manager approval and review of transactions and accounting records. On the other hand, the auditor may need a greater understanding of control activities to plan an audit for an entity that has a large volume of revenue transactions and that relies on IT to measure and bill for services based on a complex, frequently changing rate structure.

.27 Whether a control has been *placed in operation* at a point in time is different from its *operating effectiveness* over a period of time. In obtaining knowledge about whether controls have been placed in operation, the auditor determines that the entity is using them. Operating effectiveness, on the other hand, is concerned with how the control (whether manual or automated) was applied, the consistency with which it was applied, and by whom it was applied. The auditor determines whether controls have been placed in operation as part of the understanding of internal control necessary to plan the audit. The auditor evaluates the operating effectiveness of controls as part of assessing control risk, as discussed in paragraphs .62 through .83 of this section. Although understanding internal control and assessing control risk are discussed separately in this section, they may be performed concurrently in an audit. Furthermore, some of the procedures performed to obtain the understanding may provide evidential matter about the operating effectiveness of controls relevant to certain assertions.

.28 The auditor's understanding of internal control may sometimes raise doubts about the auditability of an entity's financial statements. Concerns about the integrity of the entity's management may be so serious as to cause the auditor to conclude that the risk of management misrepresentation in the financial statements is such that an audit cannot be conducted. Concerns about the nature and extent of an entity's records may cause the auditor to conclude that it is unlikely that sufficient competent evidential matter will be available to support an opinion on the financial statements.

Understanding of Internal Control Necessary to Plan the Audit

.29 In making a judgment about the understanding of internal control necessary to plan the audit, the auditor considers the knowledge obtained from other sources about the types of misstatement that could occur, the risk that such misstatements may occur, and the factors that influence the design of tests of controls, when applicable, and substantive tests. Other sources of such knowledge include information from previous audits and the auditor's understanding of the industry and market in which the entity operates. The auditor also considers his or her assessment of inherent risk, judgments about materiality, and the complexity and sophistication of the entity's operations and systems, including the extent to which the entity relies on manual controls or on automated controls.

.30 In making a judgment about the understanding of internal control necessary to plan the audit, the auditor also considers IT risks that could result

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in misstatements. For example, if an entity uses IT to perform complex calculations, the entity receives the benefit of having the calculations consistently performed. However, the use of IT also presents risks, such as the risk that improperly authorized, incorrectly defined, or improperly implemented changes to the system or programs performing the calculations, or to related program tables or master files, could result in consistently performing those calculations inaccurately. As an entity's operations and systems become more complex and sophisticated, it becomes more likely that the auditor would need to increase his or her understanding of the internal control components to obtain the understanding necessary to design tests of controls, when applicable, and substantive tests.

.31 The auditor should consider whether specialized skills are needed for the auditor to determine the effect of IT on the audit, to understand the IT controls, or to design and perform tests of IT controls or substantive tests. A professional possessing IT skills may be either on the auditor's staff or an outside professional. In determining whether such a professional is needed on the audit team, the auditor considers factors such as the following:

- The complexity of the entity's systems and IT controls and the manner in which they are used in conducting the entity's business
- The significance of changes made to existing systems, or the implementation of new systems
- The extent to which data is shared among systems
- The extent of the entity's participation in electronic commerce
- The entity's use of emerging technologies
- The significance of audit evidence that is available only in electronic form

.32 Procedures that the auditor may assign to a professional possessing IT skills include inquiring of an entity's IT personnel how data and transactions are initiated, recorded, processed, and reported and how IT controls are designed; inspecting systems documentation; observing the operation of IT controls; and planning and performing tests of IT controls. If the use of a professional possessing IT skills is planned, the auditor should have sufficient IT-related knowledge to communicate the audit objectives to the professional, to evaluate whether the specified procedures will meet the auditor's objectives, and to evaluate the results of the procedures as they relate to the nature, timing, and extent of other planned audit procedures.[9]

.33 Paragraphs .34 through .57 of this section provide an overview of the five internal control components and the auditor's understanding of the components relating to a financial statement audit. A more detailed discussion of these components is provided in the appendix [paragraph .110].

Control Environment

.34 The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure. Control environment factors include the following:

a. Integrity and ethical values

b. Commitment to competence

[9] See section 311, *Planning and Supervision*, paragraph .10.

c. Board of directors or audit committee participation

d. Management's philosophy and operating style

e. Organizational structure

f. Assignment of authority and responsibility

g. Human resource policies and practices

.35 The auditor should obtain sufficient knowledge of the control environment to understand management's and the board of directors' attitude, awareness, and actions concerning the control environment, considering both the substance of controls and their collective effect. The auditor should concentrate on the substance of controls rather than their form, because controls may be established but not acted upon. For example, management may establish a formal code of conduct but act in a manner that condones violations of that code.

.36 When obtaining an understanding of the control environment, the auditor considers the collective effect on the control environment of strengths and weaknesses in various control environment factors. Management's strengths and weaknesses may have a pervasive effect on internal control. For example, owner-manager controls may mitigate a lack of segregation of duties in a small business, or an active and independent board of directors may influence the philosophy and operating style of senior management in larger entities. Alternatively, management's failure to commit sufficient resources to address security risks presented by IT may adversely affect internal control by allowing improper changes to be made to computer programs or to data, or by allowing unauthorized transactions to be processed. Similarly, human resource policies and practices directed toward hiring competent financial, accounting, and IT personnel may not mitigate a strong bias by top management to overstate earnings.

Risk Assessment

.37 An entity's risk assessment for financial reporting purposes is its identification, analysis, and management of risks relevant to the preparation of financial statements that are fairly presented in conformity with generally accepted accounting principles. For example, risk assessment may address how the entity considers the possibility of unrecorded transactions or identifies and analyzes significant estimates recorded in the financial statements. Risks relevant to reliable financial reporting also relate to specific events or transactions.

.38 Risks relevant to financial reporting include external and internal events and circumstances that may occur and adversely affect an entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements.[10] Risks can arise or change due to circumstances such as the following:

- Changes in operating environment
- New personnel
- New or revamped information systems
- Rapid growth
- New technology
- New business models, products, or activities

[10] These assertions are discussed in section 326.

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- Corporate restructurings
- Expanded foreign operations
- New accounting pronouncements

.39 The auditor should obtain sufficient knowledge of the entity's risk assessment process to understand how management considers risks relevant to financial reporting objectives and decides about actions to address those risks. This knowledge might include understanding how management identifies risks, estimates the significance of the risks, assesses the likelihood of their occurrence, and relates them to financial reporting. The use of IT may be an important element in an entity's risk assessment process, including providing timely information to facilitate the identification and management of risks.

.40 An entity's risk assessment differs from the auditor's consideration of audit risk in a financial statement audit. The purpose of an entity's risk assessment is to identify, analyze, and manage risks that affect entity objectives. In a financial statement audit, the auditor assesses inherent and control risks to evaluate the likelihood that material misstatements could occur in the financial statements.

Control Activities

.41 Control activities are the policies and procedures that help ensure that management directives are carried out. They help ensure that necessary actions are taken to address risks to achievement of the entity's objectives. Control activities, whether automated or manual, have various objectives and are applied at various organizational and functional levels. Generally, control activities that may be relevant to an audit may be categorized as policies and procedures that pertain to the following:

- Performance reviews
- Information processing
- Physical controls
- Segregation of duties

.42 The auditor should obtain an understanding of those control activities relevant to planning the audit. As the auditor obtains an understanding of the other components, he or she is also likely to obtain knowledge about some control activities. For example, in obtaining an understanding of the documents, records, and processing steps in the financial reporting information system that pertain to cash, the auditor is likely to become aware of whether bank accounts are reconciled. The auditor should consider the knowledge about the presence or absence of control activities obtained from the understanding of the other components in determining whether it is necessary to devote additional attention to obtaining an understanding of control activities to plan the audit. Ordinarily, audit planning does not require an understanding of the control activities related to each account balance, transaction class, and disclosure component in the financial statements or to every assertion relevant to them.

.43 The auditor should obtain an understanding of how IT affects control activities that are relevant to planning the audit. Some entities and auditors may view the IT control activities in terms of application controls and general controls. Application controls apply to the processing of individual applications. Accordingly, application controls relate to the use of IT to initiate, record,

process, and report transactions or other financial data. These controls help ensure that transactions occurred, are authorized, and are completely and accurately recorded and processed. Examples include edit checks of input data, numerical sequence checks, and manual follow-up of exception reports.

.44 Application controls may be performed by IT (for example, automated reconciliation of subsystems) or by individuals. When application controls are performed by people interacting with IT, they may be referred to as user controls. The effectiveness of user controls, such as reviews of computer-produced exception reports or other information produced by IT, may depend on the accuracy of the information produced. For example, a user may review an exception report to identify credit sales over a customer's authorized credit limit without performing procedures to verify its accuracy. In such cases, the effectiveness of the user control (that is, the review of the exception report) depends on both the effectiveness of the user review and the accuracy of the information in the report produced by IT.

.45 General controls are policies and procedures that relate to many applications and support the effective functioning of application controls by helping to ensure the continued proper operation of information systems. General controls commonly include controls over data center and network operations; system software acquisition and maintenance; access security; and application system acquisition, development, and maintenance.

.46 The use of IT affects the way that control activities are implemented. For example, when IT is used in an information system, segregation of duties often is achieved by implementing security controls.

Information and Communication

.47 The information system relevant to financial reporting objectives, which includes the accounting system, consists of the procedures, whether automated or manual, and records established to initiate, record, process, and report entity transactions (as well as events and conditions) and to maintain accountability for the related assets, liabilities, and equity. The quality of system-generated information affects management's ability to make appropriate decisions in controlling the entity's activities and to prepare reliable financial reports.

.48 Communication involves providing an understanding of individual roles and responsibilities pertaining to internal control over financial reporting.

.49 The auditor should obtain sufficient knowledge of the information system relevant to financial reporting to understand—

- The classes of transactions in the entity's operations that are significant to the financial statements.
- The procedures, both automated and manual, by which transactions are initiated, recorded, processed, and reported from their occurrence to their inclusion in the financial statements.
- The related accounting records, whether electronic or manual, supporting information, and specific accounts in the financial statements involved in initiating, recording, processing, and reporting transactions.
- How the information system captures other events and conditions that are significant to the financial statements.
- The financial reporting process used to prepare the entity's financial statements, including significant accounting estimates and disclosures.

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.50 When IT is used to initiate, record, process, or report transactions or other financial data for inclusion in financial statements, the systems and programs may include controls related to the corresponding assertions for significant accounts or may be critical to the effective functioning of manual controls that depend on IT.

.51 In obtaining an understanding of the financial reporting process, the auditor should understand the automated and manual procedures an entity uses to prepare financial statements and related disclosures, and how misstatements may occur. Such procedures include—

- *The procedures used to enter transaction totals into the general ledger.* In some information systems, IT may be used to automatically transfer such information from transaction processing systems to general ledger or financial reporting systems. The automated processes and controls in such systems may reduce the risk of inadvertent error but do not overcome the risk that individuals may inappropriately override such automated processes, for example, by changing the amounts being automatically passed to the general ledger or financial reporting system. Furthermore, in planning the audit, the auditor should be aware that when IT is used to automatically transfer information there may be little or no visible evidence of such intervention in the information systems.
- *The procedures used to initiate, record, and process journal entries in the general ledger.* An entity's financial reporting process used to prepare the financial statements typically includes the use of standard journal entries that are required on a recurring basis to record transactions such as monthly sales, purchases, and cash disbursements, or to record accounting estimates that are periodically made by management such as changes in the estimate of uncollectible accounts receivable. An entity's financial reporting process also includes the use of nonstandard journal entries to record nonrecurring or unusual transactions or adjustments such as a business combination or disposal, or a nonrecurring estimate such as an asset impairment. In manual, paper-based general ledger systems, such journal entries may be identified through inspection of ledgers, journals, and supporting documentation. However, when IT is used to maintain the general ledger and prepare financial statements, such entries may exist only in electronic form and may be more difficult to identify through physical inspection of printed documents.
- *Other procedures used to record recurring and nonrecurring adjustments to the financial statements.* These are procedures that are not reflected in formal journal entries, such as consolidating adjustments, report combinations, and reclassifications.

.52 The auditor also should obtain sufficient knowledge of the means the entity uses to communicate financial reporting roles and responsibilities and significant matters relating to financial reporting.

Monitoring

.53 An important management responsibility is to establish and maintain internal control. Management monitors controls to consider whether they are operating as intended and that they are modified as appropriate for changes in conditions.

.54 Monitoring is a process that assesses the quality of internal control performance over time. It involves assessing the design and operation of controls on a timely basis and taking necessary corrective actions. This process is accomplished through ongoing activities, separate evaluations, or a combination of the two. In many entities, internal auditors or personnel performing similar functions contribute to the monitoring of an entity's activities. Monitoring activities may include using information from communications from external parties such as customer complaints and regulator comments that may indicate problems or highlight areas in need of improvement. In many entities, much of the information used in monitoring may be produced by the entity's information system. If management assumes that data used for monitoring are accurate without having a basis for that assumption, errors may exist in the information, potentially leading management to incorrect conclusions from its monitoring activities.

.55 The auditor should obtain sufficient knowledge of the major types of activities the entity uses to monitor internal control over financial reporting, including the source of the information related to those activities, and how those activities are used to initiate corrective actions. When obtaining an understanding of the internal audit function, the auditor should follow the guidance in section 322, *The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements*, paragraphs .04 through .08.

Application to Small and Midsized Entities

.56 The way in which the objectives of internal control are achieved will vary based on an entity's size and complexity, among other considerations. Specifically, small and midsized entities may use less formal means to ensure that internal control objectives are achieved. For example, smaller entities with active management involvement in the financial reporting process may not have extensive descriptions of accounting procedures, sophisticated information systems, or written policies. Smaller entities may not have a written code of conduct but, instead, develop a culture that emphasizes the importance of integrity and ethical behavior through oral communication and by management example. Similarly, smaller entities may not have an independent or outside member on their board of directors.

.57 When small or midsized entities are involved in complex transactions or are subject to legal and regulatory requirements also found in larger entities, more formal means of ensuring that internal control objectives are achieved may be present. Also, small and midsized entities may use IT in various ways to achieve their objectives. For example, a small entity may use sophisticated applications of IT as part of its information system. The impact of IT on an entity's internal control is related more to the nature and complexity of the systems in use than to the entity's size.

Procedures to Obtain Understanding

.58 In obtaining an understanding of controls that are relevant to audit planning, the auditor should perform procedures to obtain sufficient knowledge about the design of the relevant controls pertaining to each of the five internal control components and determine whether they have been placed in operation. This knowledge is ordinarily obtained through previous experience with the entity and procedures such as inquiries of appropriate management, supervisory, and staff personnel; inspection of entity documents and records; and observation of entity activities and operations. The nature and extent of

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the procedures performed generally vary from entity to entity and are influenced by the size and complexity of the entity, the auditor's previous experience with the entity, the nature of the particular control, and the nature of the entity's documentation of specific controls.

.59 For example, the auditor's prior experience with the entity may provide an understanding of its classes of transactions. Inquiries of appropriate entity personnel and inspection of documents and records, such as source documents, journals, and ledgers, may provide an understanding of the accounting records. Similarly, in obtaining an understanding of the design of automated controls and determining whether they have been placed in operation, the auditor may make inquiries of appropriate entity personnel and inspect relevant systems documentation, reports (for example, exception reports or reports evidencing the processing of transactions or application of other controls), or other documents.

.60 The auditor's assessments of inherent risk and judgments about materiality for various account balances and transaction classes also affect the nature and extent of the procedures performed to obtain the understanding. For example, the auditor may conclude that planning the audit of the prepaid insurance account does not require specific procedures to be included in obtaining the understanding of internal control.

Documenting the Understanding

.61 The auditor should document the understanding of the entity's internal control components obtained to plan the audit. The form and extent of this documentation is influenced by the nature and complexity of the entity's controls. For example, documentation of the understanding of internal control of a complex information system in which a large volume of transactions are electronically initiated, recorded, processed, or reported may include flowcharts, questionnaires, or decision tables. For an information system making limited or no use of IT or for which few transactions are processed (for example, long-term debt), documentation in the form of a memorandum may be sufficient. Generally, the more complex the entity's internal control and the more extensive the procedures performed by the auditor, the more extensive the auditor's documentation should be.

Assessing Control Risk

.62 Section 326, *Evidential Matter*, states that most of the independent auditor's work in forming an opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements. These assertions are embodied in the account balance, transaction class, and disclosure components of financial statements and are classified according to the following broad categories:

- Existence or occurrence
- Completeness
- Rights and obligations
- Valuation or allocation
- Presentation and disclosure

In planning and performing an audit, an auditor considers these assertions in the context of their relationship to a specific account balance or class of transactions.

.63 The risk of material misstatement[11] in financial statement assertions consists of inherent risk, control risk, and detection risk. Inherent risk is the susceptibility of an assertion to a material misstatement assuming there are no related controls. Control risk is the risk that a material misstatement that could occur in an assertion will not be prevented or detected on a timely basis by the entity's internal control. Detection risk is the risk that the auditor will not detect a material misstatement that exists in an assertion.

.64 Assessing control risk is the process of evaluating the effectiveness of an entity's internal control in preventing or detecting material misstatements in the financial statements. Control risk should be assessed in terms of financial statement assertions.

.65 After obtaining the understanding of internal control, the auditor may assess control risk at the maximum level[12] for some or all assertions because he or she believes controls are unlikely to pertain to an assertion or are unlikely to be effective, or because evaluating the effectiveness of controls would be inefficient. However, the auditor needs to be satisfied that performing only substantive tests would be effective in restricting detection risk to an acceptable level. For example, the auditor may determine that performing only substantive tests would be effective and more efficient than performing tests of controls for assertions related to fixed assets and to long-term debt in an entity where a limited number of transactions are related to those financial statement components, and when the auditor can readily obtain corroborating evidence in the form of documents and confirmations. In circumstances where the auditor is performing only substantive tests in restricting detection risk to an acceptable level and where the information used by the auditor to perform such substantive tests is produced by the entity's information system, the auditor should obtain evidence about the accuracy and completeness of the information.

.66 In other circumstances, the auditor may determine that assessing control risk below the maximum level for certain assertions would be effective and more efficient than performing only substantive tests. In addition, the auditor may determine that it is not practical or possible to restrict detection risk to an acceptable level by performing only substantive tests for one or more financial statement assertions. In such circumstances, the auditor should obtain evidential matter about the effectiveness of both the design and operation of controls to reduce the assessed level of control risk.[13]

.67 In determining whether assessing control risk at the maximum level or at a lower level would be an effective approach for specific assertions, the auditor should consider—

- The nature of the assertion.
- The volume of transactions or data related to the assertion.

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[11] For purposes of this section, a material misstatement in a financial statement assertion is a misstatement whether caused by error or fraud as discussed in section 312, *Audit Risk and Materiality in Conducting an Audit*, that either individually or when aggregated with other misstatements in other assertions would be material to the financial statements taken as a whole.

[12] See footnote 3.

[13] See footnote 4.

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- The nature and complexity of the systems, including the use of IT, by which the entity processes and controls information supporting the assertion.
- The nature of the available evidential matter, including audit evidence that is available only in electronic form.

.68 In circumstances where a significant amount of information supporting one or more financial statement assertions is electronically initiated, recorded, processed, or reported, the auditor may determine that it is not possible to design effective substantive tests that by themselves would provide sufficient evidence that the assertions are not materially misstated. For such assertions, significant audit evidence may be available only in electronic form. In such cases, its competence and sufficiency as evidential matter usually depend on the effectiveness of controls over its accuracy and completeness. Furthermore, the potential for improper initiation or alteration of information to occur and not be detected may be greater if information is initiated, recorded, processed, or reported only in electronic form and appropriate controls are not operating effectively. In such circumstances, the auditor should perform tests of controls to gather evidential matter to use in assessing control risk.

.69 Examples of situations where the auditor may find it impossible to design effective substantive tests that by themselves would provide sufficient evidence that certain assertions are not materially misstated include the following:

- An entity that conducts business using IT to initiate orders for goods based on predetermined decision rules and to pay the related payables based on system-generated information regarding receipt of goods. No other documentation of orders or goods received is produced or maintained.
- An entity that provides electronic services to customers (for example, an Internet service provider or a telephone company) and uses IT to log services provided to users, initiate bills for the services, process the billing transactions, and automatically record such amounts in electronic accounting records that are used to produce the financial statements.

Assessing Control Risk Below the Maximum Level

.70 Assessing control risk below the maximum level involves[14]—

- Identifying specific controls relevant to specific assertions.
- Performing tests of controls.
- Concluding on the assessed level of control risk.

Identifying Specific Controls Relevant to Specific Assertions

.71 The auditor's understanding about internal control should be used to identify the types of potential misstatements that could occur and to consider factors that affect the risk of material misstatement. In assessing control risk,

[14] Section 324 describes reports that an auditor may obtain that may assist in identifying controls relevant to specific assertions and obtaining evidential matter regarding their operating effectiveness when an entity uses a service organization.

the auditor should identify the controls that are likely to prevent or detect material misstatement in specific assertions. In identifying controls relevant to specific financial statement assertions, the auditor should consider that the controls can have either a pervasive effect on many assertions or a specific effect on an individual assertion, depending on the nature of the particular internal control component involved. For example, the conclusion that an entity's control environment is highly effective may influence the auditor's decision about the number of an entity's locations at which auditing procedures are to be performed or whether to perform certain auditing procedures for some account balances or transaction classes at an interim date. Either decision affects the way in which auditing procedures are applied to specific assertions, even though the auditor may not have specifically considered each individual assertion that is affected by such decisions.

.72 Conversely, some control activities may have a specific effect on an individual assertion embodied in a particular account balance or transaction class. For example, the control activities that an entity established to ensure that its personnel are properly counting and recording the annual physical inventory relate directly to the existence assertion for the inventory account balance.

.73 Controls can be either directly or indirectly related to an assertion. The more indirect the relationship, the less effective that control may be in reducing control risk for that assertion. For example, a sales manager's review of a summary of sales activity for specific stores by region ordinarily is indirectly related to the completeness assertion for sales revenue. Accordingly, it may be less effective in reducing control risk for that assertion than controls more directly related to that assertion, such as matching shipping documents with billing documents.

.74 General controls relate to many applications and support the effective functioning of application controls by helping to ensure the continued proper operation of information systems. The auditor should consider the need to identify not only application controls directly related to one or more assertions, but also relevant general controls.

Performing Tests of Controls

.75 Procedures directed toward evaluating the effectiveness of the design of a control are concerned with whether that control is suitably designed to prevent or detect material misstatements in specific financial statement assertions. Procedures to obtain such evidential matter ordinarily include inquiries of appropriate entity personnel; inspection of documents, reports, or electronic files; and observation of the application of specific controls. For entities with complex internal control, the auditor should consider the use of flowcharts, questionnaires, or decision tables to facilitate the application of procedures directed toward evaluating the effectiveness of the design of a control.

.76 Procedures to obtain evidential matter about the effectiveness of the operation of a control are referred to as tests of controls (paragraphs .90 through .104 of this section discuss characteristics of evidential matter to consider when performing tests of controls). Tests of controls directed toward the operating effectiveness of a control are concerned with how the control (whether manual or automated) was applied, the consistency with which it was applied during the audit period, and by whom it was applied. These tests ordinarily include procedures such as inquiries of appropriate entity personnel; inspection of documents, reports, or electronic files, indicating performance

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of the control; observation of the application of the control; and reperformance of the application of the control by the auditor. In some circumstances, a specific procedure may address the effectiveness of both design and operation. However, a combination of procedures may be necessary to evaluate the effectiveness of the design or operation of a control.

.77 In designing tests of automated controls, the auditor should consider the need to obtain evidence supporting the effective operation of controls directly related to the assertions as well as other indirect controls on which these controls depend. For example, the auditor may identify a "user review of an exception report of credit sales over a customer's authorized credit limit" as a direct control related to an assertion. In such cases, the auditor should consider the effectiveness of the user review of the report and also the controls related to the accuracy of the information in the report (for example, the general controls).

.78 Because of the inherent consistency of IT processing, the auditor may be able to reduce the extent of testing of an automated control. For example, a programmed application control should function consistently unless the program (including the tables, files, or other permanent data used by the program) is changed. Once the auditor determines that an automated control is functioning as intended (which could be done at the time the control is initially implemented or at some other date), the auditor should consider performing tests to determine that the control continues to function effectively. Such tests might include determining that changes to the program are not made without being subject to the appropriate program change controls, that the authorized version of the program is used for processing transactions, and that other relevant general controls are effective. Such tests also might include determining that changes to the programs have not been made, as may be the case when the entity uses packaged software applications without modifying or maintaining them.

.79 To test automated controls, the auditor may need to use techniques that are different from those used to test manual controls. For example, computer-assisted audit techniques may be used to test automated controls or data related to assertions. Also, the auditor may use other automated tools or reports produced by IT to test the operating effectiveness of general controls, such as program change controls, access controls, and system software controls. The auditor should consider whether specialized skills are needed to design and perform such tests of controls.

Concluding on the Assessed Level of Control Risk

.80 The conclusion reached as a result of assessing control risk is referred to as the assessed level of control risk. In determining the evidential matter necessary to support an assessed level of control risk below the maximum level, the auditor should consider the characteristics of evidential matter about control risk discussed in paragraphs .90 through .104. Generally, however, the lower the assessed level of control risk, the greater the assurance the evidential matter must provide that the controls relevant to an assertion are designed and operating effectively.

.81 The auditor uses the assessed level of control risk (together with the assessed level of inherent risk) to determine the acceptable level of detection risk for financial statement assertions. The auditor uses the acceptable level of detection risk to determine the nature, timing, and extent of the auditing procedures

to be applied to the account balance or class of transactions to detect material misstatements in the financial statement assertions. Auditing procedures designed to detect such misstatements are referred to in this section as substantive tests.

.82 As the acceptable level of detection risk decreases, the assurance provided from substantive tests should increase. Consequently, the auditor may do one or more of the following:

- Change the nature of substantive tests from a less effective to a more effective procedure, such as using tests directed toward independent parties outside the entity rather than tests directed toward parties or documentation within the entity.
- Change the timing of substantive tests, such as performing them at year end rather than at an interim date.
- Change the extent of substantive tests, such as using a larger sample size.

Documenting the Assessed Level of Control Risk

.83 In addition to the documentation of the understanding of internal control discussed in paragraph .61, the auditor should document his or her conclusions about the assessed level of control risk. Conclusions about the assessed level of control risk may differ as they relate to various account balances or classes of transactions. For those financial statement assertions where control risk is assessed at the maximum level, the auditor should document his or her conclusion that control risk is at the maximum level but need not document the basis for that conclusion. For those assertions where the assessed level of control risk is below the maximum level, the auditor should document the basis for his or her conclusion that the effectiveness of the design and operation of controls supports that assessed level. The nature and extent of the auditor's documentation are influenced by the assessed level of control risk, the nature of the entity's internal control, and the nature of the entity's documentation of internal control.

Relationship of Understanding to Assessing Control Risk

.84 Although understanding internal control and assessing control risk are discussed separately in this section, they may be performed concurrently in an audit. The objective of procedures performed to obtain an understanding of internal control (discussed in paragraphs .58 through .60) is to provide the auditor with knowledge necessary for audit planning. The objective of tests of controls (discussed in paragraphs .75 through .79) is to provide the auditor with evidential matter to use in assessing control risk. However, procedures performed to achieve one objective may also pertain to the other objective.

.85 Based on the assessed level of control risk the auditor expects to support and audit efficiency considerations, the auditor often plans to perform some tests of controls concurrently with obtaining the understanding of internal control. In addition, even though some of the procedures performed to obtain the understanding were not specifically planned as tests of controls, they may nevertheless provide evidential matter about the effectiveness of both the design and operation of the controls relevant to certain assertions. For

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example, because of the inherent consistency of IT processing, performing procedures to determine whether an automated control has been placed in operation may serve as a test of that control's operating effectiveness, depending on such factors as whether the program has been changed or whether there is a significant risk of unauthorized change or other improper intervention. Also, in obtaining an understanding of the control environment, the auditor may have made inquiries about management's use of budgets, observed management's comparison of monthly budgeted and actual expenses, and inspected reports pertaining to the investigation of variances between budgeted and actual amounts. Although these procedures provide knowledge about the design of the entity's budgeting policies and whether they have been placed in operation, they may also provide evidential matter about the effectiveness of the operation of budgeting policies in preventing or detecting material misstatements in the classification of expenses. In some circumstances, that evidential matter may be sufficient to support an assessed level of control risk that is below the maximum level for the presentation and disclosure assertions pertaining to expenses in the income statement.

.86 When the auditor concludes that procedures performed to obtain the understanding of internal control also provide evidential matter for assessing control risk, he or she should consider the guidance in paragraphs .90 through .104 in judging the degree of assurance provided by that evidential matter. Although such evidential matter may not provide sufficient assurance to support an assessed level of control risk that is below the maximum level for certain assertions, it may do so for other assertions and thus provide a basis for modifying the nature, timing, or extent of the substantive tests that the auditor plans for those assertions. However, such procedures are not sufficient to support an assessed level of control risk below the maximum level if they do not provide sufficient evidential matter to evaluate the effectiveness of both the design and operation of a control relevant to an assertion.

Further Reduction in the Assessed Level of Control Risk

.87 After obtaining the understanding of internal control and assessing control risk, the auditor may desire to further reduce the assessed level of control risk for certain assertions. In such cases, the auditor considers whether additional evidential matter sufficient to support a further reduction is likely to be available, and whether it would be efficient to perform tests of controls to obtain that evidential matter. The results of the procedures performed to obtain the understanding of internal control, as well as pertinent information from other sources, help the auditor to evaluate those two factors.

.88 In considering efficiency, the auditor recognizes that additional evidential matter that supports a further reduction in the assessed level of control risk for an assertion would result in less audit effort for the substantive tests of that assertion. The auditor weighs the increase in audit effort associated with the additional tests of controls that is necessary to obtain such evidential matter against the resulting decrease in audit effort associated with the reduced substantive tests.

.89 For those assertions for which the auditor performs additional tests of controls, the auditor determines the assessed level of control risk that the results of those tests will support. This assessed level of control risk is used in determining the appropriate detection risk to accept for those assertions and, accordingly, in determining the nature, timing, and extent of substantive tests for such assertions.

Evidential Matter to Support the Assessed Level of Control Risk

.90 When the auditor assesses control risk below the maximum level, he or she should obtain sufficient evidential matter to support that assessed level. The evidential matter[15] that is sufficient to support a specific assessed level of control risk is a matter of judgment. Evidential matter varies substantially in the assurance it provides to the auditor as he or she develops an assessed level of control risk. The type of evidential matter, its source, its timeliness, and the existence of other evidential matter related to the conclusion to which it leads all bear on the degree of assurance evidential matter provides.

.91 These characteristics influence the nature, timing, and extent of the tests of controls that the auditor applies to obtain evidential matter about control risk. The auditor selects such tests from a variety of techniques such as inquiry, observation, inspection, and reperformance of a control that pertains to an assertion. No one specific test of controls is always necessary, applicable, or equally effective in every circumstance.

Type of Evidential Matter

.92 The nature of the particular controls that pertain to an assertion influences the type of evidential matter that is available to evaluate the effectiveness of the design or operation of those controls. For some controls, documentation of design or operation may exist. In such circumstances, the auditor may decide to inspect the documentation to obtain evidential matter about the effectiveness of design or operation.

.93 For other controls, however, such documentation may not be available or relevant. For example, documentation of design or operation may not exist for some factors in the control environment, such as assignment of authority and responsibility, or for some types of control activities, such as undocumented monitoring controls or control activities performed by a computer. In such circumstances, evidential matter about the effectiveness of design or operation may be obtained through such methods as observation, inquiry, or the use of computer-assisted audit techniques.

Source of Evidential Matter

.94 Generally, evidential matter about the effectiveness of the design and operation of controls obtained directly by the auditor, such as through observation, provides more assurance than evidential matter obtained indirectly or by inference, such as through inquiry. For example, evidential matter that is obtained by the auditor's direct personal observation of the individual who applies a control generally provides more assurance than making inquiries about the application of the control. The auditor should consider, however, that the observed application of a control might not be performed in the same manner when the auditor is not present.

.95 Inquiry alone generally will not provide sufficient evidential matter to support a conclusion about the effectiveness of design or operation of a specific control. When the auditor determines that a specific control may have

[15] See also section 326 for guidance on evidential matter.

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a significant effect in reducing control risk to a low level for a specific assertion, he or she ordinarily needs to perform additional tests to obtain sufficient evidential matter to support the conclusion about the effectiveness of the design or operation of that control.

Timeliness of Evidential Matter

.96 The timeliness of the evidential matter concerns when it was obtained and the portion of the audit period to which it applies. In evaluating the degree of assurance that is provided by evidential matter, the auditor should consider that the evidential matter obtained by some tests of controls, such as observation, pertains only to the point in time at which the auditing procedure was applied. Consequently, such evidential matter may be insufficient to evaluate the effectiveness of the design or operation of controls for periods not subjected to such tests. In such circumstances, the auditor may decide to supplement those tests with other tests of controls that are capable of providing evidential matter about the entire audit period. For example, for an application control performed by a computer program, the auditor may test the operation of the control at a particular point in time to obtain evidential matter about whether the control is operating effectively at that point in time. The auditor may then perform tests of controls directed toward obtaining evidential matter about whether the application control operated consistently during the audit period, such as tests of general controls pertaining to the modification and use of that computer program during the audit period.

.97 Evidential matter about the effective design or operation of controls that was obtained in prior audits may be considered by the auditor in assessing control risk in the current audit. To evaluate the use of such evidential matter for the current audit, the auditor should consider the significance of the assertion involved, the specific controls that were evaluated during the prior audits, the degree to which the effective design and operation of those controls were evaluated, the results of the tests of controls used to make those evaluations, and the evidential matter about design or operation that may result from substantive tests performed in the current audit. The auditor should also consider that the longer the time elapsed since tests of controls were performed to obtain evidential matter about control risk, the less assurance they may provide.

.98 When considering evidential matter obtained from prior audits, the auditor should obtain evidential matter in the current period about whether changes have occurred in internal control, including its policies, procedures, and personnel, subsequent to the prior audits, as well as the nature and extent of any such changes. For example, in performing the prior audit, the auditor may have determined that an automated control was functioning as intended. The auditor should obtain evidence to determine whether changes to the automated control have been made that would affect its continued effective functioning. Consideration of evidential matter about these changes, together with the considerations in the preceding paragraph, may support either increasing or decreasing the evidential matter about the effectiveness of design and operation to be obtained in the current period.

.99 When the auditor obtains evidential matter about the design or operation of controls during an interim period, he or she should determine what additional evidential matter should be obtained for the remaining period. In making that determination, the auditor should consider the significance of the assertion involved, the specific controls that were evaluated during the interim period, the degree to which the effective design and operation of those

controls were evaluated, the results of the tests of controls used to make that evaluation, the length of the remaining period, and the evidential matter about design or operation that may result from the substantive tests performed in the remaining period. The auditor should obtain evidential matter about the nature and extent of any significant changes in internal control, including its policies, procedures, and personnel, that occur subsequent to the interim period.

Interrelationship of Evidential Matter

.100 The auditor should consider the combined effect of various types of evidential matter relating to the same assertion in evaluating the degree of assurance that evidential matter provides. In some circumstances, a single type of evidential matter may not be sufficient to evaluate the effective design or operation of a control. To obtain sufficient evidential matter in such circumstances, the auditor may perform other tests of controls pertaining to that control. For example, an auditor may observe the procedures for opening the mail and processing cash receipts to evaluate the operating effectiveness of controls over cash receipts. Because an observation is pertinent only at the point in time at which it is made, the auditor may supplement the observation with inquiries of entity personnel and inspection of documentation about the operation of such controls at other times during the audit period.

.101 In addition, when evaluating the degree of assurance provided by evidential matter, the auditor should consider the interrelationship of an entity's control environment, risk assessment, control activities, information and communication, and monitoring. Although an individual internal control component may affect the nature, timing, or extent of substantive tests for a specific financial statement assertion, the auditor should consider the evidential matter about an individual component in relation to the evidential matter about the other components in assessing control risk for a specific assertion.

.102 Generally, when various types of evidential matter support the same conclusion about the design or operation of a control, the degree of assurance provided increases. Conversely, if various types of evidential matter lead to different conclusions about the design or operation of a control, the assurance provided decreases. For example, based on the evidential matter that the control environment is effective, the auditor may have reduced the number of locations at which auditing procedures will be performed. If, however, when evaluating specific control activities, the auditor obtains evidential matter that such activities are ineffective, he or she may re-evaluate his or her conclusion about the control environment and, among other things, decide to perform auditing procedures at additional locations.

.103 Similarly, evidential matter indicating that the control environment is ineffective may adversely affect an otherwise effective control for a particular assertion. For example, a control environment that is likely to permit unauthorized changes in a computer program may reduce the assurance provided by evidential matter obtained from evaluating the effectiveness of the program at a particular point in time. In such circumstances, the auditor may decide to obtain additional evidential matter about the design and operation of that program during the audit period. For example, the auditor might obtain and control a copy of the program and use computer-assisted audit techniques to compare that copy with the program that the entity uses to process data.

.104 An audit of financial statements is a cumulative process; as the auditor assesses control risk, the information obtained may cause him or her to modify the nature, timing, or extent of the other planned tests of controls for

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assessing control risk. In addition, information may come to the auditor's attention as a result of performing substantive tests or from other sources during the audit that differs significantly from the information on which his or her planned tests of controls for assessing control risk were based. For example, the extent of misstatements that the auditor detects by performing substantive tests may alter his or her judgment about the assessed level of control risk. In such circumstances, the auditor may need to re-evaluate the planned substantive procedures, based on a revised consideration of the assessed level of control risk for all or some of the financial statement assertions.

Correlation of Control Risk With Detection Risk

.105 The ultimate purpose of assessing control risk is to contribute to the auditor's evaluation of the risk that material misstatements exist in the financial statements. The process of assessing control risk (together with assessing inherent risk) provides evidential matter about the risk that such misstatements may exist in the financial statements. The auditor uses this evidential matter as part of the reasonable basis for an opinion referred to in the third standard of field work, which follows:

> Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

.106 After considering the level to which he or she seeks to restrict the risk of a material misstatement in the financial statements and the assessed levels of inherent risk and control risk, the auditor performs substantive tests to restrict detection risk to an acceptable level. As the assessed level of control risk decreases, the acceptable level of detection risk increases. Accordingly, the auditor may alter the nature, timing, and extent of the substantive tests performed.

.107 Although the inverse relationship between control risk and detection risk may permit the auditor to change the nature or the timing of substantive tests or limit their extent, ordinarily the assessed level of control risk cannot be sufficiently low to eliminate the need to perform any substantive tests to restrict detection risk for all of the assertions relevant to significant account balances or transaction classes. Consequently, regardless of the assessed level of control risk, the auditor should perform substantive tests for significant account balances and transaction classes.

.108 The substantive tests that the auditor performs consist of tests of details of transactions and balances, and analytical procedures. In assessing control risk, the auditor also may use tests of details of transactions as tests of controls. The objective of tests of details of transactions performed as substantive tests is to detect material misstatements in the financial statements. The objective of tests of details of transactions performed as tests of controls is to evaluate whether a control operated effectively. Although these objectives are different, both may be accomplished concurrently through performance of a test of details on the same transaction. The auditor should recognize, however, that careful consideration should be given to the design and evaluation of such tests to ensure that both objectives will be accomplished.

Effective Date

.109 This amendment is effective for audits of financial statements for periods beginning on or after June 1, 2001. Earlier application is permissible.

.110

Appendix

Internal Control Components

1. This appendix discusses the five internal control components set forth in paragraph .07 and further described in paragraphs .34 through .57 as they relate to a financial statement audit.

Control Environment

2. The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.
3. The control environment encompasses the following factors:
   a. *Integrity and ethical values.* The effectiveness of controls cannot rise above the integrity and ethical values of the people who create, administer, and monitor them. Integrity and ethical values are essential elements of the control environment, affecting the design, administration, and monitoring of other components. Integrity and ethical behavior are the product of the entity's ethical and behavioral standards, how they are communicated, and how they are reinforced in practice. They include management's actions to remove or reduce incentives and temptations that might prompt personnel to engage in dishonest, illegal, or unethical acts. They also include the communication of entity values and behavioral standards to personnel through policy statements and codes of conduct and by example.
   b. *Commitment to competence.* Competence is the knowledge and skills necessary to accomplish tasks that define the individual's job. Commitment to competence includes management's consideration of the competence levels for particular jobs and how those levels translate into requisite skills and knowledge.
   c. *Board of directors or audit committee participation.* An entity's control consciousness is influenced significantly by the entity's board of directors or audit committee. Attributes include the board or audit committee's independence from management, the experience and stature of its members, the extent of its involvement and scrutiny of activities, the appropriateness of its actions, the degree to which difficult questions are raised and pursued with management, and its interaction with internal and external auditors.
   d. *Management's philosophy and operating style.* Management's philosophy and operating style encompass a broad range of characteristics. Such characteristics may include the following: management's approach to taking and monitoring business risks; management's attitudes and actions toward financial reporting (conservative or aggressive selection from available alternative accounting principles, and conscientiousness and conservatism with which accounting estimates are developed); and management's attitudes toward information processing and accounting functions and personnel.

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e. *Organizational structure.* An entity's organizational structure provides the framework within which its activities for achieving entity-wide objectives are planned, executed, controlled, and monitored. Establishing a relevant organizational structure includes considering key areas of authority and responsibility and appropriate lines of reporting. An entity develops an organizational structure suited to its needs. The appropriateness of an entity's organizational structure depends, in part, on its size and the nature of its activities.

f. *Assignment of authority and responsibility.* This factor includes how authority and responsibility for operating activities are assigned and how reporting relationships and authorization hierarchies are established. It also includes policies relating to appropriate business practices, knowledge and experience of key personnel, and resources provided for carrying out duties. In addition, it includes policies and communications directed at ensuring that all personnel understand the entity's objectives, know how their individual actions interrelate and contribute to those objectives, and recognize how and for what they will be held accountable.

g. *Human resource policies and practices.* Human resource policies and practices relate to hiring, orientation, training, evaluating, counseling, promoting, compensating, and remedial actions. For example, standards for hiring the most qualified individuals—with emphasis on educational background, prior work experience, past accomplishments, and evidence of integrity and ethical behavior—demonstrate an entity's commitment to competent and trustworthy people. Training policies that communicate prospective roles and responsibilities and include practices such as training schools and seminars illustrate expected levels of performance and behavior. Promotions driven by periodic performance appraisals demonstrate the entity's commitment to the advancement of qualified personnel to higher levels of responsibility.

Application to Small and Midsized Entities

4. Small and midsized entities may implement the control environment factors differently than larger entities. For example, smaller entities might not have a written code of conduct but, instead, develop a culture that emphasizes the importance of integrity and ethical behavior through oral communication and by management example. Similarly, smaller entities may not have an independent or outside member on their board of directors.

Risk Assessment

5. An entity's risk assessment for financial reporting purposes is its identification, analysis, and management of risks relevant to the preparation of financial statements that are fairly presented in conformity with generally accepted accounting principles. For example, risk assessment may address how the entity considers the possibility of unrecorded transactions or identifies and analyzes significant estimates recorded in the financial statements. Risks relevant to reliable financial reporting also relate to specific events or transactions.

6. Risks relevant to financial reporting include external and internal events and circumstances that may occur and adversely affect an entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. Once risks are identified, management considers their significance, the likelihood of their occurrence, and how they should be managed. Management may initiate plans, programs, or actions to address specific risks or it may decide to accept a risk because of cost or other considerations. Risks can arise or change due to circumstances such as the following:

- *Changes in operating environment.* Changes in the regulatory or operating environment can result in changes in competitive pressures and significantly different risks.
- *New personnel.* New personnel may have a different focus on or understanding of internal control.
- *New or revamped information systems.* Significant and rapid changes in information systems can change the risk relating to internal control.
- *Rapid growth.* Significant and rapid expansion of operations can strain controls and increase the risk of a breakdown in controls.
- *New technology.* Incorporating new technologies into production processes or information systems may change the risk associated with internal control.
- *New business models, products, or activities.* Entering into business areas or transactions with which an entity has little experience may introduce new risks associated with internal control.
- *Corporate restructurings.* Restructurings may be accompanied by staff reductions and changes in supervision and segregation of duties that may change the risk associated with internal control.
- *Expanded foreign operations.* The expansion or acquisition of foreign operations carries new and often unique risks that may affect internal control, for example, additional or changed risks from foreign currency transactions.
- *New accounting pronouncements.* Adoption of new accounting principles or changing accounting principles may affect risks in preparing financial statements.

Application to Small and Midsized Entities

7. The basic concepts of the risk assessment process should be present in every entity, regardless of size, but the risk assessment process is likely to be less formal and less structured in small and midsized entities than in larger ones. All entities should have established financial reporting objectives, but they may be recognized implicitly rather than explicitly in smaller entities. Management may be able to learn about risks related to these objectives through direct personal involvement with employees and outside parties.

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Control Activities

8. Control activities are the policies and procedures that help ensure that necessary actions are taken to address risks to achievement of the entity's objectives. Control activities, whether automated or manual, have various objectives and are applied at various organizational and functional levels.

9. Generally, control activities that may be relevant to an audit may be categorized as policies and procedures that pertain to the following:

   - *Performance reviews.* These control activities include reviews of actual performance versus budgets, forecasts, and prior period performance; relating different sets of data—operating or financial—to one another, together with analyses of the relationships and investigative and corrective actions; and review of functional or activity performance, such as a bank's consumer loan manager's review of reports by branch, region, and loan type for loan approvals and collections.

   - *Information processing.* A variety of controls are performed to check accuracy, completeness, and authorization of transactions. The two broad groupings of information systems control activities are application controls and general controls. Application controls apply to the processing of individual applications. These controls help ensure that transactions occurred, are authorized, and are completely and accurately recorded and processed. General controls commonly include controls over data center and network operations; system software acquisition and maintenance; access security; and application system acquisition, development, and maintenance. These controls apply to mainframe, miniframe, and end-user environments. Examples of such general controls are program change controls, controls that restrict access to programs or data, controls over the implementation of new releases of packaged software applications, and controls over system software that restrict access to or monitor the use of system utilities that could change financial data or records without leaving an audit trail.

   - *Physical controls.* These activities encompass the physical security of assets, including adequate safeguards such as secured facilities, over access to assets and records; authorization for access to computer programs and data files; and periodic counting and comparison with amounts shown on control records. The extent to which physical controls intended to prevent theft of assets are relevant to the reliability of financial statement preparation, and therefore the audit, depends on circumstances such as when assets are highly susceptible to misappropriation. For example, these controls would ordinarily not be relevant when any inventory losses would be detected pursuant to periodic physical inspection and recorded in the financial statements. However, if for financial reporting purposes management relies solely on perpetual inventory records, the physical security controls would be relevant to the audit.

   - *Segregation of duties.* Assigning different people the responsibilities of authorizing transactions, recording transactions, and

maintaining custody of assets is intended to reduce the opportunities to allow any person to be in a position to both perpetrate and conceal errors or fraud in the normal course of his or her duties.

Application to Small and Midsized Entities

10. The concepts underlying control activities in small or midsized organizations are likely to be similar to those in larger entities, but the formality with which they operate varies. Further, smaller entities may find that certain types of control activities are not relevant because of controls applied by management. For example, management's retention of authority for approving credit sales, significant purchases, and draw-downs on lines of credit can provide strong control over those activities, lessening or removing the need for more detailed control activities. An appropriate segregation of duties often appears to present difficulties in smaller organizations. Even companies that have only a few employees, however, may be able to assign their responsibilities to achieve appropriate segregation or, if that is not possible, to use management oversight of the incompatible activities to achieve control objectives.

Information and Communication

11. An information system consists of infrastructure (physical and hardware components), software, people, procedures (manual and automated), and data. Infrastructure and software will be absent, or have less significance, in systems that are exclusively or primarily manual. Many information systems make extensive use of information technology.

12. The information system relevant to financial reporting objectives, which includes the accounting system, consists of the procedures, whether automated or manual, and records established to initiate, record, process, and report entity transactions (as well as events and conditions) and to maintain accountability for the related assets, liabilities, and equity. Transactions may be initiated manually or automatically by programmed procedures. Recording includes identifying and capturing the relevant information for transactions or events. Processing includes functions such as edit and validation, calculation, measurement, valuation, summarization, and reconciliation, whether performed by automated or manual procedures. Reporting relates to the preparation of financial reports as well as other information, in electronic or printed format, that the entity uses in monitoring and other functions. The quality of system-generated information affects management's ability to make appropriate decisions in managing and controlling the entity's activities and to prepare reliable financial reports.

13. Accordingly, an information system encompasses methods and records that—

    - Identify and record all valid transactions.
    - Describe on a timely basis the transactions in sufficient detail to permit proper classification of transactions for financial reporting.

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- Measure the value of transactions in a manner that permits recording their proper monetary value in the financial statements.
- Determine the time period in which transactions occurred to permit recording of transactions in the proper accounting period.
- Present properly the transactions and related disclosures in the financial statements.

14. Communication involves providing an understanding of individual roles and responsibilities pertaining to internal control over financial reporting. It includes the extent to which personnel understand how their activities in the financial reporting information system relate to the work of others and the means of reporting exceptions to an appropriate higher level within the entity. Open communication channels help ensure that exceptions are reported and acted on.

15. Communication takes such forms as policy manuals, accounting and financial reporting manuals, and memoranda. Communication also can be made electronically, orally, and through the actions of management.

Application to Small and Midsized Entities

16. Information systems in small or midsized organizations are likely to be less formal than in larger organizations, but their role is just as significant. Smaller entities with active management involvement may not need extensive descriptions of accounting procedures, sophisticated accounting records, or written policies. Communication may be less formal and easier to achieve in a small or midsized company than in a larger enterprise due to the smaller organization's size and fewer levels as well as management's greater visibility and availability.

Monitoring

17. Monitoring is a process that assesses the quality of internal control performance over time. It involves assessing the design and operation of controls on a timely basis and taking necessary corrective actions. This process is accomplished through ongoing monitoring activities, separate evaluations, or a combination of the two.

18. Ongoing monitoring activities are built into the normal recurring activities of an entity and include regular management and supervisory activities. Managers of sales, purchasing, and production at divisional and corporate levels are in touch with operations and may question reports that differ significantly from their knowledge of operations.

19. In many entities, internal auditors or personnel performing similar functions contribute to the monitoring of an entity's activities through separate evaluations. They regularly provide information about the functioning of internal control, focusing considerable attention on evaluating the design and operation of internal control. They communicate information about strengths and weaknesses and recommendations for improving internal control.

20. Monitoring activities may include using information from communications from external parties. Customers implicitly corroborate billing data by paying their invoices or complaining about their charges. In addition, regulators may communicate with the entity concerning matters that affect the functioning of internal control, for example, communications concerning examinations by bank regulatory agencies. Also, management may consider communications relating to internal control from external auditors in performing monitoring activities.

Application to Small and Midsized Entities

21. Ongoing monitoring activities of small and midsized entities are more likely to be informal and are typically performed as a part of the overall management of the entity's operations. Management's close involvement in operations often will identify significant variances from expectations and inaccuracies in financial data.

[The next page is 381.]

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Exhibit 57

APPENDIX B-1

SAMPLE INDEPENDENT CONTRACTOR LANGUAGE

A CONSULTANT IS AN INDEPENDENT CONTRACTOR

A. The selected consultant shall perform the services outlined in the contract as an independent contractor and will not be an agent or employee of the City. The consultant shall not represent or otherwise hold out itself or any of its subcontractors, sub-subcontractors, directors, officers, partners, employees, or agents to be an agent or employee of the City. The selected consultant agrees to defend, indemnify, protect and hold the City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to consultant's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the consultant, and its agents, officers, or employees, in performing the work or services herein, and all expenses of investigating and defending against same; provided, however, that consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

B. The selected consultant shall expressly warrant that the work is based upon its expertise and shall be done in accordance with good (audit, professional, etc.) practices. Where approval by the City, or representatives of the City is indicated, it is understood to be conceptual approval only and does not relieve the consultant of responsibility for complying with all laws, codes and good (audit, professional, etc.) practices. Any provisions of this agreement that may appear to give the City the right to direct the consultant as to the details of doing the work or to exercise a measure of control over the work, means that the consultant shall follow the direction of the City as to end results of the work only.

APPENDIX F

SAMPLE AUDIT CLAUSE CONTRACT LANGUAGE

AUDIT AND INSPECTION OF RECORDS

At any time during normal business hours and as often as the City deems necessary, Contractor shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this agreement and Contractor will permit City to audit, examine, and make excerpts or transcripts from such data and records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this agreement. Contractor shall maintain such data and records for a period of not less than three years following receipt of final payment under this agreement unless City agrees in writing to an earlier disposition. If Contractor does not make all records available in City/County of San Diego, then Contractor shall pay all the City's travel related costs to audit the records associated with this agreement at the location where the records are maintained.

Exhibit 58

SAN DIEGO CITY ATTORNEY'S OFFICE

BILLING GUIDELINES FOR OUTSIDE COUNSEL

Introduction

These guidelines describe your responsibilities as a lawyer or law firm retained by the City of San Diego. Every effort has been made to be clear and reasonable, so that you can provide excellent legal services for the lowest possible cost to the taxpayers.

Each invoice you submit will be reviewed by the City's representative with these guidelines in mind. We expect your compliance and invite any questions or comments you may have about these new processes. We look forward to a closer and more productive relationship, based on this foundation.

Billing Format

Each invoice shall list the billing and expenses separately.

Each bill shall include an invoice showing the amount of services rendered during the billing period, the fee for such services and the amount of reimbursable expenses. The invoice shall be accompanied by a separate invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work and itemized reimbursable expenses. The invoice support statement shall be marked "Confidential -- Attorney-Client Privilege." The invoice may be subject to disclosure pursuant to the California Public Records Act."

The billing entries on the support statement must be complete, discrete, and appropriate.

Invoice Support Statement: Complete

- The statement should first identify the matter or the person represented, with all billing and expenses incurred as to that matter or representation following.
- Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.
- The date the work was performed must be included
- Travel related fees and costs must be itemized
- The hours should be billed in .10 hour increments
- The specific task performed should be described, and the related work product should be referenced ("telephone call re: trial brief," "interview in preparation for deposition").
- The biller's professional capacity (partner, associate, paralegal, etc.) should be included

- All expenses charged to the City should be accompanied by a receipt or invoice.

Discrete

Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

Appropriate

- The City does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the City will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
- Neither will the City pay for outside expenses such as delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail, unless prior approval is given in writing.
- Due to the nature of the City's payment process, the City will not pay any late charges. Every effort will be made to pay bills promptly.

Staffing

Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is a City decision, and the City's representative may review staffing to insure that it is optimal to achieve the goals of the engagement at the least cost.

Paralegals are to be used to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered associate work should be considered for assignment to a paralegal.

Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the firm. The City will not pay the costs of bringing a new attorney up to speed.

If more than one attorney is going to perform the same task, prior approval from the City must be had. This includes document review.

Written Memoranda

If legal research results in a written memorandum, whether formal or informal, a hard copy **and** a digital copy should be forwarded to the City.

Internal Conferencing

Regardless of how many people from your firm attend a meeting, only one may bill the time.

Travel

Mileage will be reimbursed at the current IRS rate.

Air travel will be reimbursed at coach or lower rate.

Overnight accommodations shall not exceed $110/night without prior approval.

Meals while traveling must be reasonably priced.

Travel fees must be itemized as to place of travel and reason, and costs must be supported by receipts and/or invoices.

Hourly Rates

Hourly rates may not be increased without the written approval of the City.

Out-of-Pocket Disbursements

The City agrees to reimburse the Firm, in accordance with the procedures set out here, for telephone, facsimile, mail, messengers, federal express deliveries, and similar out-of-pocket expenses charged by the Firm as a standard practice to its clients. In any billing for disbursements, the Firm shall provide the City with a statement breaking down the amounts by category of expense.

The following items will not be reimbursed, unless the City has specifically agreed to accept the following expenses:

(1) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.

(2) Storage of open or closed files, rent, electricity, air conditioning, local telephone, postage, receipt or local transmission of facsimile documents, rental of equipment including computers, meals served at meetings, or any other items traditionally associated with overhead.

(3) Litigation support or any other service in excess of the amount actually expended by the Firm for such service. The City will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.

(4) In-house photocopy charges in excess of $.10 (ten cents) per page. **The number of pages copied must be stated on the invoice.**

(5) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.

(6) Overtime compensation. Where case requirements demand overtime, the City will consider reimbursement on a case-by-case basis. The City will not reimburse overtime incurred for the convenience of the Firm where the deadline was known in advance.

(7) Equipment, books, periodicals, research materials, online research, Westlaw/Lexis or like items.

(8) Express charges, overnight mail charges, messenger services or the like, without the City's prior consent. The City expects these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, the City will consider reimbursement on a case-by-case basis.

(9) Air travel fares in excess of economy or coach class fares; lodging, meals, and ground transportation expenses in excess of $250 per day.

(10) Videotaping of depositions, investigative services, and computer litigation support services unless the City gives prior written approval.

Records

The individual disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the City in support of bills rendered by the Firm.

Invoices

The Firm agrees to forward to the City a statement of account for each one month (or, if requested by the City, two-week) period of services under this Agreement, and the City agrees to compensate the Firm on this basis.

The Firm will submit monthly invoices to the City Attorneys' Office to the hiring deputy and/or to the attention of Chief Deputy City Attorney Maria (Mia) Severson by the 15th of each month for services rendered the previous month. Invoices shall include a distinct identification number. Both the amount invoiced for the billing period and the total amount then owed (the balance forward) shall be set forth. Invoices shall provide detailed billing information including, but not limited to, a detailed description of the service rendered, date of service, attorney time devoted to service, attorney name, billing rate, and total amount billed for each service. Invoices will also include a breakdown of all Disbursements by category of expense. A receipt or vendor invoice for each expense must accompany the invoice to qualify for reimbursement by the City. The parties agree that if the City questions any item on an invoice, the Firm will provide all supporting information to substantiate the billing and will make any appropriate adjustments.

Media Inquiries

Media inquiries should be immediately communicated to the Office of the City Attorney.

Exhibit 59

Kroll
The Risk Consulting Company

660 South Figueroa Street
9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

RECEIVED
APR 11 2005
City Manager

March 30, 2005

Matter No. 0005948-0002
Invoice No. 1310719

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From February 1, 2005 through February 28, 2005 (Troy Dahlberg)

RE Financial Review & Evaluation
Internal Controls Assessment

For Professional Services Rendered	$ 71,417.50
Out-of-Pocket Disbursements	2,617.91
Total Due:	$ 74,035.41

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310719

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
David M. Cogan	19.75	$350.00	$6,912.50
Laurie E. Capen	3	$175.00	$525.00
Lynn Turner	25	$750.00	$18,750.00
Troy Dahlberg	55.5	$450.00	$24,975.00
Jennifer Arnini	48.5	$300.00	$14,550.00
Regina Israel	3	$85.00	$255.00
Rachel Laybourn	9	$250.00	$2,250.00
David Callaghan	8	$400.00	$3,200.00
Total	171.75		$71,417.50

Detail of Out-of-Pocket Expenses

T&E - Air Transportation	$734.40
T&E - Ground Transportation	$50.00
T& E - Meals	$140.74
T&E - Mileage Reimbursement	$50.63
T&E - Travel & Lodging	$1,248.93
Telephone	$5.30
Reproduction Expense	$145.65
Office Supplies	$242.26
Total	$2,617.91

Kroll
The Risk Consulting Company

660 South Figueroa Street
9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

APR 0 8 2005

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310721

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005 (Troy Dahlberg)

RE Research Pension Board Nominees.

For Professional Services Rendered	$ 104,608.75
Out-of-Pocket Disbursements	4,216.70
Total Due:	$ 108,825.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310721

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Marcia R. Berss	20.25	$285.00	$5,771.25
Gary W. Hoffman	0.50	$235.00	$117.50
Kenneth W. Mate	85.00	$315.00	$26,775.00
Arnold G. Contreras	25.00	$240.00	$6,000.00
David M. Cogan	2.00	$350.00	$700.00
Adrian Maher	90.00	$250.00	$22,500.00
Alexis Keefe	5.00	$200.00	$1,000.00
Brandon Sprague	40.50	$220.00	$8,910.00
Theo Gragg	48.50	$220.00	$10,670.00
Richard Lucia	3.00	$250.00	$750.00
Giles G. Miller	31.50	$260.00	$8,190.00
Erin L. Walker	0.50	$50.00	$25.00
Kim M. Christensen	44.00	$300.00	$13,200.00
	395.75		$104,608.75

Detail of Out-of-Pocket Expenses

T& E - Meals	$141.03
Off-Line Databases	$2,039.75
On-line Database	$560.00
On-line Database	$1,063.64
Postage & Courier	$14.28
Off-Line Databases	$370.00
Telephone	$14.00
Reproduction Expense	$14.00
TOTAL	$4,216.70

Original to Loc
4/15

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The Risk Consulting Company

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RECEIVED
APR 15 2005
City Manager

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310722

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005 (Troy Dahlberg)

RE Internal Investigation

For Professional Services Rendered	$ 135,100.00
Out-of-Pocket Disbursements	8,938.46
Total Due:	$ 144,038.46

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310722

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	42	$750.00	$31,500.00
Troy Dahlberg	79	$450.00	$35,550.00
Jennifer Arnini	92	$300.00	$27,600.00
Regina Israel	10	$85.00	$850.00
David Callaghan	99	$400.00	$39,600.00
Total	322		$135,100.00

Detail of Out-of-Pocket Expenses

Air Transportation	$1,280.60
Ground Transportation	$781.27
Hotel Charges	$4,319.49
Meals	$1,546.68
Misc	$53.67
Electronic Research	$956.75
Total	$8,938.46

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

RECEIVED
APR 20 2005
City Manager

April 18, 2005

Matter No. 0005948-0002
Invoice No. 1310781

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 16, 2005 through March 31, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 123,650.00
Out-of-Pocket Disbursements	6,052.37
Total Due:	$ 129,702.37

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310781

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	1	$750.00	$750.00
Roger Siefert	4	$615.00	$2,460.00
Troy Dahlberg	67.5	$450.00	$30,375.00
Jennifer Arnini	87	$300.00	$26,100.00
Regina Israel	9	$85.00	$765.00
David Callaghan	102	$400.00	$40,800.00
Jenny Dominguez	64	$350.00	$22,400.00
Total	334.5		$123,650.00

Detail of Out-of-Pocket Expenses

Air Transportation	$0.00
Ground Transportation	$563.32
Hotel Charges	$3,079.93
Meals	$1,269.42
Misc	$905.62
Electronic Research	$234.08
Total	$6,052.37

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

RECEIVED
MAY 2 2005
City Manager

April 27, 2005

Matter No. 0005948-0002
Invoice No. 1310787

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From April 1, 2005 through April 15, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 135,405.00
Out-of-Pocket Disbursements	8,789.17
Total Due:	$ 144,194.17

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310787

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	4.5	$900.00	$4,050.00
Lynn Turner	9.5	$750.00	$7,125.00
Troy Dahlberg	73.5	$450.00	$33,075.00
Jennifer Arnini	97.5	$300.00	$29,250.00
Regina Israel	6	$85.00	$510.00
David Callaghan	31	$400.00	$12,400.00
Jenny Dominguez	99.5	$350.00	$34,825.00
Rachel Laybourn	48.7	$250.00	$12,175.00
Justin Bird	10.5	$190.00	$1,995.00
Total	380.7		$135,405.00

Detail of Out-of-Pocket Expenses

Air Transportation	$215.20
Ground Transportation	$736.26
Hotel Charges	$4,496.10
Meals	$2,711.80
Misc	$629.81
Electronic Research	$0.00
Total	$8,789.17

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

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RECEIVED
MAY 1 1 2005
City Manager

May 9, 2005

Matter No. 0005948-0002
Invoice No. 1310822

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From April 15, 2005 through April 30, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 160,005.00
Out-of-Pocket Disbursements	33,880.16
Total Due:	$ 193,885.16

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310822

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	4	$900.00	$3,600.00
Lynn Turner	19.5	$750.00	$14,625.00
Troy Dahlberg	82.5	$450.00	$37,125.00
Jennifer Arnini	92	$300.00	$27,600.00
Regina Israel	8	$85.00	$680.00
David Callaghan	62	$400.00	$24,800.00
Jenny Dominguez	92	$350.00	$32,200.00
Rachel Laybourn	77.5	$250.00	$19,375.00
Total	437.5		$160,005.00

Detail of Out-of-Pocket Expenses

Air Transportation	$5,485.79
Ground Transportation	$2,538.06
Hotel Charges	$16,451.48
Meals	$6,840.11
Misc	$2,077.79
Electronic Research	$486.93
Total	$33,880.16

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

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RECEIVED
MAY 23
City Manager

May 20, 2005

Matter No. 0005948-0002
Invoice No. 1310854

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 1, 2005 through May 15, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 198,525.00
Out-of-Pocket Disbursements	16,632.22
Total Due:	$ 215,157.22

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310854

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	25.5	$900.00	$22,950.00
Lynn Turner	28.5	$750.00	$21,375.00
Troy Dahlberg	71.5	$450.00	$32,175.00
Jennifer Arnini	97.5	$300.00	$29,250.00
David Callaghan	73	$400.00	$29,200.00
Jenny Dominguez	93.5	$350.00	$32,725.00
Rachel Laybourn	110	$250.00	$27,500.00
David Cogan	4.5	$350.00	$1,575.00
Craig Resnick	3	$300.00	$900.00
Justin Bird	3.5	$250.00	$875.00
Total	510.5		$198,525.00

Detail of Out-of-Pocket Expenses

Air Transportation	$3,271.80
Ground Transportation	$1,644.81
Hotel Charges	$7,625.79
Meals	$3,373.10
Misc	$716.72
Electronic Research	$0.00
Total	$16,632.22

TO: Martin
6/6/05

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

JUN. 6 2005

June 3, 2005

Matter No. 0005948-0002
Invoice No. 1310863

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 16, 2005 through May 27, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 167,745.00
Out-of-Pocket Disbursements	29,966.53
Total Due:	$ 197,711.53

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310863

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	6	$750.00	$4,500.00
Arthur Levitt	6	$900.00	$5,400.00
Troy Dahlberg	70	$450.00	$31,500.00
Jennifer Arnini	34	$300.00	$10,200.00
Jeffrey Klein	71.7	$300.00	$21,510.00
David Callaghan	89	$400.00	$35,600.00
Jenny Dominguez	92	$350.00	$32,200.00
Rachel Laybourn	94.3	$250.00	$23,575.00
David Cogan	6.5	$350.00	$2,275.00
Arnold Contreras	2	$240.00	$480.00
Justin Bird	1	$250.00	$250.00
Regina Israel	3	$85.00	$255.00
Total	475.5		$167,745.00

Detail of Out-of-Pocket Expenses

Air Transportation	$6,681.60
Ground Transportation	$3,644.29
Hotel Charges	$14,656.10
Meals	$3,779.65
Misc	$1,204.89
Electronic Research	$0.00
Total	$29,966.53

Exhibit 60

WILLKIE FARR & GALLAGHER LLP

JUN 1 2005

BENITO ROMANO
212 728 8258
bromano@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

May 19, 2005

Mr. Lamont P. Ewell
City Manager
The City of San Diego
202 "C" Street, MS9A
San Diego, CA 92101

Dear Mr. Ewell:

Enclosed is our statement for professional services rendered through April 30, 2005 in connection with the City of San Diego Audit Committee investigation. Also enclosed is a detailed record of diary entries relating thereto. I hope you find them in order and arrange for payment.

Please call me with any questions you may have.

Sincerely Yours,

Benito Romano

BR:jlp
Enclosures

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005 as set forth in the attached client statement	$ 25,406.50
Total this Statement	$ 25,406.50

AUDIT COMMITTEE INVESTIGATION

Date	Timekeeper	Description	Hours		Amount
3/3/05	B R	TCW Jack Nusbaum re: San Diego project; meeting L B.	0.40	$	324.00
4/5/05	LMM	O/c with M. Young re possible representation of A. Levitt in his investigation of San Diego pension fund underfunding matters.	0.50		405.00
4/5/05	B R	Tcw M. Young; review various e-mails	0.40		324.00
4/6/05	B R	Review various e-mails from L. Turner; tcw Young; ocw Young. Review written material.	2.00		1,620.00
4/8/05	B R	Review documents received from L. Turner.	3.00		2,430.00
4/8/05	LMM	Read article and City Attorney Third Interim Report; begin preparing issues list, timeline, etc.	3.50		2,835.00
4/10/05	B R	Review engagement letter. Read materials.	2.20		1,782.00
4/11/05	T M	Conf B. Romano re: new case/assignment; review reports.	0.70		416.50
4/11/05	MBK	(San Diego) Conf. Romano re: case (.5). Review of Vinson & Elkins report (1.3).	1.80		1,170.00
4/12/05	T M	Review reports and correspondence.	1.50		892.50
4/13/05	MBK	(San Diego) Review of Vinson & Elkins report.	3.00		1,950.00
4/14/05	MBK	(San Diego) Review of KPMG corres.	0.80		520.00
4/15/05	T M	Review docs.	0.50		297.50
4/15/05	B R	Review engagement letter; tcw Young re: indemnity.	0.40		324.00
4/18/05	LMM	Email to M. Young re documents/due diligence and read news story re waiver attorney/client privilege.	0.10		81.00
4/18/05	B R	Redraft engagement letter to include indemnity. Tcw Klotz; review U&E materials.	4.00		3,240.00
4/19/05	MBK	(San Diego) Review of memo re: legal framework for investigation.	0.80		520.00
4/20/05	LMM	Begin reading Luce, Forward report 2/22/05.	0.50		405.00

Date	Timekeeper	Description	Hours	Amount
4/22/05	MRY	Matters as to recent developments and audit committee investigation.	1.30	1,053.00
4/23/05	MRY	Matters as to audit committee investigation and work needed to satisfy auditors.	0.40	324.00
4/26/05	LMM	Reviewing background materials.	3.50	2,835.00
4/28/05	LMM	Continue reading background materials.	1.50	1,215.00
4/29/05	MRY	Conference with Lynn Turner re upcoming trip to San Diego and issues to be addressed; related e-mail traffic; conference with Benito Romano re same; related activity; conference with KPMG.	0.40	324.00
4/30/05	T M	E-mail BR, review LT e-mail.	0.20	119.00

Timekeeper	Hours	Amount
KLOTZ, MARTIN	6.40	$ 4,160.00
MAZZA, LESLIE	9.60	7,776.00
MUNDIYA, TARIQ	2.90	1,725.50
ROMANO, BENITO	12.40	10,044.00
YOUNG, MICHAEL	2.10	1,701.00

Professional Fees $ 25,406.50

Total this Statement $ 25,406.50

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005	$ 25,406.50
Total this Statement	$ 25,406.50

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Exhibit 61

TO: Martin 6/27/05

JUN 27 2005

WILLKIE FARR & GALLAGHER LLP

MICHAEL R. YOUNG
212 728 8280
myoung@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 9280

June 22, 2005

original invoice w/ DP 4132295

Mr. P. Lamont Ewell
City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in May in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2906820.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005	$	226,634.50
Disbursements and Other Charges		6,090.56
Total this Statement	$	232,725.06

2901883.1

20505598-02
CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not paid
SIGNED: Linnie Dance
balance of 8,131.56

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: distillation of financial reporting issues into discrete areas based on preliminary review of materials relating to the City's pension fund and finances, including the various reports prepared by the City Attorney and Vinson & Elkins; working with Vinson & Elkins as to preparation of summary memoranda and binders as to each issue area; efforts directed to the board of the San Diego City Employees' Retirement System concerning waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preliminary research of municipal bankruptcy law and cases relating to the rejection under Chapter 9 of employee benefits, including pension obligations, and preparation of a list of issues that the City should consider in deciding whether to seek Chapter 9 protection; projects directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and complete production of relevant documents to those authorities and KPMG, such projects including review of the relevant subpoenas and records of the City's past compliance efforts, discussions with the SEC, U.S. Attorney's Office, and the City's outside counsel concerning the status of the City's production, and preparation of a memorandum to City employees and others concerning document

retention and production obligations; consideration of issues raised in fourth report of the City Attorney.	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

Exhibit 62

COUNCIL MEETING OF JUNE 14, 2005, ITEM NUMBER S500

In the matter of the Audit Committee's Status Report

MAYOR MURPHY:

WE'RE GOING TO GO TO ITEM S500, AN ACTION REGARDING THE MATTER OF THE AUDIT COMMITTEE STATUS REPORT. AND I WOULD CALL ON THE CITY MANAGER TO INTRODUCE THE ITEM.

CITY MANAGER EWELL:

THANK YOU, YOUR HONOR, MEMBERS OF THE COUNCIL.AS YOU KNOW, YOU HAVE HIRED OUTSIDE LEGAL COUNSEL VINSON AND ELKINS LAW FIRM OUT OF WASHINGTON, D.C. TO REPRESENT YOU IN TWO MATTERS. ONE, AS A CITY ENTITY REPRESENTING US AND COORDINATING WITH THE SEC. HOWEVER, THEY WERE ALSO RETAINED BY THE CITY TO DO ADDITIONAL INVESTIGATIVE WORK TO ASSIST WITH THE KPMG AUDIT.YOU ASKED AND DIRECTED ME TO INSURE THAT WE PROVIDE UPDATED REPORTS AND SO MR. MAYCO IS HERE TO BEGIN THE PRESENTATION BY GIVING YOU A STATUS REPORT IN PARTICULAR ON THE INVESTIGATIONS RELATED TO KPMG.

MR. MACO:

GOOD AFTERNOON YOUR HONOR, MEMBERS OF THE CITY COUNCIL. WE HAVE BEEN PROVIDING YOU WITH PERIODIC WRITTEN UPDATES ON THE PROGRESS OF OUR WORK SINCE LAST FALL. THIS AFTERNOON I AM PLEASED TO PROVIDE YOU WITH ANOTHER UPDATE. THIS TIME, A COMPREHENSIVE REPORT OF OUR PROGRESS, AND THIS TIME IN PERSON. YOU RECALL THAT OUR WORK BEGAN LAST FEBRUARY 12TH WHEN THE MAYOR AND THE FEBRUARY 12TH A YEAR AGO WHEN THE MAYOR AND THE CITY ATTORNEY ISSUED A PRESS RELEASE THAT STATED IN LIGHT OF THE QUESTIONS THAT HAD BEEN RAISED ABOUT THE CITY'S FINANCIAL STATEMENTS AND DISCLOSURES, THE CITY HAD RETAINED OUR SERVICES TO CONDUCT A COMPREHENSIVE REVIEW OF THE CITY'S PAST AND CURRENT DISCLOSURE PRACTICES. SOON AFTER THAT THE GOVERNMENT INQUIRIES BEGAN AND THE CITY ANNOUNCED ITS FULL COOPERATION WITH THE INVESTIGATIONS. AND WE WERE THEN ASKED TO REPRESENT THE CITY IN THE SEC INQUIRY. WE SIGNED A CONTRACT WITH YOU TO CARRY OUT THAT INQUIRY. IT SAID, WE WILL CONDUCT AN INTERNAL REVIEW OF CITY DISCLOSURE RELATING TO PENSION MATTERS AND ITS MUNICIPAL BOND OFFERINGS FROM 1996 TO THE PRESENT, AND PREPARE A REPORT WITH OBSERVATIONS, CONCLUSIONS, AND RECOMMENDATIONS. WE FILED OUR REPORT WITH YOU ON SEPTEMBER 16TH, 2004. AND AS CALLED FOR UNDER OUR CONTRACT, WE RECOMMENDED AN ORDINANCE WHICH

MR. LEVITT
THAT IS CORRECT.

COUNCILMEMBER YOUNG:
AND THAT REPORT AND THAT ASSESSMENT COULD TAKE MONTHS

MR. LEVITT:
OUR ESTIMATE IS IF THEY PUT OUT FOR AN RFP RIGHT AWAY, WE ARE TALKING ABOUT THREE OR FOUR MONTHS TO COMPLETE THE WORK OF THE ACTUARY BEING HIRED AND DOING HIS WORK.

COUNCILMEMBER YOUNG:
AND THERE WILL BE ANDTHERE IS ACTUALLY MORE WORK THAT HAS TO HAPPEN AFTER THAT, AFTER THAT REPORT IS COMPLETED. IS THERE A SUBSTANTIAL AMOUNT OF WORK THAT NEEDS TO HAPPEN AFTER THAT REPORT IS COMPLETED?

MR. LEVITT:
I WOULDN'T LOOK UPON THE ACTUARIAL EFFORT AS DELAYING US. I THINK THERE IS ENOUGH TO BE DONE DURING THAT PERIOD OF TIME FOR ME TO SAY THAT I'M VERY HOPEFUL THAT WE WILL BE COMPLETE AND OUT OF HERE BY THE END OF THE YEAR.

COUNCILMEMBER YOUNG:
OKAY. A FEW OTHER QUESTIONS.I KNOW WE HAVE SOME OTHER FOLKS THAT HAVE TO HAVE SOME QUESTIONS ALSO, BUT YOU REMEMBER YOU ARE ALSO SPEAKING TO SOME LAYMEN HERE AND ALSO MANY LAYMEN OUT IN THE AUDIENCE AND ON TV TODAY. SO COULD YOU JUST GIVE US A LAYMAN'S EXPLANATION OF WHAT NEEDS TO BE DONE FROM TODAY TO THE END OF THE AUDIT THE END OF OUR THIS WHOLE PROCESS

MR. LEVITT:
THE GOAL OF THIS EXERCISE IS TO PERSUADE KPMG THAT AN INDEPENDENT AUDIT COMMITTEE HAS EXAMINED ALL OF THE ASSUMPTIONS UNDERLYING THE FINANCIALS OF THE COMMUNITY, UNDERLYING THE PROBLEMS THAT HAVE BEEN HIGHLIGHTED IN THE OCCASION FOR SEPARATE INVESTIGATIONS BY TWO GOVERNMENT AGENCIES, ADDRESS THOSE ISSUES, REMEDIATE THOSE ISSUES IN TERMS OF BRINGING ABOUT

Exhibit 63

COUNCIL MEETING OF JUNE 14, 2005, ITEM NUMBER S500

In the matter of the Audit Committee's Status Report

MAYOR MURPHY:

WE'RE GOING TO GO TO ITEM S500, AN ACTION REGARDING THE MATTER OF THE AUDIT COMMITTEE STATUS REPORT. AND I WOULD CALL ON THE CITY MANAGER TO INTRODUCE THE ITEM.

CITY MANAGER EWELL:

THANK YOU, YOUR HONOR, MEMBERS OF THE COUNCIL.AS YOU KNOW, YOU HAVE HIRED OUTSIDE LEGAL COUNSEL VINSON AND ELKINS LAW FIRM OUT OF WASHINGTON, D.C. TO REPRESENT YOU IN TWO MATTERS. ONE, AS A CITY ENTITY REPRESENTING US AND COORDINATING WITH THE SEC. HOWEVER, THEY WERE ALSO RETAINED BY THE CITY TO DO ADDITIONAL INVESTIGATIVE WORK TO ASSIST WITH THE KPMG AUDIT.YOU ASKED AND DIRECTED ME TO INSURE THAT WE PROVIDE UPDATED REPORTS AND SO MR. MAYCO IS HERE TO BEGIN THE PRESENTATION BY GIVING YOU A STATUS REPORT IN PARTICULAR ON THE INVESTIGATIONS RELATED TO KPMG.

MR. MACO:

GOOD AFTERNOON YOUR HONOR, MEMBERS OF THE CITY COUNCIL. WE HAVE BEEN PROVIDING YOU WITH PERIODIC WRITTEN UPDATES ON THE PROGRESS OF OUR WORK SINCE LAST FALL. THIS AFTERNOON I AM PLEASED TO PROVIDE YOU WITH ANOTHER UPDATE. THIS TIME, A COMPREHENSIVE REPORT OF OUR PROGRESS, AND THIS TIME IN PERSON. YOU RECALL THAT OUR WORK BEGAN LAST FEBRUARY 12TH WHEN THE MAYOR AND THE FEBRUARY 12TH A YEAR AGO WHEN THE MAYOR AND THE CITY ATTORNEY ISSUED A PRESS RELEASE THAT STATED IN LIGHT OF THE QUESTIONS THAT HAD BEEN RAISED ABOUT THE CITY'S FINANCIAL STATEMENTS AND DISCLOSURES, THE CITY HAD RETAINED OUR SERVICES TO CONDUCT A COMPREHENSIVE REVIEW OF THE CITY'S PAST AND CURRENT DISCLOSURE PRACTICES. SOON AFTER THAT THE GOVERNMENT INQUIRIES BEGAN AND THE CITY ANNOUNCED ITS FULL COOPERATION WITH THE INVESTIGATIONS. AND WE WERE THEN ASKED TO REPRESENT THE CITY IN THE SEC INQUIRY. WE SIGNED A CONTRACT WITH YOU TO CARRY OUT THAT INQUIRY. IT SAID, WE WILL CONDUCT AN INTERNAL REVIEW OF CITY DISCLOSURE RELATING TO PENSION MATTERS AND ITS MUNICIPAL BOND OFFERINGS FROM 1996 TO THE PRESENT, AND PREPARE A REPORT WITH OBSERVATIONS, CONCLUSIONS, AND RECOMMENDATIONS. WE FILED OUR REPORT WITH YOU ON SEPTEMBER 16TH, 2004. AND AS CALLED FOR UNDER OUR CONTRACT, WE RECOMMENDED AN ORDINANCE WHICH

THAT. THE OTHER CONCERN I HAVE ABOUT KPMG IS I THINK THEY NEED TO COME AND BE A PART OF SOME KIND OF REPORTING AT SOME POINT SO WE CAN HEAR DIRECTLY FROM THEM. I DON'T QUITE UNDERSTAND WHY IF THEY ARE OUR AUDITORS THEY CAN'T COME AND REPORT TO US DIRECTLY SO THAT WE CAN UNDERSTAND EXACTLY WHERE THEY ARE. I DON'T KNOW OF ANY AUDIT PROCEDURE THAT PROHIBITS AN AUDITOR FROM REPORTING TO THE COUNCIL AND THEN WE COULD ASK THEM QUESTIONS. AND I'M NOT SUGGESTING THAT WE INTERFERE WITH ANY OF YOUR DIRECTIVES TO THEM. BUT I DO THINK THAT IT WOULD BE A USEFUL EXERCISE.

MR. LEVITT:
I SEE NO REASON WHY WE CAN'T GIVE YOU A REPORT, A WRITTEN REPORT ON OUR PLAN OF ACTION WITH THE UNDERSTANDING, OF COURSE, THAT THERE ARE MOVING PARTS TO IT. BUT I THINK THAT CLEARLY WE CAN DO THAT AS TO THE ABILITY TO ASK KPMG TO MEET WITH YOU. I SIMPLY....

CITY ATTORNEY MIKE AGUIRRE:
I THINK WHAT YOU HAVE DONE, MR. LEVITT, IN TERMS OF THE COMMENTS THAT YOU HAVE MADE AND THE EFFORTS THAT YOU HAVE MADE WITH REGARD TO THE WAIVER OF
THE ATTORNEY CLIENT PRIVILEGE HAS BEEN VERY VERY USEFUL, VERY HELPFUL. I THINK THE WORK THAT YOU HAVE DONE ON THE ACTUARY HAS BEEN VERY VERY HELPFUL AND VERY VERY USEFUL IN MOVING THINGS FORWARD. AND SO I DON'T WANT TO HAVE YOU MISINTERPRET. BUT I DO THINK THAT THE COUNCIL ARE SUPPOSED TO BE PRUDENT MANAGERS OF PUBLIC FUNDS. $800,000 A MONTH IS AN ENORMOUS AMOUNT OF MONEY TO SPEND IN VIEW OF THE KIND OF HARD TRADEOFFS THAT THEY HAVE HAD TO MAKE WITH REGARD TO BUDGET PRIORITIES. AND I THINK THAT AT THIS POINT, GIVEN THE LACK OF COMMUNICATION THAT TOOK PLACE BETWEEN V AND E AND KPMG THAT WE OUGHT TO HAVE SOME SORT OF AGREED UPON WORK PLAN SO THAT WE CAN SEE HOW THIS IS ALL GOING TO COME TOGETHER. MAYBE WE ALL INCLUDING THE CITY ATTORNEYS OFFICE CAN WORK TO HELP PUT THAT TOGETHER WITH YOU.

COUNCILMEMBER YOUNG:
I WOULD BE SUPPORTIVE OF SOMETHING LIKE THAT. THAT WOULD BE VERY HELPFUL IN . REGARDS TO HAVING
[MULTIPLE VOICES]

MR. LEVITT:

Exhibit 64

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

June 24, 2005

Matter No. 0005948-0002
Invoice No. 1310917

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 28, 2005 through June 10, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered	$ 162,197.00
Out-of-Pocket Disbursements	31,997.05
Total Due:	$ 194,194.05

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310917

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	9.5	$750.00	$7,125.00
Arthur Levitt	6.48	$900.00	$5,832.00
Troy Dahlberg	68.5	$450.00	$30,825.00
Jennifer Amini	84.5	$300.00	$25,350.00
Jeffrey Klein	15.9	$300.00	$4,770.00
David Callaghan	91	$400.00	$36,400.00
Jenny Dominguez	74	$350.00	$25,900.00
Rachel Laybourn	87.7	$250.00	$21,925.00
David Cogan	4.5	$350.00	$1,575.00
Arnold Contreras	1	$240.00	$240.00
John Seeley Jr.	10	$200.00	$2,000.00
Regina Israel	3	$85.00	$255.00
Total	456.08		$162,197.00

Detail of Out-of-Pocket Expenses

Air Transportation	$6,382.60
Ground Transportation	$3,745.57
Hotel Charges	$14,987.66
Meals	$5,495.49
Misc	$1,060.71
Electronic Research	$325.02
Total	$31,997.05

Exhibit 65

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20506722
Client/Matter No. 115662.00001
July 15, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2005	$ 329,304.50
Disbursements and Other Charges	18,125.00
Total this Statement	$ 347,429.50

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: [illegible]

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Original to Martin
7/26

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

JUL 25 2005

July 18, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in June in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2934943.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20506722
Client/Matter No. 115662.00001
July 15, 2005

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: working with Vinson & Elkins as to preparation of summary memoranda and binders on reporting issue areas previously identified and reviewing completed Vinson & Elkins materials; efforts directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and KPMG, including drafting and distributing a memorandum and certification to all City employees concerning document retention and production, establishing procedures for review of completed certifications from employees, working with various City officials to establish an orderly and efficient process to ensure complete compliance with document production obligations, discussing with law enforcement authorities the scope of their document requests, and considering and answering questions and concerns of City employees concerning the scope of and compliance with document production obligations; projects concerning the board of the San Diego City Employees' Retirement System, including efforts directed toward waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities, such as appearing before the board to explain in public testimony the reasons supporting a waiver and the consequences

of failing to waive the privilege, and retention by the board of a new independent actuary; consideration of options in the event of a failure by the SDCERS board to waive the attorney-client privilege, including legal research on receivership and the authority of various City officials to remove members of the board; legal research on California's Brown Act and consideration of the implications of the law on efforts directed toward the SDCERS board; continued research of municipal bankruptcy law and cases related to the rejection under Chapter 9 of employee benefits, and further revision of list of issues that the City should consider in deciding whether to seek Chapter 9 protection; review and consideration of issues raised in fifth and sixth reports of the City Attorney.	$ 329,304.50
Disbursements and Other Charges	18,125.00
Total this Statement	$ 347,429.50

Exhibit 66

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

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ITEM-205: Second Amendment to Agreement with Kroll, Inc., for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and First Amendment to Agreement with Willkie, Farr & Gallagher, to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters18

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

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-2005-) 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-2005-) 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).

Exhibit 67

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

June 29, 2005

Matter No. 0005948-0002
Invoice No. 1310933

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From June 13, 2005 through June 24, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered	$ 207,732.50
Out-of-Pocket Disbursements	28,548.95
Total Due:	$ 236,281.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310933

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	21	$750.00	$15,750.00
Arthur Levitt	33.85	$900.00	$30,465.00
Troy Dahlberg	33	$450.00	$14,850.00
Jennifer Amini	86.5	$300.00	$25,950.00
Jeffrey Klein	105	$300.00	$31,500.00
David Callaghan	79	$400.00	$31,600.00
Jenny Dominguez	67.5	$350.00	$23,625.00
Rachel Laybourn	110.7	$250.00	$27,675.00
David Cogan	3	$350.00	$1,050.00
Lisa Han	2	$300.00	$600.00
Lisa Jordan	14	$300.00	$4,200.00
Regina Israel	5.5	$85.00	$467.50
Total	561.05		$207,732.50

Detail of Out-of-Pocket Expenses

Air Transportation	$8,912.30
Ground Transportation	$2,256.91
Hotel Charges	$11,763.11
Meals	$2,999.44
Misc	$2,463.19
Electronic Research	$154.00
Total	$28,548.95

Exhibit 68

Progress Reports from Kroll (Audit Committee), Willkie Farr, Vinson & Elkins, and KPMG, regarding the Audit and Financial Investigation of the City of San Diego's Pension Systems and Disclosure Practices.

ATKINS:
ITEMS THAT MANY PEOPLE ARE HERE TO DISCUSS TODAY, STARTING WITH ITEM 330. WE HAVE A COLLECTION OF ITEMS, 330, 331 AND 332. AND I WITH LIKE TO SUGGEST THAT WE HAVE THE CITY MANAGER OPEN THE ITEM. WE HEAR THE REPORTS FROM THE CONSULTANTS IN ORDER OF, AS I UNDERSTAND IT, VINSON AND ELKINS, THE AUDIT COMMITTEE, AND THEN KPMG AND THEN I WOULD LIKE TO GO TO OUR CITY ATTORNEY AND THEN PROCEED THROUGH THE COUNCIL COMMENTS AND QUESTIONS AFTER, OF COURSE, WE HAVE HEARD THE SPEAKERS. SO, IF WE CAN DO IT IN THAT ORDER. MR. EWELL, WILL YOU SET US UP ON THE FIRST ITEM?

EWELL:
I WOULD BE MORE THAN HAPPY TO, YOUR HONOR. YOUR HONOR, AS YOU KNOW, IN JUNE AT YOUR JUNE MEETING, YOU DIRECTED THAT I INVITE MEMBERS OF VINSON AND ELKINS LAW FIRM, THE AUDIT COMMITTEE AND REPRESENTATIVES OF KPMG TO COME BEFORE YOU AND PROVIDE STATUS REPORTS WITH RESPECT TO WHERE WE ARE WITH THE INVESTIGATION AND THE AUDITS. YOU HAVE IN YOUR PACKAGES STATUS REPORTS THAT EACH OF THEM HAVE SUBMITTED. AND AS YOU STATED, YOUR HONOR, WE WITH ASK THAT VINSON AND ELKINS PROVIDE THE FIRST UPDATE FOLLOWED BY THE AUDIT COMMITTEE. THEN IT WOULD BE PRECEDED BY KPMG.

MACO:
GOOD AFTERNOON, DEPUTY MAYOR ATKINS AND MEMBERS OF THE CITY COUNCIL. MY COLLEAGUE, RICK SAUER AND I ARE PLEASED TO PROVIDE YOU WITH THIS UPDATE ON OUR WORK UNDER OUR AGREEMENT OF OCTOBER 15TH, 2004. THAT AGREEMENT PROVIDES THAT WE WILL CONDUCT THE INVESTIGATION SUBSTANTIALLY ALONG THE LINES OF A PROGRAM FOR INQUIRY ADDRESSING CERTAIN MATTERS OF

CITY IS SUBSTANTIALLY COMPLETE. WE BELIEVE THIS IS AN OPPORTUNE TIME TO RECOMMEND TO THE CITY AS BEING IN THE CITY'S BEST INTEREST THAT IT SELECT NEW COUNSEL TO REPRESENT THE CITY BEFORE THE SEC. WE WOULD BE GLAD TO ASSIST THE CITY IN IDENTIFYING SUCH COUNSEL. WE ARE ALSO GLAD TO CONTINUE OUR SEC REPRESENTATION UNTIL NEW COUNSEL IS SELECTED AND TO PROVIDE FOR SMOOTH TRANSITION. WE ARE HONORED TO HAVE SERVED THE CITY IN THESE MOST IMPORTANT MATTERS AND THANK YOU FOR ALLOWING US THAT PRIVILEGE.

ATKINS:
THANK YOU, MR. MACO. MR. EWELL, DO YOU WANT TO INTRODUCE THE NEXT SPEAKER?

EWELL:
YES, YOU'RE HONOR. MEMBERS OF THE COUNCIL. I WILL LIKE TO INTRODUCE YOUR AUDIT COMMITTEE AND I THINK MR. LEVITT IS GOING TO FIRST ADDRESS YOU, IF IM NOT MISTAKEN.

LEVITT:
MADAM MAYOR, MEMBERS OF THE CITY COUNCIL, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO APPEAR BEFORE YOU AND REPORT ON OUR COMMITTEES PROGRESS. WE COME TOGETHER THIS AFTERNOON UNDER EXCEEDINGLY DIFFICULT AND TRYING CIRCUMSTANCES. FROM THE RECENT DOWNGRADING OF THE RATING OF THE CITY'S BONDS TO THE ONGOING INVESTIGATIONS OF VARIOUS CITY OFFICIALS. THE FISCAL AND POLITICAL CRISIS FACING SAN DIEGO HAS ONLY DEEPENED. AMERICA'S FINEST CITY HAS BEEN TARNISHED BEYOND ALMOST ALL RECOGNITION. REALIZING THE EXTENT OF THE PROBLEMS FACING SAN DIEGO AND THE NECESSITY FOR INDEPENDENT ASSESSMENT OF ITS FINANCES, THE CITY'S OUTSIDE AUDITORS KPMG SUGGESTED THAT THIS BODY ESTABLISH AN INDEPENDENT AUDIT COMMITTEE IN THE MODEL OF THOSE REQUIRED BY PUBLIC COMPANIES UNDER THE SARBANES OXLEY ACT. IN ESTABLISHING THE AUDIT COMMITTEE, THE CITY COUNCIL WISELY RECOGNIZED THE IMPORTANT ROLE THAT QUALIFIED, COMMITTED, INDEPENDENT AND TOUGH MINDED AUDIT COMMITTEES PLAY AS GUARDIANS

OF THE PUBLIC INTEREST. YOU MADE OUR MISSION CRYSTAL CLEAR. TO ACT AS A FREESTANDING COMMITTEE, SEPARATE AND APART FROM THE BODY POLITIC, TO REVIEW THE INVESTIGATIVE ACTIVITY UNDERWAY, TO TAKE THE STEPS NECESSARY TO CORRECT THE CITY'S FINANCIAL DISCLOSURES AND PROVIDE A REMEDIATION PLAN TO PREVENT THE DEFICIENCIES FROM RECURRING. AND TO OTHERWISE SATISFY THE CITY'S AUDITORS. SO SAN DIEGO MAY THEN ISSUE CREDIBLE AND TRANSPARENT FINANCIAL STATEMENTS. THIS PAST WEEK, THE SEC CONFIRMED THE WISDOM OF THIS APPROACH AND REGAINING ACCESS TO THE SOURCES OF PUBLIC SOURCES NEEDED TO RESTORE THE CITY'S FINANCIAL VIABILITY AND THE VIABILITY IN PARTICULAR OF ITS PENSION SYSTEM. YET, IN THE MONTHS SINCE THESE DEVELOPMENTS, WE ARE AT A LOG JAM, BATTLES OVER POLITICAL TURF, OVERWHELM THE PUBLIC INTEREST. OPENNESS IN THE PURSUIT OF A CREDIBLE, EFFECTIVE INVESTIGATION IS BEING FRUSTRATED AND UNDERMINED BY LEGAL MANEUVERINGS AND POLITICAL SHOW MAN SHIP. SOME MAY SAY THAT THE ISSUES FACING SAN DIEGO ARE TOO COMPLEX SIMPLY TO BE PAINTED AS A CHOICE BETWEEN RIGHT AND WRONG. MY COLLEAGUES AND I ON THE AUDIT COMMITTEE DISAGREE WITH THAT JUDGMENT. THE CHOICE COULDN'T BE CLEARER. BEFORE YOU TODAY IS THE CHOICE EITHER TO REJECT THE POLITICS, THE PERSONAL AVARICE AND MISGUIDED POLICIES THAT HAVE PUT SAN DIEGO IN THE POSITION IT FINDS ITSELF IN. OR TO EXCUSE THEM, GRANT THEM A PASS TO CAUSE FURTHER DISARRAY, DIVISION, AND DISTRUST. IT IS A CHOICE BETWEEN PERSONAL GRUDGES AND THE COMMUNITY'S WELLBEING. BETWEEN ARGUING ABOUT THE PAST AND FINDING SOLUTIONS FOR THE FUTURE. BETWEEN THE CYNICISM, SKEPTICISM, AND HOPE. MY TESTIMONY TODAY I WILL REVIEW HOW WE ARRIVED AT THIS CHOICE. THE WORK THE AUDIT COMMITTEE HAS DONE, THE ROADBLOCKS WE HAVE ENCOUNTERED AND HOW ALL OF YOU CAN HELP US OVERCOME THEM. OVER THE PAST FIVE MONTHS SINCE YOU ESTABLISHED AN INDEPENDENT AUDIT COMMITTEE, WE HAVE MADE SOME SIGNIFICANT PROGRESS. FIRST WE HAVE ENGAGED IN EXTENSIVE DIALOGUE WITH THE CITY'S INVESTIGATORS AND VINSON AND ELKINS AND EVALUATED THE EXTENT OF ADDITIONAL WORK NECESSARY SO THAT THE

INVESTIGATION MAY BE BROUGHT TO A CONCLUSION. SECOND, WE HAVE MET WITH THE CITY'S OUTSIDE AUDITORS OF KPMG, DISCUSSED WITH THEM AT GREAT LENGTH THE INVESTIGATIVE MATERIAL AND ARE IN THE PROCESS OF IMPLEMENTING AN AGREED UPON PLAN WHICH, AT ITS CONCLUSION, WOULD ALLOW KPMG TO ISSUE AN AUDIT REPORT ON THE CITY'S FINANCIAL STATEMENTS. THIRD, WE HAVE BEGUN THE WORK ON REMEDIATION EFFORTS, INCLUDING THE REMOVAL OF THE CITY RETIREMENT SYSTEMS ACTUARY AND WORKING WITH A NEW CITY AUDITOR AND CONTROLLER WHO IS APPROPRIATELY IMPROVING INTERNAL CONTROLS. FOURTH, WE HAVE ORGANIZED AND ARE OVERSEEING THE PRODUCTION OF DOCUMENTS AT BOTH THE U.S. ATTORNEY AND SEC SUBPOENA MORE THAN A YEAR AGO. FIFTH, OVER THE COURSE OF OUR WORK THESE LAST FIVE MONTHS, WE HAVE HAD SEVERAL DISCUSSIONS AND MEETINGS WITH THE INDEPENDENT AUDITORS WHO SUPPORT OUR APPROACH AND OUR EFFORTS. FINALLY, WE HAVE UPDATED AND WILL CONTINUE TO UPDATE THE COUNCIL ON THE PROGRESS OF OUR WORK PLAN. AS WE PROCEED THROUGH SEGMENTS OF OUR PLAN, WE WILL ALSO ISSUE REGULARLY WRITTEN REPORTS TO THE COUNCIL, APPRISING YOU OF OUR PROGRESS AND ALERTING YOU TO ANY IMPEDIMENTS TO THAT PROGRESS THAT WE MAY BE ENCOUNTERING. PART OF THE AUDIT COMMITTEES INVESTIGATION IS REMEDIATION OF THE CAUSES OF THE DEFICIENCIES THAT ARE FOUND TO EXIST. IN DOING SO, THE AUDIT COMMITTEE HAS MET WITH CITY OFFICIALS, LEADERS IN THE BUSINESS COMMUNITY AND LABOR WHO SUPPORT WHOSE COMMITMENT, WHOSE COOPERATION ARE ESSENTIAL TO EVENTUALLY RESOLVING THE PENSION AND OTHER LONG TERM ISSUES THAT THREATEN THE COMMUNITY. INDEED FROM THE OUTSET OF THIS PROJECT, WE HAVE BEEN CLEAR THAT WE CANNOT COMPLETE THE TASK AT HAND WITHOUT THE ACTIVE SUPPORT AND COOPERATION OF KEY MEMBERS OF THE SAN DIEGO COMMUNITY. WE APPROACHED OUR MISSION KNOWING THAT WE COULD ONLY SUCCEED IF THE LEADERS OF THIS COMMUNITY WANTED US TO SUCCEED. UNFORTUNATELY, TIME AND TIME AGAIN, KEY FIGURES IN THE LEADERSHIP OF SAN DIEGO HAVE FRUSTRATED, IMPEDED AND EVEN THWARTED OUR EFFORT. IN JUST FIVE MONTHS OF WORK, WE HAVE ENCOUNTERED A

REFUSAL BY THE PENSION BOARD TO MAKE AVAILABLE TO THE U.S. ATTORNEY, THE SEC OR THE AUDIT COMMITTEE DOCUMENTS CRITICAL TO ASCERTAINMENT OF THE TRUTH AND CRITICAL TO THE COMPLETION OF AN INVESTIGATION SATISFACTORY BOTH TO US AND THE AUDITOR. WE HAVE ENCOUNTERED AN UNRELENTING DRUM BEAT OF ALMOST NONSTOP PUBLIC ACCUSATIONS BY THE CITY ATTORNEYS OFFICE, WHICH HAS ONLY SERVED TO CAUSE DIVISION, UNCERTAINTY, AND OBSTACLES TO PROGRESS. WE HAVE ENCOUNTERED THE DISTRACTION OF LITIGATION, OSTENSIBLY BEGUN ON BEHALF OF THE CITY, WHICH IS HAS RESULTED IN INCREASED ACRIMONY AND DELAY, IS NOW THE JUDICIARY MUST SPEND MONTHS OR YEARS WORKING THROUGH THE COUNTLESS CHARGES AND COUNTER CHARGES. THIS IN TURN HAS CREATED RELUCTANCE ON THOSE BEING SUED TO COOPERATE WITH THE AUDIT COMMITTEE AND ITS INVESTIGATIVE EFFORTS. WE HAVE ENCOUNTERED PUBLIC PLEDGES OF COOPERATION, BY THE CITY ATTORNEY WHO BEHIND THE SCENES HAS, IN FACT, FAILED TO FULFILL THOSE PLEDGES AND WHO TO THIS DAY HAS STILL NOT MADE AVAILABLE RELATED INVESTIGATIVE MATERIAL CRUCIAL TO OUR EFFORTS THAT WE REQUESTED MONTHS AGO. WE HAVE ENCOUNTERED QUESTIONS EVEN AMONG SOME OF THE MEMBERS OF THE CITY COUNCIL ITSELF AS TO WHETHER THE AUDIT COMMITTEE THAT IT FORMED SHOULD BE PERMITTED TO COMPLETE ITS TASK. THE AUDIT COMMITTEE IS GRAPPLING WITH AN EXTRAORDINARILY COMPLEX SITUATION. COMBING THROUGH HUNDREDS OF THOUSANDS OF RECORDS, SCORES OF ALLEGATIONS OF POSSIBLE VIOLATION OF CRIMINAL AND CIVIL LAW. WE HAVE A TEAM OF 15 LAWYERS AND ACCOUNTANTS WORKING LONG DAYS, LONG WEEKS TRYING EFFICIENTLY TO UNCOVER THE FACTS AND PREPARE A REPORT. THE HOSTILE ENVIRONMENT WE ARE OPERATING IN ONLY ADDS TO THE TIME AND IN TURN THE COSTS OF OUR REVIEW. BUT MORE THAN THAT, THIS CONTENTIOUSNESS ALSO FLIES IN THE FACE OF TWO CALLS BY THE SEC STAFF FOR THE LEADERSHIP OF THIS CITY TO COOPERATE. IGNORING THESE CALLS WILL ONLY ADD TO THE COSTS INCURRED BY THE PEOPLE OF SAN DIEGO. NOT JUST IN TERMS OF REPUTATION LOST, POTENTIALLY IN THE SIZE OF THE SANCTIONS HANDED OUT BY VARIOUS LAW ENFORCEMENT

AGENCIES. LET ME BE CRYSTAL CLEAR. THERE IS NO WAY SAN DIEGO CAN GET THE FUNDS IT NEEDS FROM PUBLIC CAPITAL MARKETS WITHOUT AN ADEQUATE AUDIT REPORT. THERE IS NO WAY TO GET SUCH A REPORT WITHOUT A THOROUGH INVESTIGATION BY A BODY UNENCUMBERED, UNTAINTED, AND UNABASHEDLY INDEPENDENT FROM THOSE INVOLVED IN THE SITUATION. OF COURSE, SOME HAVE SUGGESTED DISBAND THE AUDIT COMMITTEE, FIRE KPMG, SEEK AN AUDITOR WHO WOULD BE LESS RIGOROUS IN ITS REQUIREMENTS. WITHOUT GETTING INTO THE WRATH THAT MAY BE EXPECTED FROM REGULATORY OFFICIALS, IN RESPONSE TO SUCH AN IRRESPONSIBLE APPROACH IT IS INCONCEIVABLE TO ME THAT ANY REPUTABLE AUDITOR WOULD SIMPLY TURN A BLIND EYE TO THE LEGAL AND FACTUAL ISSUES THAT MUST BE INVESTIGATED AND RESOLVED BEFORE AN AUDIT REPORT MAY BE ISSUED. OTHERS HAVE ARGUED, ALMOST NAIVELY, THAT THE BANKRUPTCY OF THIS CITY IS A VIABLE ALTERNATIVE. YET, IT IS FAR FROM CLEAR THAT THE CITY WOULD EVEN QUALIFY FOR A BANKRUPTCY. BEYOND THAT, EVEN WITH BANKRUPTCY, EVEN WITH BANKRUPTCY THE CITY WOULD STILL NEED TO GET AN AUDIT REPORT. EVEN WITH BANKRUPTCY, THE CITY WOULD STILL NEED A THOROUGH INDEPENDENT INVESTIGATION. EVEN WITH BANKRUPTCY, THE CITY WOULD STILL NEED WAIVER OF THE ATTORNEY CLIENT PRIVILEGES BY THE PENSION BOARD. A BANKRUPTCY FILING WOULD DO NOTHING TO RESOLVE THE CITY'S PRESENT DIFFICULTIES. IT WOULD ONLY ADD NEW LAYERS OF COST AND DELAY AS ALL MEANINGFUL ACTIVITY WOULD HAVE TO BE ARGUED ABOUT BY LAWYERS, SUBJECT TO THE SCRUTINY OF VARIOUS COMMITTEES, ALL CONVENED AT CITY EXPENSE AND THEN SEPARATELY APPROVED BY THE BANKRUPTCY COURT. RESPONSIBLE OFFICIALS COULD EVEN RAISE THE POSSIBILITY OF BANKRUPTCY SPEAKS TO THE TRAGIC CIRCUMSTANCES OF THE CURRENT SITUATION. SAN DIEGO'S PROBLEMS ARE AT THEIR ROOT POLITICAL PROBLEMS, NOT ECONOMIC ONES. THIS IS A CITY WITH ABSOLUTELY EXTRAORDINARY ASSETS, MAGNIFICENT NATURAL BEAUTY AND RESOURCES, A FIRST RATE CULTURAL ENVIRONMENT, A COMMITTED PUBLICITY CITIZENRY, A HARD WORKING POPULOUS AND AND AN EXTREME STREAMLINE ROBUST ECONOMIC BASE. HOW TRAGIC IT IS THAT INFIGHTING, INTEMPERATE POLITICAL

DIATRIBE, PREMATURE PUBLIC CHARGES HAVE SO DRIVEN US UNDER THE MEMBERS OF THIS MAGNIFICENT COMMUNITY WITH NO OTHER NAVIGABLE PATH OUT OF THIS FISCAL CRISIS. I COME TODAY TO ASK YOU, THE MEMBERS OF THE CITY COUNCIL, FOR YOUR UNQUALIFIED SUPPORT. I CAN SAY IT IN NO OTHER WAY BUT THAT THE AUDIT COMMITTEE YOU ESTABLISHED CANNOT GUARANTEE ITS INDEPENDENCE WITHOUT YOUR SOLID BACKING. WE CANNOT FULFILL OUR MISSION WITHOUT A VOTE OF CONFIDENCE. TODAY YOU'VE GOT A CHOICE. YOU CAN DECIDE TO GIVE THE AUDIT COMMITTEE THE SUPPORT IT NEEDS TO COMPLETE ITS WORK OR EFFECTIVELY DISBAND. IT IS AN IMPORTANT DECISION. MAYBE ONE OF THE MOST IMPORTANT YOU'LL MAKE THIS TERM. AND AS YOU MAKE THIS DECISION, YOU SHOULD DO SO WITH FULL KNOWLEDGE AND AWARENESS THAT A DECISION TO DISBAND THE AUDIT COMMITTEE THROUGH LACK OF ACTIVE SUPPORT AND NECESSARY FUNDING WILL ALL BUT GUARANTEE THAT SAN DIEGO SINKS FURTHER INTO THE MORASS OF FISCAL CHAOS. AS YOU CONSIDER THE COURSE TO TAKE, ALLOW ME TO REITERATE THIS KEY POINT. THE INDEPENDENCE OF THIS AUDIT COMMITTEE IS CRITICAL TO ITS WORK. AND THAT CAN ONLY BE GUARANTEED BY YOUR SUPPORT. WE CANNOT, WE WILL NOT CONTINUE THE AUDIT COMMITTEES WORK WITHOUT YOUR BACKING. MEMBERS OF THE CITY COUNCIL, YOU ARE THE CUSTODIANS OF THE FUTURE OF THIS CITY AND THE MILLIONS OF PEOPLE WHO CALL IT HOME. YOU HAVE IT IN YOUR POWER TO ADDRESS THE MISTAKES OF THE PAST AND GIVE THIS CITY A BRIGHTER FUTURE. TO SET A TONE OF COOPERATION, NOT ACRIMONY... NEGOTIATION, NOT LITIGATION, DISCUSSION, NOT DIATRIBE. IT IS NOT AN IMPOSSIBLE TASK. FROM MY HOMETOWN IN NEW YORK IN THE 70'S, TO ORANGE COUNTY IN THE 90'S, OTHER LOCALITIES HAVE FACED SIMILAR PROBLEMS AND THEY HAVE OVERCOME THEM. AND I KNOW THAT SAN DIEGO CAN OVERCOME THEM TOO. ALREADY WE HAVE BEEN HEARTENED BY THE COOPERATION AND SHOW OF SUPPORT BY THE BUSINESS AND LABOR COMMUNITIES AND BY MEMBERS OF THIS COUNCIL. IF LEADERS FROM ACROSS SAN DIEGO SHOW THIS TYPE OF PATIENCE AND COOPERATION, IF ALL PARTIES INVOLVED QUICKLY PRODUCE THE DOCUMENTS THAT THIS COMMITTEE NEEDS, THE AUDIT COMMITTEE CAN WRAP UP ITS WORK BY THE

WRAP UP ITS WORK BY THE END OF THE YEAR, WE CAN BEGIN TO PUT THIS CITY BACK ON THE PATH TOWARD FISCAL HEALTH. I WOULD NOW LIKE TO CALL ON MY ASSOCIATE, MR. BENITO ROMANO.

ROMANO:
DEPUTY MAYOR ATKINS, MEMBERS OF THE CITY COUNCIL, I WOULD LIKE TO REVIEW BRIEFLY THE PROGRESS WE HAVE MADE SINCE OUR LAST PROGRESS REPORT, AND THEN MAKE A FEW OBSERVATIONS ABOUT WHERE I THINK WE ARE. SINCE OUR LAST REPORT TO THE COUNCIL, WE HAVE IDENTIFIED FROM ALL SORTS OF SOURCES APPROXIMATELY 140 ALLEGATIONS OF ILLEGAL ACTS OR MISCONDUCT. AND AS TO EACH, WE ARE GOING TO BE REQUIRED TO GAIN A COMPLETE UNDERSTANDING OF WHAT THOSE ACTS ARE AND WHAT INVESTIGATIVE PROCEDURES HAVE BEEN APPLIED TO THOSE ACTS BY EITHER MR. AGUIRRE OR MR. MACO. WE ARE GOING TO HAVE TO EVALUATE THE THOROUGHNESS AND ADEQUACY OF THE INVESTIGATIONS THAT HAVE GONE ON UP TO NOW AND WE ARE GOING TO HAVE TO MAKE SUBSTANCE ASSESSMENT OF THE CONCLUSIONS THAT HAVE BEEN DRAWN BY THE INVESTIGATIONS THAT HAVE GONE ON SO FAR. EVEN TO THE EXTENT NECESSARY, WE ARE GOING TO HAVE TO CONDUCT AN INVESTIGATION OF OUR OWN. THERE HAVE BEEN TWO INVESTIGATIONS OF SOME OF THESE ALLEGATIONS. ONE BY VINSON AND ELKINS AND ONE BY THE CITY ATTORNEY. AND WE HAVE FIRST REORGANIZED AND SYNTHESIZED THE MATERIAL FROM VINSON AND ELKINS SO THAT WE COULD UNDERSTAND IT. THE 140 ALLEGATIONS HAVE BEEN SYNTHESIZED INTO 17 STANTIVE SUBJECT AREAS. FOR EXAMPLE, ALL ISSUES RELATED TO THE USE OF SURPLUS EARNINGS HAVE BEEN LUMPED TOGETHER AND ALL THE RELEVANT MATERIAL RELATED TO THAT ISSUE HAS BEEN GROUPED. AS TO EACH, WE HAVE REQUESTED AND RECEIVED FROM VINSON AND ELKINS A SUMMARY MEMORANDA AND RELATED KEY DOCUMENTS SO THAT WE CAN UNDERSTAND THE CONCLUSIONS THAT THEY REACHED AND EVALUATE THEM. VINSON AND ELKINS HAS CONCLUDED ITS WORK. WE HAD HOPED FOR THE SAME LEVEL OF COOPERATION FROM THE CITY ATTORNEY, BUT UNFORTUNATELY, THAT HAS NOT HAPPENED. WE HAVE REQUESTED TWICE ACCESS

Exhibit 69

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

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FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:46 a.m. – 11:46 a.m.)

ITEM-330: Progress Reports from Kroll (the Audit Committee), Willkie, Farr, Vinson & Elkins, and KPMG, regarding the Audit and Financial Investigation of the City of San Diego's Pension System and Disclosure Practices.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-300778

Accepting the status reports provided by Kroll (the Audit Committee), Willkie, Farr, Vinson & Elkins and KPMG, regarding their respective progress in the matter of the audit and financial investigation of the City of San Diego's pension system and disclosure practices;

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

At the City Council meeting of June 28, 2005, the Mayor and City Council directed the City Manager to return on August 9, 2005, with progress reports to be presented by Kroll (the Audit Committee), Willkie, Farr, Vinson & Elkins, and KPMG regarding their respective work on the audit and financial investigation of the City of San Diego's pension system and disclosure practices.

Ewell/Villa

Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:28 p.m. – 4:56 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-331: Two actions related to Fourth Amendment to Agreement with Kroll, Inc. for Services related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and Third Amendment to Agreement with Willkie, Farr and Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2006-) ADOPTED AS RESOLUTION R-300779, WITH DIRECTION

Authorizing a Fourth Amendment to the Agreement with Kroll, Inc., in the amount of $1,200,000, 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 and Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution.

Subitem-B: (R-2006-) ADOPTED AS RESOLUTION R-300780

Authorizing a Third Amendment to Agreement with Willkie, Farr & Gallagher LLP in the amount of $1,200,000, 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 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 (see agreement with Kroll). The original agreement was for a not-to-exceed amount of $250,000. Three subsequent amendments, one in May and two in June of 2005 (one each for FY 2005 and

FY 2006), increased the not-to-exceed amount to $2,350,000, and another amendment is before the Mayor and City Council today requesting an additional amount of $1,200,000, bringing the total not-to-exceed amount to $3,550,000.

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 issues 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 $1,200,000, for a total not-to-exceed amount of $3,550,000, to cover estimated expenses for August through October 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. Two subsequent amendments in June of 2005 (one each for FY 2005 and FY 2006) increased the not-to-exceed amount to $1,450,000. An additional amendment is before the Mayor and City Council today, requesting an additional $1,200,000 to cover estimated expenses for August through October of Fiscal Year 2006, and would bring the total not-to-exceed amount to $2,650,000. General Fund portion of expense will be paid from Public Liability Fund. Other expenses will be paid from operating allocations or fund balance.

Ewell/Villa
Aud. Certs. 2600090 and 2600091.

Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: Subitems A-B: MEET

COUNCIL ACTION: (Time duration: 5:03 p.m.– 5:24 p.m.)

MOTION BY MADAFFER TO ADOPT, WITH DIRECTION THAT THE CITY MANAGER AND CITY ATTORNEY WORK TOGETHER, WITH THE ASSISTANCE OF VINSON & ELKINS, TO IDENTIFY AND RECOMMEND APPROPRIATE OUTSIDE COUNSEL TO REPRESENT THE CITY BEFORE THE SECURITIES AND EXCHANGE COMMISSION AND TO RETURN TO THE COUNCIL WITH THOSE RECOMMENDATIONS.

ACCEPT COUNCIL MEMBER YOUNG'S RECOMMENDATION THAT THE CITY MANAGER WORK WITH REPRESENTATIVES OF THE AUDIT COMMITTEE AND ASK THEM TO PROVIDE DETAILED REPORTING OF THEIR SERVICES AND THEIR RECORDS, IN ADDITION TO THEIR INVOICES, AND TO DETERMINE WHETHER THERE ARE OTHER METHODS THAT CAN BE USED TO PROVIDE MORE ACCURATE REPORTING OF THEIR SERVICES. THE CITY MANAGER IS REQUESTED TO PROVIDE A MEMORANDUM BY THE END OF THE WEEK, EXPLAINING THE NEW REPORTING PRACTICES THAT MIGHT BE INSTITUTED, AS REQUESTED BY COUNCIL MEMBER YOUNG.

Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-332: Seventh Amendment to Retention Agreement with KPMG, LLP to Perform an Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-300781, WITH DIRECTION

Exhibit 70

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: August 9, 2005

TO: City Auditor

FROM: City Attorney

SUBJECT: Insufficiency of Documentation for Payments to Kroll and Willkie, Farr

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My office has reviewed the documentation provided by the City Manager to the Auditor seeking authorization to pay Kroll and its outside legal counsel, Willkie, Farr. The documentation consists primarily of the total amounts owed without any detailed descriptions of the services actually rendered, who incurred expenses sought for reimbursement, and whether the rates were in compliance with the contract terms. It is impossible for the Auditor to verify these amounts are justified without sufficient documentation. In order to protect taxpayer monies, we request that the Auditor demand and review more detailed documentation before paying any further invoices.

MICHAEL J. AGUIRRE, City Attorney

By

Michael J. Aguirre
City Attorney

MJA:jb
cc: P. Lamont Ewell, City Manager

ROLL INC.

CWCV #	DATE	AMOUNT	
8471041	3/18/2005	75,000.00	MANUAL
8471088	5/23/2005	650,642.56	MANUAL
8471089	5/23/2005	144,038.46	MANUAL
8502804	6/27/2005	215,157.22	
8503822	6/29/2005	197,711.53	
8513348	8/2/2005	194,194.05	
8513969	8/3/2005	236,281.45	

WILLKIE FARR & GALLAGHER LLP

CWCV #	DATE	AMOUNT	
8471087	5/23/2005	250,000.00	MANUAL
8502805	6/27/2005	25,406.50	
8507421	7/13/2005	8,131.56	
8507422	7/13/2005	224,593.50	

NSON & ELKINS L.L.P

WCV #	DATE	AMOUNT
8273535	5/19/2003	18,506.29
8282316	6/16/2003	3,065.00
8290695	7/14/2003	1,322.57
8329658	11/17/2003	2,935.58
8342620	12/25/2003	4,170.56
8354651	2/5/2004	16,013.25
8360032	3/8/2004	7,577.07
8369632	4/12/2004	149,987.22
8371468	4/15/2004	212.50
8376951	5/3/2004	3,197.18
8376952	5/3/2004	12.78
8376953	5/3/2004	3,781.74
8387467	6/7/2004	346,195.37
8393597	6/24/2004	307,735.03
8403582	7/26/2004	236,891.85
8409479	8/16/2004	255,396.01
8424666	10/4/2004	484,924.58
8438208	11/16/2004	141,622.43
8439831	11/17/2004	215,057.42
8441879	11/23/2004	108,377.57
8450495	12/27/2004	282,970.19
8473798	3/16/2005	67029.81
8473799	3/16/2005	723,426.13
8477907	3/30/2005	368,121.40
506121	7/7/2005	1418105.5

Exhibit 71

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Via Facsimile and U.S. Mail

August 11, 2005

Arthur Levitt
Kroll Associates, Inc.
660 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Troy Dahlberg
Kroll Associates, Inc.
660 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Lynn Turner
Kroll Associates, Inc.
660 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Dear Messrs. Levitt, Dahlberg, and Turner:

In 1931, by their enactment of Charter section 40, San Diego citizens established that an independently elected City Attorney would be "the chief legal advisor of, and attorney for the City" and would "perform all services incident to the legal department," including the defense of "all suits or cases to which the City may be a party." This mandate is a clear expression of the will of the people to confer on the City Attorney broad powers to protect their collective interests.

As is widely known, from February 2004, until at least August 2005, City officials retained the law firm of Vinson & Elkins (V&E) for the ostensible purpose of conducting an independent investigation into illegal acts in connection with the City of San Diego's financial statements and of representing the City before the United States Securities & Exchange Commission (SEC). In fact, V&E served as the de facto defense counsel for City officials.

On Tuesday, 9 August 2005, after having charged City of San Diego taxpayers more than $6 million, V&E announced their withdrawal from the case. They left the City of San Diego without an outside counsel in the SEC investigation and with an investigative report widely

regarded as a useless "whitewash." Kroll Associates (Kroll), assisted by its legal counsel, apparently is attempting to occupy the dual role abandoned by V&E by becoming investigator of and de facto defense counsel for City officials.

This letter is to inform you that pursuant to Charter section 40, following the departure of Vinson & Elkins, the San Diego City Attorney will be assuming the role of defending the City of San Diego before the SEC.

This letter is also to inform you that the San Diego City Attorney considers neither Kroll nor you to be independent with respect to any review of illegal acts investigations involving the City of San Diego. The standard of independence that is used to judge your actions is expressed in AU § 230.07 as "the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence."

Since at least March 2005, Kroll and each of you by your own actions have demonstrated that you are not independent. These actions include the following:

First, you have failed to provide the City Attorney with appropriate detail for or to answer relevant questions about over a million of dollars of billings that Kroll has submitted to the City of San Diego. (See attached billings.) The failure to allow review by the City Attorney, who under Charter section 40 has an absolute right to this information, raises the concern that the billings might show activities that illustrate a lack of independence.

Second, Kroll has violated the scope and terms of its engagement with the City of San Diego by establishing an inappropriate working relationship with V&E. (See attached engagement letter.) As was made clear in a series of detailed billing statements sent to the City by V&E, you regularly and repeatedly met with, advised, and consulted V&E principals regarding their work. (See attached billings.) In doing so prior to the issuance of V&E's second report on 15 July 2005, you not only failed to perform the independent investigator role that you agreed to but also breached the AICPA auditing principles pertaining to independent review.

Third, Kroll, Mr. Levitt, and Mr. Dahlberg failed to prevent or adequately justify the apparent involvement of Kroll personnel in the drafting of V&E's second "whitewash" report. (See attached summary of relevant billings.)

Based on these facts, the San Diego City Attorney has determined that Kroll, Arthur Levitt, Troy Dahlberg, and Lynn Turner, are not independent for purposes of evaluating the illegal acts reports issued either by the San Diego City Attorney or by V&E.

Notwithstanding the foregoing, the City Attorney will in good faith respond to any questions and provide any writings concerning the illegal acts reports issued by the San Diego City Attorney's office. However, any such discussions must be held in the presence of a court reporter.

The San Diego City Attorney again requests that Kroll and its legal counsel provide a detailed billing for all amounts thus far billed to or paid by the City of San Diego. Although such billings are required under applicable City contract provisions and policies, they have not been provided.

Finally, the San Diego City Attorney requests that Kroll make available a log of all documents or sets of documents provided to it by V&E in connection with the investigation into possible illegal acts, including any individual evaluations of possible liability on the part of City of San Diego personnel and officials.

Very truly yours,

Michael J. Aguirre

Michael J. Aguirre
San Diego City Attorney

MJA:meb

Attachments

cc: Ms. Sandy Harris
Mr. Kelly Bowers

Exhibit 72

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

September 6, 2005

Troy Dahlberg
Kroll
660 S. Figueroa, 9th Floor
Los Angeles, CA 90017

Dear Mr. Dahlberg:

It is critical that your firm provide detailed bills to the City. I have attached a sample of the summary type of billing that we have recently received from Kroll. This style of billing is unacceptable.

I have also attached an example of an acceptable billing format from your colleague Vinson & Elkins. These billings allow the reader to know what tasks have been performed.

Perhaps you were unaware that there are Billing Guidelines for the City's outside counsel. These guidelines were put in place several years ago. I am attaching a copy of the guidelines for your use in the future. I am sure your firm tries to accommodate the desires of its clients, with respect to billing form. You adherence to the Billing Guidelines will provide needed transparency and avoid costly litigation.

I look forward to your compliance with this request.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By Michael J. Aguirre

Michael J. Aguirre
City Attorney

MJA:jb
Enclosures

Case #0005948-0002
Invoice #1310781

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	1	$750.00	$750.00
Roger Slefert	4	$615.00	$2,460.00
Troy Dahlberg	67.5	$450.00	$30,375.00
Jennifer Amini	87	$300.00	$26,100.00
Regina Israel	9	$85.00	$765.00
David Callaghan	102	$400.00	$40,800.00
Jenny Dominguez	64	$350.00	$22,400.00
Total	334.5	-	$123,650.00

Mark 16-31 2005

1

Detail of Out-of-Pocket Expenses

Air Transportation	$0.00
Ground Transportation	$563.32
Hotel Charges	$3,079.93
Meals	$1,269.42
Misc	$905.62
Electronic Research	$234.08
Total	$6,052.37

120

Client/Matter Number SAN068 36000
Invoice Number 25148417
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
06/01/05	KAF	Document review.	7.25
06/01/05	BFF	Perform due diligence review of Michael Uberagua emails.	7.75
06/01/05	PSM	Call with audit committee, coordinate document review, continue drafting.	6.00
06/01/05	DKG	Respond to audit committee requests; conferences with Paul Maco.	13.25
06/01/05	JMSH	Review Uberuaga emails; email conferences with David Godschalk, Tegan Flynn, and other attorney group members regarding substantive and procedural review issues.	1.25
06/01/05	CAS	Review email correspondence from document review team.	0.25
06/01/05	LJO	Participate in conference call regarding document review; review and code documents.	3.00
06/01/05	GHR	Conference call with Paul Maco and others regarding document review; review memoranda regarding same.	1.50
06/01/05	VLNO	Participate in working group call regarding document review; review background memoranda; document review.	7.75
06/01/05	NEVA	Document review.	7.00
06/01/05	STFU	Participate in conference call and review memoranda regarding online document review project; begin reviewing documents.	5.75
06/01/05	RCSA	Document review; edit memos; draft disclosure memo.	6.50
06/01/05	CMCI	Participate in conference call regarding document review; review memoranda in preparation for document review; review correspondence from San Diego review team for same purpose; review documents for privilege and relevance.	1.25
06/01/05	CACU	Conference call regarding San Diego document review.	0.50
06/01/05	DJKE	Participate in telephone conference call with team regarding electronic document review; begin to review memorandum regarding document review and numerous e-mail correspondence with team regarding review.	1.50
06/01/05	DBKE	Telephone conference regarding document review; review Stephanie Webster e-mails.	6.50
06/01/05	NDBO	Review Mike Uberuaga groupwise documents; review Alison Glennon documents; meeting with Jennifer Arnini to discuss document review procedures; update Audit Committee Log.	6.75

Client/Matter Number SAN068 36000
Invoice Number 25148417
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
05/01/05	MLWE	Conference call regarding San Diego Internal Investigation.	0.50
05/01/05	WWOL	Review documents electronically to determine responsiveness to document production and coding issues.	7.25
05/01/05	VMLA	Assist Paul Maco and David Godschalk with the assembly and organization of folder topic binders.	2.00
06/01/05	KMLA	Arrange for package of documents and binders to be sent to Willkie Farr; arrange for copying of Gleason settlement agreement for Kroll; continue to assist David Godschalk and Paul Maco with creation of issue binders.	2.00
06/02/05	TMF	Conference with Paul Maco, Rick Sauer, David Godschalk; communication with team; address document review; communications with document reviewers; communications with David Godschalk; discussion with Bill Lawler; discussion with Ben Lippard; communication to Ben Lippard.	7.75
06/02/05	WMB	Continue review of memoranda related to document review and case status; review and respond to correspondence regarding same.	1.25
06/02/05	BSL	Confer with Tegan Flynn regarding discovery issues; respond to document production questions.	0.50
06/02/05	LMEH	Correspondence with Tegan Flynn regarding status of review; correspondence with Sarina Quiddos regarding review; conference with Sarina Quiddos regarding document review; telephone conference with Sarina Quiddos and Dan Kelly; review of documents; review procedures; correspondence regarding log in and review and code documents; correspondence regarding status.	3.75
06/02/05	KAF	Document review.	6.00
06/02/05	BFF	Perform due diligence review of Michael Uberagua and Mary Vattimo emails.	5.50
06/02/05	PSM	Calls with SEC, continue to draft summary memoranda and organize files with Kroll.	10.00
06/02/05	DKG	Respond to audit committee requests; conferences with Kroll staff; conferences with Paul Maco; telephone conference with Catherine Wimberly at SEC.	13.00
06/02/05	SAQ	Review background materials in preparation for document review; conference with Leila El-Hakem, Dan Kelley, and Scott Fuqua regarding documents to review.	1.75
06/02/05	CAS	Review documents for responsiveness to various issues.	2.25

Exhibit 73

Kroll
660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Lynne Dance

September 23, 2005

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

Matter No. 0005948-0002
Invoice No. 1311127

CONFIDENTIAL

Professional Fees From August 20, 2005 through September 2, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	4.00 hrs @ $ 750.00 per hour	3,000.00	
Troy Dahlberg	34.50 hrs @ $ 450.00 per hour	15,525.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
Lisa Jordan	38.50 hrs @ $ 300.00 per hour	11,550.00	
Phil Mennona	65.90 hrs @ $ 350.00 per hour	23,065.00	
Michael Archibald	9.00 hrs @ $ 300.00 per hour	2,700.00	
Jennifer Amini	73.50 hrs @ $ 300.00 per hour	22,050.00	
Jeffrey Klein	95.20 hrs @ $ 300.00 per hour	28,560.00	
Rachel Laybourn	70.00 hrs @ $ 250.00 per hour	17,500.00	
Justin Bird	3.00 hrs @ $ 250.00 per hour	750.00	
Jenny Dominguez	83.50 hrs @ $ 350.00 per hour	29,225.00	
Jessie Ting	23.00 hrs @ $ 250.00 per hour	5,750.00	
Lisa Han	82.00 hrs @ $ 300.00 per hour	24,600.00	
David Callaghan	87.00 hrs @ $ 400.00 per hour	34,800.00	
Regina Israel	20.00 hrs @ $ 85.00 per hour	1,700.00	
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00	
			$ 231,912.50
Total Due:			$ 231,912.50

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Exhibit 74

Status Report by Audit Committee and KPMG

MADAFFER:
WE WILL NOW GO TO ITEM 201 ON THE AGENDA, AND THAT IS ACTION REGARDING THE STATUS REPORT BY THE AUDIT COMMITTEE AND KPMG. I WILL TURN IT OVER TO OUR CITY MANAGER, LAMONT EWELL.

EWELL:
THANK YOU, YOUR HONOR, MEMBERS OF THE COUNCIL.
YOU WILL ROW CALL WE DIRECTED A MINIMUM OR MONTHLY STATUS REPORT OF BOTH THE INVESTIGATIONS UNDERWAY AS WELL AS THE AUDIT BY OUR OUTSIDE AUDITING FIRM KPMG TO BE PROVIDED FOR YOU. AND SO THIS AFTERNOON WE HAVE WITH US REPRESENTATIVES OF KPMG AND THE AUDIT COMMITTEE. I WOULD LIKE TO ASK IF YOU WOULD ALLOW KPMG TO BEGIN FIRST BECAUSE MR. MORRIS HAS A FLIGHT THAT HE IS DESIROUS OF CATCHING. SO I WOULD RECOMMEND THAT YOU START WITH KPMG AND ALLOW THEM TO PROVIDE YOU WITH A MONTHLY UPDATE.

MADAFFER:
AND I UNDERSTAND, MR. AGUIRRE, YOU WANT TO MAKE A PRESENTATION AS WELL?

AGUIRRE:
THAT WOULD BE AFTER KPMG.

MADAFFER:
HOW MUCH TIME WOULD KPMG BE REQUESTING?

MORRIS:
A MINUTE AND A HALF BECAUSE WE PROVIDED A WRITTEN REPORT.

MADAFFER:
WHY DON'T WE SAY 5 MINUTES FOR EACH. GO AHEAD.

AGUIRRE:
ALL RIGHT. SO HAVING COME AS PART OF THE PACKAGE, LET ME ASK YOU, WHERE IS HE TODAY? WHY IS HE NOT HERE?

ROMANO:
HE IS PRESUMABLY ENGAGED IN PRODUCTIVE ACTIVITIES AND I THINK HE IS NOT HERE BECAUSE WE THOUGHT WE COULD HANDLE THIS.

AGUIRRE:
OK BUT IN THE FUTURE I WOULD RECOMMEND TO THE COUNCIL BECAUSE WE ARE PAYING HIM NINE HUNDRED DOLLARS AND HOUR AND BECAUSE HIS FIRM IS CHARGING AND HOPEFULLY EARNING ONE MILLION DOLLARS A MONTH IT WOULD BE AN EXPECTATION AT LEAST IN THE PART OF THE CITY ATTORNEY'S OFFICE THAT THE PERSON WHO IS ESSENTIALLY THE HEAD PERSON BE HERE TO BE AVAILABLE TO PROVIDE THE INFORMATION THAT WE NEED. LET ME ASK IF WE COULD TURN ON THE COMPUTER AND I'D LIKE TO INVITE YOUR ATTENTION TO THE BILL FROM VINSON AND ELKIN, THE DETAILED BILL. DO YOU SEE THAT ON THE MONITOR WE HAVE A BILL FROM VINSON AND ELKIN THAT IS JUST AN EXAMPLE AND IT HAS THE DATE, THE PERSON WHO DID THE WORK, A DESCRIPTION OF THE WORK AND THE AMOUNT INVOLVED IN DOING THAT WORK. DO YOU SEE THAT MR. DAHLBERG?

DAHLBERG:
YES.

AGUIRRE:
OK. NOW MAY WE GO TO THE BILL FROM KROLL? THANK YOU VERY MUCH. THIS IS AN EXAMPLE OF THE BILL WE RECEIVED FROM THE KROLL FIRM AND FOR EXAMPLE IF YOU COULD LOOK AT YOUR OWN ENTRY THERE MR. DAHLBERG, THIS IS FROM A PERIOD OF HALF A MONTH IN MARCH, IN WHICH YOU BILLED 87.5 HOURS I BELIEVE IF I AM NOT READING THAT CORRECTLY, AM I READING THAT RIGHT? 67.5. THANK YOU. YOUR HOURLY RATE IS

FOUR HUNDRED AND FIFTY DOLLARS FOR A TOTAL COST OF THIRTY THOUSAND THREE SEVENTY FIVE. IS THAT CORRECT?

DAHLBERG:
YES.

AGUIRRE:
IT IS MY UNDERSTANDING, NOW MR. ROMANO YOU CAN CORRECT ME BUT IT IS MY UNDERSTANDING THAT THE FORMAT THAT HIS BILL HAS BEEN PROVIDED TO THE CITY WITHOUT A DESCRIPTION OF THE SPECIFIC WORK OR A BREAK DOWN OF TIME IN SMALLER INCREMENTS THAT, THAT WAS SOMETHING THAT WAS ARRANGED WITH THE CITY MANAGER, IS THAT TRUE?

ROMANO:
YOU SHOULD DIRECT THIS QUESTION TO MR. DAHLBERG BUT I THINK THAT IS ACCURATE. YES.

AGUIRRE:
OK, NOW THE CITY MANAGER TOLD YOU MR. DAHLBERG THAT IT WAS OK TO SUBMIT YOUR BILL IN THE FORM THAT IS BEFORE US, WHICH HAS JUST THE NAME OF THE PERSON THE TOTAL HOURS OF THE MONTH, THE RATE, AND THEN THE TOTAL BILL AMOUNT FOR THAT PERIOD OF THE MONTH THAT IS BEING BILLED. IS THAT CORRECT OR INCORRECT?

DAHLBERG:
WELL, I WOULD SAY THAT TO BE COMPLETELY CORRECT WE SUBMITTED THIS FIRST AND THEN SAID WHATEVER LEVEL OF MORE DETAIL YOU NEED, IF YOU NEED ANY MORE DETAIL PLEASE LET US KNOW. WE INITIATED THIS TYPE OF BILLING FORMAT.

AGUIRRE:
FAIR ENOUGH, NOW HAS THE CITY MANAGER ASKED YOU FOR A MORE DETAILED BILL? BEYOND THIS AND MORE ALONG THE LINE OF THE VINSON AND ELKIN BILL WHICH IN OTHER WORDS INSTEAD OF PROVIDING A BILL THAT JUST GIVES US THE NAME OF THE

PERSON, THE TOTAL NUMBER OF HOURS WORKED IN THE MONTH, THE HOURLY RATE AND THE TOTAL BILL WHERE YOU ACTUALLY BROKE IT DOWN BY SPECIFIC TASK AND TIME, PERSON AND HOURS AND TIME SPENT. HAS THE CITY MANAGER ASKED YOU FOR A MORE DETAILED BILL?

DAHLBERG:
THEY RESERVE THE RIGHT TO AUDIT ON OCCASION IF THERE WAS ANYTHING THAT CAME UP ON OUR BILLS AND THEY WANTED TO SEE MORE DETAIL, THEY DESERVE THAT RIGHT AND WE WOULD SAY YES YOU CAN HAVE IT IF YOU WANTED IT AND WE AGREED THAT THIS WOULD BE THE GENERAL WAY WE WOULD DO BILLING.

AGUIRRE:
AND I KNOW, YOU BEING AN ATTORNEY THAT THE QUESTION BEFORE YOU IS NOT THAT QUESTION THAT YOU JUST ANSWERED BUT THE QUESTION BEFORE YOU IS; HAS THE CITY MANAGER REQUESTED A MORE DETAILED BILL INSTEAD OF PROVIDING THE JUST THE PERSONS NAME, THE HOURS WORKED, THE HOURLY RATE AND THE TOTAL AMOUNT CHARGED FOR THE MONTH. HE ACTUALLY PROVIDED A BREAKDOWN SPECIFYING THE AMOUNT OF TIME, SPECIFIC TASK, SOMETHING ALONG THE LINES OF THE EARLIER BILL. CAN WE GO BACK TO THE EARLIER BILL AGAIN HAVE YOU BEEN REQUESTED BY THE CITY MANAGER TO PROVIDE THE KIND OF DETAIL THAT IS IN THE BILL BEFORE YOU? NOW, YOU HAVE BEEN REQUESTED TO PROVIDE THAT BY THE CITY ATTORNEY'S OFFICE, IS THAT CORRECT?

DAHLBERG:
THAT IS CORRECT.

AGUIRRE:
AND YOU HAVE DECLINED TO DO SO?

DAHLBERG:
YES.

AGUIRRE:
BEFORE I GO ANY FURTHER MAY I ASK THE CITY MANAGER WHY IT IS THAT YOU HAVE NOT ASKED FOR THE BILLING THAT PROVIDES THE KIND OF DETAIL THAT VINSON AND ELKIN BROKE DOWN MR. CITY MANAGER FROM THE KROLL FIRM?

EWELL:
AM I PART OF THIS CROSS EXAMINATION?

AGUIRRE:
WELL YOU ARE PART OF THE NEED TO ANSWER QUESTIONS TO THE PEOPLE OF SAN DIEGO.

EWELL:
I THINK THEN THAT YOU SHOULD LEARN HOW TO ASK THE CORRECT QUESTION. MR. DAHLBERG THE QUESTION IS THEN OR SHOULD BE; DO WE HAVE ACCESS TO ALL THE DETAILS NECESSARY TO ENSURE THEIR PROPERLY BEING BILLED AT THE RATES ACCORDING TO THE AGREEMENT THAT HAS BEEN SET FORTH BY THE CITY?

AGUIRRE:
EXCUSE ME MR. CITY MANAGER THAT IS NOT THE QUESTION I ASKED YOU.

EWELL:
I DON'T NEED TO BE PART OF YOUR CROSS EXAMINATION.

AGUIRRE:
YOU DON'T WANT TO ANSWER THE QUESTION THAT IS FINE WE WILL SIT DOWN....

EWELL:
MR. DAHLBERG FOR THE BENEFIT OF THE COUNCIL, DOES THE CITY, DOES OUR FINANCE DEPARTMENT AND THE CITY'S AUDITOR AND COMPTROLLER HAVE ACCESS TO ALL THE DETAIL NECESSARY TO ENSURE THAT WE ARE BEING PROPERLY CHARGED

AT THE RATES THE WE AGREED TO WHEN WE ENTERED THIS AGREEMENT?

DAHLBERG:
WE'VE SAID WE WOULD PROVIDE THAT TO YOU, YES.

AGUIRRE:
BUT THEY DON'T HAVE IT IN THEIR POSSESSION, DO THEY?

EWELL:
DOES THAT INCLUDE THAT AT ANYTIME THAT THE CITY SAYS UNANNOUNCED THAT WE WOULD LIKE TO SIT DOWN WITH YOU AND DO A DETAILED AUDITING. DO YOU HAVE THOSE BILLS AVAILABLE UPON REQUEST?

DAHLBERG:
WE DO.

EWELL:
PERIODICALLY HAVE WE GONE BACK TO YOU AND ASKED FOR CERTAIN RECORDS AND ASKED FOR ADJUSTMENTS SINCE WE BEGAN THIS?

DAHLBERG:
YOU HAVE.

EWELL:
THANK YOU VERY MUCH.

AGUIRRE:
WOULD YOU...

EWELL:
ONE OTHER QUESTION IF I MAY, IN THOSE REVIEWS HAVE WE FOUND ANY LIMOUSINES BEING CHARGED TO THE CITY AS ALLEGED BY THE CITY ATTORNEY?

DAHLBERG:
NOT A ONE.

EWELL:
THANK YOU VERY MUCH SIR AND AGAIN I THINK THIS IS SO INAPPROPRIATE.

AGUIRRE:
EXCUSE ME; WHAT IS INAPPROPRIATE IS THE CITY MANAGER IS NOT DOING HIS JOB. HE HAS NO LEGAL AUTHORITY, NO LEGAL AUTHORITY, NO LEGAL AUTHORITY TO RELIEVE YOU OF THE OBLIGATION TO PROVIDE A DETAILED BILLING THAT I HAVE REQUESTED YOU FOR AND AS EVERY OTHER FIRM WITH THE EXCEPTION OF YOU AND NOW WILLKIE FARR, EVERY OTHER FIRM HAS PROVIDED DETAILED BILLING. CAN WE GO TO THE WILLKIE FARR ORIGINAL BILLING IF WE COULD?

MADAFFER:
MR. AGUIRRE JUST AS A QUESTION. HOW MUCH MORE OF THIS BECAUSE I HAVE MR. YOUNG AND MR. PETERS.

AGUIRRE:
WELL its 4:30 AND I HAVE ABOUT ANOTHER TEN MINUTES.

MADAFFER:
HOW ABOUT ANOTHER FIVE MORE MINUTES, OK?

AGUIRRE:
WELL THIS IS INVOLVING MILLIONS OF DOLLARS. THE CITY MANAGER IS NOT REQUIRING THEM TO PROVIDE PROPER BILLING IN MY JUDGMENT AS THE LEGAL ADVISOR AS ELECTED BY THE PEOPLE OF SAN DIEGO. THE ONLY CITYWIDE CITY OFFICIAL SITTING HERE TODAY ELECTED BY THE MAJORITY OF VOTERS OF THE CITY OF SAN DIEGO TO DO THIS SPECIFIC JOB.

MADAFFER:
MR. AGUIRRE JUST AS A RULING FROM THE CHAIR THEN LET ME JUST MAKES THIS STATEMENT. WE ARE HERE TO GET A STATUS REPORT FROM THE KPMG FIRM. I AM GOING TO SAY WE HAVE HAD ENOUGH OF THIS AND I AM GOING TO CALL ON MR. YOUNG.

AGUIRRE:
IM SORRY. I AM NOT DONE WITH MY QUESTIONING,

MADAFFER:
MR. AGUIRRE. MR. AGUIRRE I AM GOING TO CALL ON MR. YOUNG AND THEN ON MR. PETERS. AND IF THE PLEASURE OF THE COUNCIL WANTS TO HAVE MORE OF YOUR QUESTIONS TO BE ASKED, SO BE IT.

AGUIRRE:
THIS IS IMPROPER, YOU JUST SAID FIVE MINUTES AGO OR JUST ONE SECOND AGO THAT I HAD FIVE MORE MINUTES. NOW YOU'VE BACKED TRACKED ON EVEN THAT.

MADAFFER:
YOU ARE GETTING THROUGH A PROCESS THAT I FIND IS EXTREMELY INAPPROPRIATE.

AGUIRRE:
RIGHT. IT IS INAPPROPRIATE BECAUSE THERE IS AN EFFORT TO TRY AND NOT HAVE THE DETAIL THAT IS REQUIRED...

MADAFFER:
MR. AGUIRRE IT'S TO GET THE CITY'S AUDIT COMPLETED. MR. AGUIRRE, MR. AGUIRRE, IF WE AT ANY TIME TERMINATE THE KROLL COMPANY OR KPMG I GUARANTEE YOU EIGHTEEN MORE MONTHS OF ANARCHY IN THE CITY, I GUARANTEE YOU ANOTHER TEN MILLION DOLLARS OF MONEY DOWN THE RAT HOLE AND I'M NOT GOING TO SIT HERE ANYMORE AND SPEND IT. ..

AGUIRRE:
WELL YOU ARE INCORRECT.

MADAFFER:
WELL MR. AGUIRRE YOUR DECLARATIONS ARE NOT GOING TO BE SATISFACTORY TO THE SECURITIES EXCHANGE COMMISSION, OR THE U.S ATTORNEY, OR ANYBODY ELSE. THE REASON THESE INDEPENDENT PEOPLE WHO ARE DOING THE WORK THAT IS WHAT WE NEED.

AGUIRRE:
THE PEOPLE OF SAN DIEGO NEED TO HAVE A RIGHT TO KNOW AND YOU ARE OBSTRUCTING MY EXAMINATION.

MADAFFER:
MR. AGUIRRE YOU ARE NOT GOING TO EXAMINE ANYMORE.

AGUIRRE:
OK, FINE. THEN YOU CAN (MUTE) THE CITY ATTORNEY THEN BECAUSE THIS IS IMPROPER ON YOUR PART.

MADAFFER:
VERY WELL MR. AGUIRRE. MR. YOUNG.

YOUNG:
MOST OF MY QUESTIONS HAVE BEEN ANSWERED ALREADY BY THE PREVIOUS QUESTIONS. THANK YOU.

MADAFFER:
THANK YOU. MR. PETERS.

PETERS:
JUST TO CIRCLE AROUND TO THE 8 DOCUMENTS. I REAL DON'T WANT TO BE POLLYANNA ABOUT THIS, I WANT TO IDENTIFY WHETHER WE HAVE AN OBSTACLE OR NOT. LET ME RESTATE WHAT I THINK HE SAID AND CORRECT ME IF IM WRONG. WE HAVE A NUMBER OF A WHOLE SUITE OF DOCUMENTS THAT WEREN'T

BEING DISCLOSED A WHILE BACK. WE AT THE COUNCIL MADE A NUMBER OF EFFORTS TO TRY TO SHAKE THEM LOOSE, IN FACT IT WAS THE FEDERAL GOVERNMENT THAT SHOOK THEM LOOSE THROUGH A COURT ACTION. AND THEN THE RETIREMENT BOARD AFTER THAT AGREED TO SHARE SOME OF THOSE DOCUMENTS WITH THE AUDIT COMMITTEE SO THEY COULD COMPLETE THEIR WORK.

DAHLBERG:
CORRECT.

PETERS;
AND AS I UNDERSTAND IT NOW, YOU WILL HAVE RECEIVED ALL BUT EIGHT OF THOSE DOCUMENTS, AS YOU UNDERSTAND IT SHORTLY HOPEFULLY. AND DURING THE NEXT FEW WEEKS YOU'LL REVIEW THOSE AND SEE WHETHER THOSE EIGHT DOCUMENTS ARE NECESSARY TO THE COMPLETION OF THE AUDIT COMMITTEES REPORT WHICH WILL BE FOLLOWED BY THE AUDIT, IS THAT CORRECT

ROMANO:
JUST ONE CORRECTION. WE HAVE RECEIVED ALL BUT 400 ALREADY. 400 PLUS MINUS 8 WE WILL RECEIVE SHORTLY. AND THE EIGHT WE HAVE BEEN TOLD WE ARE NOT RECEIVING.

PETERS:
OKAY AND SO YOU HAD MENTIONED THAT THE EIGHT SEEM TO HAVE BEEN CREATED, JUDGING BY THE PRIVILEGE LOG, THE DESCRIPTION THAT YOU DO HAVE OF THEM, AFTER THE MB2 EVENTS AND SO FORTH. AND YOU JUST EXPLAINED WHY THAT MIGHT ALLEVIATE YOUR CONCERN THAT YOU NEED TO SEE THEM.

DAHLBERG:
WELL THEY LOOK LIKE THEY DON'T DIRECTLY WRITE THE FACTS THAT OCCURRED AT THE TIME THEY MAY BE STATEMENTS OR POSITIONS ON THINGS LOOKING BACK IN TIME. ONE APPEARS TO BE AN OPINION LETTER. SO THEY MAY HAVE ASKED OPINION OF

SELTZER KAPLAN ABOUT SOMETHING THAT DID OCCUR IN THE PAST.

PETERS:
AS LONG AS YOU HAVE ACCESS TO ALL OF THE FACTS YOU MAY ACTUALLY COME UP WITH A DIFFERENT OPINION THAN SELTZER KAPLAN WOULD HAVE IN THAT LETTER.

DAHLBERG:
WE WOULD COME UP WITH OUR OWN OPINION.

PETERS;
I THINK IT IS IMPLICIT IN ALL THE DISCUSSIONS IS THAT YOU KNOW LOOK THROUGH THE DOCUMENTS AS QUICKLY AS YOU CAN. I AGREE THAT THE QUICKEST WAY TO GET THESE DOCUMENTS IS THROUGH COOPERATION AND WE'VE HAD FITS AND STARTS FROM THE AUDIT COMMITTEE BUT WE WILL GIVE IT A SHOT SO JUST LET US KNOW IF THERE IS ANYTHING ELSE WE NEED TO DO TO PROVIDE YOU DOCUMENTATION.

DAHLBERG:
I'D SAY WE PLAN TO BE BACK HERE VERY SHORTLY ABOUT OUR WORKING RELATIONSHIP WE HOPE TO DEVELOP WITH NAVIGANT AND HOW THEY WOULD HOPEFULLY WORK WITH US TO EXPEDITE THE PROCESS.

PETERS:
AND FINALLY, I GUESS MR. MAINSCHIEN HAS OFTEN ASKED THIS QUESTION. IS THERE ANYTHING ELSE THAT WE COULD DO AS THE CITY COUNCIL THAT WILL ASSIST YOU IN MOVING THIS ALONG? ANYTHING YOU COULD THINK OF?

DAHLBERG:
WELL AGAIN, I THINK ONE OF OUR MAIN POINTS IS CERS IS A CRITICAL ELEMENT HERE AND IF WE TRY TO EXPLAIN TO PEOPLE AT CERS AND NAVIGANT AS WELL. THE SEC LOOKS AT THE CITY AND CERS TOGETHER; THEY LOOK AT THE INVESTIGATION AS A

COMPLETE ONE TOGETHER AND THEY LOOK AT REMEDIATION AS COMPLETE TOGETHER. AND SO THE BETTER RELATIONSHIP HAS WITH THE BOARD AND THE MORE COOPERATIVE WE CAN BE WITH COMPLETING THE INVESTIGATION DOING WHATEVER THE REMEDIAL ACTION IS THE FASTER THIS IS GOING TO BE DONE.

PETERS:
OK, WELL JUST WITH RESPECT TO CERS, JUST TO DOUBLE BACK, WE UNDERSTAND THAT THERE IS 400 DOCUMENTS YOU ARE ABOUT TO SEE, MINUS EIGHT AND YOU ARE GOING TO TELL US WHAT TO DO IF YOU NEED THEM WITH RESPECT TO CERS AND WITH RESPECTS TO ANYTHING ELSE YOU ARE GETTING SOME ACTUARY ADVISE THAT IS DIFFERENT WHICH IS ONE OF THE THINGS WE ARE LOOKING FOR.

DAHLBERG:
CORRECT.

PETERS:
IS THERE ANYTHING THAT WE NEED TO DO AS A COUNCIL OTHER THAN PRAY SAY THE HAIL MARIES OR WHATEVER WE COULD DO TO GET TO MOVE ALONG.

DAHLBERG:
WELL I THINK THAT ANYTHING YOU CAN DO TO REACH OUT TO BOARD MEMBERS THERE WHICH IS FITTING AND PROPER FOR YOU TO DO TO KEEP THE RELATIONSHIP OPEN. THE MOST YOU CAN DO THAT, THE BETTER WE ARE.

PETERS:
THERE IS NOTHING FIRST TO ASK OF THEM AT THIS MOMENT?

DAHLBERG:
SPECIFICALLY NO. WELL ACTUALLY YES. MAKE SURE THAT NAVIGANT'S INVESTIGATION DOES WORK WITH US AND COOPERATE WITH US BECAUSE THAT IS NOT CLEAR RIGHT NOW HOW ALL OF THAT IS GOING TO WORK OUT.

PETERS:
WELL WE DON'T HAVE THIS AGENDANIZED IN ANY WAY. I DON'T THINK, MAYBE WE CAN ASK THE CITY MANAGER TO DRAFT A LETTER IN OUR BEHALF SAYING THAT WE SUPPORT THAT, MRS. HEUMANN IS NODDING THAT IT IS SOMETHING WE CAN DO. I THINK WE SHOULD EXPRESS ON BEHALF OF THE COUNCIL THAT IS OUR INTENT AND OF COURSE EACH OF US IS FREE AND ENCOURAGED TO DO THAT AS WELL.

DAHLBERG:
ON AN INDIVIDUAL BASIS AS WELL AS A GROUP BASIS THAT WOULD BE HELPFUL.

PETERS;
OK. THANK YOU AGAIN FOR YOUR REPORT.

MADAFFER:
MRS. FRYE AND THEN MRS. ATKINS:

FRYE:
HOW LONG DO YOU... I GUESS WITH THE ENTRANCE OF NAVIGANT INTO THE PROCESS NOW, MY CONCERN IS THAT NAVIGANT CAN SPEND A LONG TIME NOW BEFORE INFORMATION YOU MIGHT NEED IN ORDER TO COMPLETE YOUR INVESTIGATION CAN BE GIVEN TO KPMG. THAT THE ENTRANCE OF THEM INTO THE PROCESS MIGHT ACTUALLY EXTEND THE PROCESS LONGER THEN WHAT WE HAD ORIGINALLY BELIEVED TO BE AND THEN ADDITIONALLY THE PROCESS CAN BE EXTENDED BECAUSE THE DOCUMENTS THAT MAY OR MAY NOT BE PROVIDED, AND I DON'T KNOW ABOUT YOU BUT IT SEEMS TO ME THAT IT IS VERY DIFFICULT TO KNOW EXACTLY WHAT IS IN THE DOCUMENT WITHOUT READING IT. NO MATTER HOW IT IS WRITTEN IN THE ENTRY LOG, YOU CAN WRITE ANYTHING YOU WANT.

ROMANO:
CANDIDLY, IN FACT THAT EIGHT DOCUMENTS RECEIVE SUCH ATTENTION OBVIOUSLY CAUSES ME TO BE INTERESTED.

FRYE:
YES BECAUSE WHEN YOU CAN'T HAVE YOU WANT TO LOOK AT IT BECAUSE THERE IS PROBABLY A REASON WHY THEY DON'T WANT TO GIVE IT TO YOU.

ROMANO:
YES, I WOULD THINK SO.

FRYE:
IT MIGHT BE RELEVANT. THAT WOULD BE MY GUESS. SO I GUESS THAT WOULD BE MY CONCERN TO NOW THAT NAVIGANT IS IN THERE THAT IS GOING TO ADD TO THE AMOUNT OF TIME WE ARE GOING TO NEED TO GET OUR AUDITED FINANCIAL REPORT OUT. IF THEY ARE NOT COOPERATIVE AND DON'T GIVE YOU INFORMATION THEN THAT MIGHT SLOW DOWN YOUR WORK.

ROMANO:
IT'S CONCEIVABLE. IT IS FAIRLY COMPLICATED TO, IF THEY HAVE AN OPEN TRANSPARENT PROCESS AS WE'VE HAD OR TRYING TO HAVE. IF THEY HAVE ONE WITH AN EYE TOWARDS REVELING AND DISCLOSING WHAT THEY FIND AND HOW THEY ARE PROCEEDING I THINK WE CAN ALL LOOK AT THE SAME FACTS EVEN IF WE DON'T AGREE ON EVERYTHING BUT IT WON'T IMPEDE OUR WORK. IF THEY APPROACH IT DIFFERENTLY IT COULD BE A COMPLICATING AND DELAYING FACTOR.

DAHLBERG:
WHAT IS CRITICAL IN AN INVESTIGATION IS NOT NECESSARILY THAT EVERYONE REACHES THE SAME CONCLUSION BUT WHAT IS CRITICAL IS THAT THE EVIDENCE IS AIRED OUT. KPMG CAN POTENTIALLY NOT AGREE WITH OUR FINDINGS ON SOMETHING BUT THAT IS ULTIMATELY NOT WHAT THEY ARE LOOKING FOR.

FRYE:
RIGHT. BUT IT WOULD ULTIMATELY HELP IF EVERYBODY CAN LOOK AT THE SAME DOCUMENTS TO REACH THAT CONCLUSION AS

OPPOSED TO NAVIGANT SAYING FOR EXAMPLE BEING ABLE TO LOOK AT CERTAIN DOCUMENTS THAT YOU COULD NOT LOOK AT.

ROMANO:
WELL THAT IS CORRECT. WE CAN LOOK AT THE SAME DOCUMENTS AND NOT AGREE.

FRYE:
BUT IF YOU CAN'T LOOK AT ALL THEN YOU JUST DON'T KNOW IF YOU AGREE OR NOT BECAUSE THERE COULD BE IMPORTANT INFORMATION. THE OTHER THING IS YOU HAD MENTIONED AND I MEANT TO ASK YOU EARLIER BUT THAT PRICE WATER HOUSE COOPER. WHO EXACTLY ARE THEY AND WHAT EXACTLY ARE THEY DOING?

ROMANO:
THEY ARE PROVIDING ACTUARIAL AND THEY ARE GOING TO PROVIDE US ACTUARIAL ADVISE SO THAT WE COULD UNDERSTAND AND EVALUATE THE ASSUMPTIONS MADE BY THE CERS BOARD. WE NEED AN ACTUARY WHO WAS ABLE TO HELP US EVALUATE THE DECISIONS THAT WHERE MADE BY THE CERS BOARD AND ADOPTING CERTAIN ASSUMPTIONS THAT UNDERLAY THE ACTUARIAL CALCULATIONS DONE BY PRIOR ACTUARIES

DAHLBERG:
WE PUT OUT A LETTER A WHILE BACK ABOUT CERS ACTUARY AND THE CONCERNS WE HAD ABOUT SOME OF THE THINGS THAT WE HAD SEEN AND WE ACTUALLY LISTED OF DOCUMENTS WHICH CAUSED US TO HAVE A LEVEL OF CONCERN ABOUT PERHAPS THE INTERACTION HE HAD WITH THE BOARD. THAT RELATED TO ASSUMPTION IN PARTICULAR ALTHOUGH A FEW OTHER THINGS AS WELL SO WE HAD ALWAYS HAD IN OUR MINDSET THAT WE WERE GOING TO TRY AND FIND SOME PROFESSIONAL ACTUARY THAT WE COULD LOOK TO, TO GIVE US GUIDANCE ABOUT THE ADEQUACY ABOUT THE CERS ACTUARIAL WORK OR WHETHER OR NOT WE CAN GAIN COMFORT IN THE ASSUMPTIONS THAT WHERE MADE BY THE BOARD AND MANY TIMES PUT FORTH BY THE ACTUARY.

FRYE:
AND SO THE WORK THAT WOULD BE DONE BY MERCER WHO WAS ONE OF THE FIRM THAT HAD BEEN HIRED TO DO EXACTLY WHAT YOU ARE TALKING ABOUT SO THAT WOULD NOT BE SUFFICIENT EITHER FOR YOU AS FAR AS YOUR WORK GOES SO THEN YOU NEED ANOTHER . DOESN'T CERS HAVE SOMEONE THAT AUDITS THEM JUST LIKE THE CITY HAS SOMEONE INDEPENDENT THAT AUDITS THE CITY?

DAHLBERG:
THEIR 2003 AUDITOR WAS CAPPER, RITCHIE, AND LARSON WHICH WAS THE ONE THAT THE CITY HAD WHICH THEY DECIDED THEY COULDN'T STAY WITH.

FRYE:
AND WASN'T THERE ANOTHER INVESTIGATION DONE BY ANOTHER OUTSIDE FIRM BESIDES CAPPER, RITCHIE, AND LARSON OR DID SOMEONE ELSE LOOK AT THESE DOCUMENTS OR AT LEAST LOOK AT THE-

EWELL:
IF I CAN INTERJECT HERE. WE HIRED TARS PARENT A SYSTEM. TARS PARENT RECENTLY DECLINED TO CONTINUE OFFERING ANY OF THEIR SUPPORT TO THIS EFFORT. THEY'VE WITHDRAWN AND THEY NEEDED SOMEONE ELSE TO LOOK AT THE ASSUMPTIONS THAT THEY BELIEVED WHERE MORE SUITED TO MEET THE NEEDS OF BOTH THE ACTUARY AND THE CITY.

FRYE:
SAY THAT AGAIN PLEASE.

EWELL:
WE HAD TARS PARENT WORKING WITH THE CITY TO DO, IF YOU MIGHT RECALL THEY WHERE HERE BEFORE YOU ONCE BEFORE IN SPEAKING TO SOME OF THE ACTUARIAL ASSUMPTIONS THAT THEY WERE WORKING WITH THE CITY ON. THEY HAVE RECENTLY

WITHDRAWN THEIR ENGAGEMENT AND DECIDED THAT THEY WERE NO LONGER INTERESTED IN WORKING ON THIS PROJECT AND SO THE AUDIT COMMITTEE ASKED IF WE CAN THEN RETAIN PRICE WATER HOUSE COOPER.

FRYE:
SO THE ACTUARY THAT WE HAD WITHDREW AND WHEN DID THAT HAPPEN?

EWELL:
THIS HAPPENED THIS MONTH, THIS DAY.

FRYE:
TODAY IT HAPPENS?

DAHLBERG:
WELL ACTUALLY, TARS PARENT WAS DOING A NUMBER OF THINGS FOR THE CITY, WE HAD ASKED THEM IF THEY COULD HELP US IN LOOKING ASSESSMENTS AT THE APPRAISALS AND THEY HAD TOLD US PROBABLY IN THE CITY ABOUT A MONTH AGO, SIX WEEKS AGO THAT THEY WEREN'T COMFORTABLE IN THAT ROLE NOW TARS PARENT WAS DOING FOR THE CITY, IF THAT HAS CHANGED, I DON'T KNOW BUT AS IT RELATES JUST WORKING WITH THE AUDIT COMMITTEE AND FOCUSING ON THE ASSUMPTIONS THAT WHERE USED IN THE 03 TIME PERIOD FOR CERS, THAT WAS SOMETHING THEY HAD STARTED TO DO AND THEN DECIDED I GUESS FOR INTERNAL REASONS THAT THEY DID NOT REALLY WANT TO DO THAT ENGAGEMENT.

FRYE:
AN SO YOU JUST FOUND OUT TODAY?

EWELL:
IT SOUNDS LIKE A PORTION, WELL THEY HAVE NOW WITHDRAWN A HUNDRED PERCENT OF THEIR PARTICIPATION IN THIS EFFORT.

FRYE:
AND WHEN DID THAT HAPPEN?

EWELL:
MRS. FRYE I AM EXPLAINING AND LOOKING AT STAFF. APPARENTLY WE WHERE NOTIFIED TODAY OF THE ONE HUNDRED PERCENT WITHDRAW IS THAT CORRECT?

IRVINE:
THAT IS CORRECT. WHEN WE CAME FORWARD WITH OUR PENSION, THIS IS LISA IRVINE, DEPUTY CITY MANAGER. WHEN WE CAME FORWARD LAST WEEK ON OUR PENSION SOLUTION WE HADE LESLIE (MUTE) FROM TARA PARENT THERE WHO PROVIDED THE ACTUARY ANALYSIS AS A RESULT OF THAT PENSION SOLUTION THE COUNSEL DIRECTED STAFF TO GO BACK AND WORK WITH THE ACTUARY TO DEVELOP A MORE LONG TERM ANALYSIS THAT WENT OUT MORE THAN FIFTEEN YEARS. WE ASKED THEM TO CONTINUE AND DO THAT WORK AND THEY SAID THAT WOULD BE VERY DIFFICULT TO DO, AND THEY ASKED THAT THEY NO LONGER WORK ON THIS PROJECT. AND THAT WAS AS OF TODAY, THIS MORNING.

FRYE:
WHEN THEY WERE ASKED TO EXTENDED FOR THE FIFTEEN YEARS THEY LEFT?

EWELL:
I THINK QUITE FRANKLY THAT THERE IS MORE TO THIS THAN JUST THE FIFTEEN YEARS BUT THEY ARE BEING ASKED TO SECOND GUESS OR QUESTION OTHER PROFESSIONAL WORK AND THEY HAD A LEVEL OF DISCOMFORT IN PROCEEDING.

FRYE:
AND SO THE LEVEL OF DISCOMFORT WITH PROCEEDING WITH REVIEWING ANOTHER'S PROFESSIONAL WORK THAT LEVEL OF DISCOMFORT DOES NOT EXIST WITH APPARENTLY PRICE, WATER, HOUSE, COOPER, IS THAT CORRECT?.

DAHLBERG:
WE HAVE HAD SOME LONG DISCUSSIONS WITH THE PROFESSIONAL ACTUARY THAT WE ARE GOING TO USE AS WELL AS THE GENERAL COUNSEL FOR PRICE WATER HOUSE BECAUSE WE DID NOT WANT TO STUD OUR FOOT IN THE SAME THING.

FRYE:
I'M GLAD I ASKED THE QUESTION AND LEARNED ABOUT THIS BECAUSE OTHERWISE I WOULDN'T HAVE KNOWN AND THE OTHER THING IS WE WOULD LIKE TO HAVE SOMEONE WHO WILL ACTUALLY STICK AROUND AND DO THE WORK.

DAHLBERG:
IN TERMS OF OUR SITUATION THERE IS SENSITIVITY ABOUT DOING WORK AGAINST OTHER PROFESSIONALS POTENTIALLY AND THAT IS WHETHER IT IS ACCOUNTING, LEGAL, OR ACTUARIAL. I'M NOT SURE THAT WHEN THEY STARTED THE WORK THAT THEY WERE DOING THEY SAW IT GOING DOWN THAT ROAD, WE DIRECTED THEM DOWN THAT ROAD, I'M NOT TALKING ABOUT FOR US, I'M TALKING ABOUT THE CITY AS A WHOLE. THEY WERE DOING OTHER THINGS FOR THE CITY. A LOT OF PROFESSIONALS HAVE CONCERNS OF ABOUT IF THEY BEGIN TO DO WORK THAT THEY THINK COULD BE USED AGAINST OTHER PROFESSIONALS.

FRYE:
SO WHAT OTHER WORK WERE THEY DOING FOR THE CITY?

IRVINE:
THEY ACTUALLY HELPED US DEVELOP THE PENSION SOLUTION ANALYSIS. SO THEY DID THE ACTUARIAL ANALYSIS AND WHAT IFS' TO LOOK OUT THE TEN YEARS. WE ALSO ASKED THEM TO LOOK AT THE FISCAL YEAR 2004 EVALUATION THAT WAS DEVELOPED FROM SCARS AND SEE IF THEY COULD MIRROR THAT WHICH THEY DID SUCCESSFULLY.

FRYE:
SO WAS IT THE FIVE YEAR CHART?

IRVINE:
THE PENSION SOLUTIONS WHICH WHERE 8-9 YEAR CHART, SO THEY DID THAT AND WENT OUT 2014 AND THEY ALSO DID SOME OTHER ACTUARY ANALYSIS ON BEHALF OF THE CITY.

FRYE:
OK THEN DUE TO SOME SENSITIVITY THAT THEY FELT MAYBE HAVING TO ANALYZE OTHER PROFESSIONAL'S WORK THEY DECIDED TO STOP DOING IT. IS THAT RIGHT?

EWELL:
I'M GIVING YOU AN OPINION, MY OPINION BASED ON THE CONVERSATION THAT I HELD BRIEFLY WITH THEM.

FRYE:
OK WELL SOMEONE CAN FIGURE THOSE OUT. ANYWAYS IT WOULD BE NICE TO HAVE A REPORT ABOUT THAT SO THAT WE KNOW. SO THAT THEN I CAN ASK YOU SO THAT IT APPEARS THAT PRICE WATER HOUSE COOPER DOES NOT HAVE THIS SENSITIVITY ISSUE.

DAHLBERG:
WE DIDN'T GET FAR DOWN THE ROAD. WE HAVE GOING OUR LITTLE PIECE OF THIS THING.

FRYE:
I HAVE TWO LAST QUESTIONS. HOW LONG WAS TRASPARENT WITH THE CITY OR WORKING FOR THE CITY WAS IT A YEAR OR YEAR AND A HALF BEFORE THEY GOT SENSITIVE?

IRVINE:
THEY ACTUALLY WORKED ON OTHER PROJECTS, IT WAS ON THE ACTUARY ANALYSIS WITH RESPECT TO THE PENSION SOLUTIONS THAT WE RETAINED THEM, I THINK THEY WORKED FOR US ABOUT SIX MONTHS NOW.

FRYE:
OK SO SIX MONTHS THEN. THAT IS FINE I WOULD LIKE SOME MORE INFORMATION ABOUT THAT AND I ACTUALLY DON'T THINK WITH ALL DUE RESPECT THAT IT IS UNREASONABLE TO HAVE THOUGH ROUGH BILLING RECORD, OF COURSE I DON'T REALLY SEE A PROBLEM WITH THAT. I THINK THAT IS SORT OF REASONABLE, I THINK IT IS STANDARD THAT THE CITY SORT OF HAVE TO LIVE UP TO. JUST FOR THE RECORD I DON'T SEE A PROBLEM WITH ME MAKING SURE THAT THERE IS SOME CONSISTENCY ON HOW THIS CITY DOES BILLING RECORD OR HOW TO SUBMIT BILLING RECORDS.

EWELL:
I KNOW THAT THIS IS AN ISSUE FOR MR. AGUIRRE WHO IS JUST DYING TO GET CERTAIN INFORMATION WHICH TENDS TO FIND ITS WAY TO THE PUBLIC PREMATURELY.

AGUIRRE:
YOU BET IT DOES.

EWELL:
WELL ONLY PORTIONS OF IT NOT THE ENTIRE DOCUMENTS JUST THOSE PORTIONS THAT YOU THINK ARE GOING TO ASSIST YOUR EFFORTS BUT COULD YOU EXPLAIN TO THE COUNCIL WHY IT IS BASED ON YOUR PROFESSION AND YOUR INVESTIGATION YOU HAD SOME RELUCTANCE IN RELEASING THAT INFORMATION.

DAHLBERG:
YES, CAN WE HAVE VINSON AND ELKINS DETAIL POPPED UP ON THE SCREEN AGAIN? THERE IS A COUPLE OF DIFFERENT POINTS. ONE IS THAT VINSON AND ELKIN IS A LAW FIRM THAT IS USED TO DOING QUARTER OF AN HOUR, TENTHS OF AN HOUR, WE ARE BASICALLY ACCOUNTING, I MEAN I AM AN ACCOUNTANT. WE DON'T EVEN HAVE A BILLING SYSTEM THAT HAS THIS. ATTORNEYS BILL THAT WAY ACCOUNTANTS TEND TO BILL MORE ON EITHER TASK LIKE SOME MANY HOURS OF A DAY OR EVEN GENERALLY NUMBERS TYPES OF TASKS AND HOW MANY HOURS YOU HAVE. WE

DON'T REALLY HAVE THE BILLING RECORDS TO SET THIS UP. IT WOULD BE A TITANIC EXPENSE TO DO IT BUT THAT IS NOT WE DO IT. THE MAIN REASON WE DON'T TO IT. ITS BECAUSE OF THE TASK DESCRIPTION RIGHT THERE OUT IN PUBLIC. SEE THE ANALYSIS UP THERE ON THE FIRST DESCRIPTION WHERE IT SAYS PERFORM DUE DILIGENCE REVIEW FOR UBERRUAGA'S E-MAILS? I HAVE DONE INVESTIGATIONS BEFORE AND WE DID NOT SHOW INVESTIGATION IN THE BILLS WHO WE ARE DOING THE INVESTIGATIVE WORK ON BECAUSE UNFORTUNATELY SOMETIMES THERE IS A PRESUMED LEVEL OF GUILT IF YOU JUST LOOK AT SOME BODY'S STUFF. THAT LEVEL OF OTHER PEOPLE ARE GUILTY OR INNOCENT OF ANYTHING COMES OUT IN THE FINAL REPORTS THAT PEOPLE DO. BUT IN FACT, YOU HAVE TO GO THROUGH AND LOOK AT A LOT OF INDIVIDUALS RECORDS TO FIGURE OUT WHAT THE ISSUES ARE. SOMETIMES YOU ARE LOOKING AT SOME INDIVIDUALS RECORDS NOT BECAUSE THEY ARE INDIVIDUALLY SUSPECTED, BUT BECAUSE YOU ARE GETTING INFORMATION THAT EXISTED IN THEIR EMAILS OR WHATEVER ABOUT MG SOMEBODY ELSE OR SOMETHING ELSE. SO IT HAS ALWAYS BEEN MY PRACTICE IT, ERNST YOUNG'S PRACTICE, KPMG'S PRACTICE BEFORE WHEN YOU DID THESE TYPE OF INVESTIGATIONS THAT WE NEVER WENT INTO THE KIND OF DETAIL ABOUT WHOSE EMAIL WE WERE LOOKING AT, WHOSE DOCUMENTS WE WERE LOOKING AT. IN THE NORMAL LEGAL SITUATION, IF YOU WERE BEING REPRESENTED BY MR. LAMONT, HE WASN'T DOING INTERNAL INVESTIGATION, WOULD SAY, I SPOKE WITH SO AND SON ON THE PHONE FOR A QUARTER OF AN HOUR OR I WORK ON THIS MEMO OR TOOK THIS GENTLEMAN'S DECLARATION. BUT THAT IS NOT WHAT IS DONE I HAVE NEVER DONE IT IN ALL MY YEARS OF PUBLIC ACCOUNTING ON THESE TYPES OF INVESTIGATES BECAUSE OF THE SENSITIVE. HEAR NOW IN THE PUBLIC FORUM, WERE LOOKING AT MIKE UBERRUAGA WHETHER HE DID ANYTHING OR NOT. THAT IS WHY WE DON'T PUT THAT KIND OF INFORMATION IN THE BILLING RECORDS.

AGUIRRE:
MR. MADAFFER, IF YOU ARE GOING TO DO THAT AND NOT ALLOW ME TO QUESTION HIM, IT DOES NOT SAY WHETHER MR. DAHLBERG

IS CORRECT OR INCORRECT. THAT IS ONE SIDE OF THE STORY WITHOUT ALLOWING ME TO EXAMINE HIM ON WHAT I CONSIDER TO BE A RATHER INCORRECT STATEMENT ON HIS PAST.

MADAFFER:
MR. AGUIRRE, I APPRECIATE IT. IM GOING TO CALL ON MS. ATKINS. I GUESS THE QUESTION AND PROBLEM I HAVE-

AGUIRRE:
YOU ARE JUST DENYING THE PEOPLE OF SAN DIEGO AN OPPORTUNITY TO GET IT THE TRUTH AND THEY CAN SEE THAT AND THEY KNOW WHAT YOU ARE DOING. THOSE ARE YOUR WORDS YOU JUST SAID TO EXAMINE, THIS IS NOT A COURT OF LAW, YOU ARE NOT SITTING HERE AS AN ATTORNEY IN AN INQUISITION. IF YOU HAVE A QUESTION JUST SIMPLY ASK IT LIKE A NORMAL PERSON. TELL ME ABOUT THE DETAIL BILLING.

AGUIRRE:
NO LISTEN. I HAVE A RIGHT TO CARRY OUT MY RESPONSABILITIES PROFESSIONALLY. IT'S GETTING AT THE TRUTH. THAT IS NOT FOR YOU TO CENSOR, YOU GIVE ME A CERTAIN AMOUNT OF TIME, LET ME, AND LET THE VOTERS, AND THE PEOPLE DECIDE TO GET IT THE TRUTH. WHAT MR. DAHLBERG SAID, I BELIEVE IS COMPLETELY INCONSISTENT WITH WHAT THE CITY MANAGER SAID. THE CITY MANAGER SAID JUST A MOMENT AGO AND MR. DAHLBERG CONFIRMED IT THAT ALL THIS INFORMATION WAS READILY AVAILABLE NOW MR. DAHLBERG HAS MADE THE OPPOSITE EXPRESSION. NOW HE SAYS IT IS NOT AVAILABLE AND NOT ONLY IS IT NOT AVAILABLE IT HAS NEVER BEEN AVAILABLE AND THAT IS HOW WE GET TO THE TRUTH. WHEN PEOPLE ARE PAID HUNDREDS OR DOLLARS AN HOUR AND THEY ARE VERY PROFESSIONAL WHICH BOTH OF THESE GENTLEMEN ARE, YOU HAVE TO EXAMINE THEM IN A WAY THAT GETS PAST ALL OF THE EFFORTS, PERHAPS TO NOT PUT THINGS IN A SHARP AS CONTRAST AS THE PUBLIC IS ENTITLED TO KNOW. THE IDEA THAT SOMEBODY HAD A CONVERSATION WITH UBERRUAGA AND SOMEHOW THAT IS

SOME STATE SECRET, THEREFORE WOULD JUSTIFY NOT BILLING, COME ON, THAT IS A VERY WEAK EXCUSE.

MADAFFER:
MRS. ATKINS WOULD YOU LIKE MR. AGUIRRE TO GO RIGHT NOW? I'M HAPPY TO GIVE HIM FIVE MINUTES. DO YOU HAVE SOME QUESTIONS?

ATKINS:
YOU ARE CHAIRING THE MEETING AND I APPRECIATE THAT VERY MUCH. IM SORRY THAT I ASKED YOU TO DO THIS, BUT DO WHAT YOU FEEL YOU NEED TO DO NEXT.

MADAFFER:
I FEEL THAT YOU WHERE NEXT TO SPEAK AND THAT IS WHY, WELL OK MR. AGUIRRE GO AHEAD FOR ANOTHER FIVE MINUTES.

AGUIRRE:
THANK YOU. GENTLEMEN YOU SAID THAT THE REASON YOU-

ROMANO:
WHO IS THAT QUESTION DIRECTED AT?

AGUIRRE:
I'LL DIRECT IT AT EITHER ONE OF YOU IT IS A TOSS UP. YOU BOTH SAID THAT YOU WERE REVIEWING THE WASTE WATER IN ORDER TO SAVE MONEY. DO YOU REMEMBER SAYING THAT?

ROMANO:
NO.

AGUIRRE:
YOU DIDN'T SAY THAT?

ROMANO:
NO.

Exhibit 75

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

MICHAEL J. AGUIRRE

CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 533-5800
FAX (619) 533-5856

October 24, 2005

Delivered via hand delivery

Re Kroll Invoices

Dear Honorable Deputy Mayor Atkins and City Council:

Item 203 on today's docket includes actions related to a fifth amendment to the agreement with Kroll, Inc. for services audit of the City's Comprehensive Annual Financial Audit Report, a fourth amendment to the agreement with Willkie Farr & Gallagher to provide legal services to Kroll and the Audit Committee, and to accept the KPMG/Audit Committee status report.

The City Council first hired Kroll on February 14, 2005, with a $250,000 retainer. The retention cost has mushroomed to $3,525,000 to date. Item 203 includes a request for an additional $1,750,000, bringing the total appropriation for Kroll to $5,275,000.

On May 10, 2005, the City first authorized $500,000 for the law firm Willkie Farr & Gallagher to provide independent legal counsel to Kroll and the Audit Committee. Three subsequent amendments increased the retainer to $2,650,000. To pay for services through November, Item 203 requests an additional $1,250,000, bringing the total retainer for the months of May through June 2005 to $3,900,000.

The City Attorney's Office has repeatedly requested all invoices for Kroll and Willkie Farr & Gallagher. Those requests have been met with resistance. The public's funds and confidence in government are seriously compromised by the practice of bypassing the City Attorney's Office to review these expenses.

The invoices submitted by Kroll for their work are wholly inadequate and contrary to best, let alone acceptable, billing practices. The invoices lack specificity as to work being performed, and accountability for the hours spent on each task. Notwithstanding this breach of fiduciary duty to the City, the City Council continues to reward them with additional appropriations.

I have attached a copy of the following:

1. Billing from Kroll, lacking adequate detail;
2. Billing from Vinson & Elkins detailing the work performed;
3. Billing from Willkie Farr & Gallagher that lacked detail; and
4. Billing from Willkie Farr & Gallagher showing detail.

Because Kroll refuses to submit billing that substantiates the work they are performing for the City, I strongly object to appropriating additional funding to pay for their services. Because Willkie Farr & Gallagher perform services at the request of Kroll, I regrettably must object to additional appropriations for them as well. I have serious questions about whether these two firms performed in a way that would justify additional appropriations. Moreover, their billing to date begs the question as to whether they have satisfied their legal responsibility to the City of San Diego of acting with due care and diligence. For these reasons, I can not endorse this request for funds, and advise the City of San Diego to remove it from the docket.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By
Michael J. Aguirre
City Attorney

MJA:ms

ATTACHMENT 1

Case #0005948-0002
Invoice #1310933

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	21	$750.00	$15,750.00
Arthur Levitt	33.85	$900.00	$30,465.00
Troy Dahlberg	33	$450.00	$14,850.00
Jennifer Amini	86.5	$300.00	$25,950.00
Jeffrey Klein	105	$300.00	$31,500.00
David Callaghan	79	$400.00	$31,600.00
Jenny Dominguez	67.5	$350.00	$23,625.00
Rachel Layboum	110.7	$250.00	$27,675.00
David Cogan	3	$350.00	$1,050.00
Lisa Han	2	$300.00	$600.00
Lisa Jordan	14	$300.00	$4,200.00
Regina Israel	5.5	$85.00	$467.50
Total	561.05		$207,732.50

Detail of Out-of-Pocket Expenses

Air Transportation	$8,912.30
Ground Transportation	$2,256.91
Hotel Charges	$11,763.11
Meals	$2,999.44
Misc	$2,463.19
Electronic Research	$154.00
Total	$28,548.95

ATTACHMENT 2

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
05/14/05	REBA	Assist in compiling exhibits for Issue Coding Reports into notebooks.	6.00
05/14/05	MHIN	Review documents and prepare witness exhibit binders.	7.00
05/14/05	NEVA	Document review.	2.50
05/14/05	RCSA	Draft memorandum regarding disclosure failure.	2.75
05/14/05	RCSA	Draft memorandum regarding disclosure failures.	6.50
05/14/05	NASA	Research and review files regarding Proposition 218 and water rate increase issue.	3.75
05/14/05	VMLA	Assist with the assembly of IC Binders per David Godschalk and Paul Maco.	7.50
05/14/05	KMLA	Finish creating 6 binders of alphabetical listing of all interviews and exhibits per David Godschalk.	7.00
05/15/05	PSM	Work with team on Kroll response, call with Turner.	2.50
05/15/05	DKG	Respond to audit committee requests; conferences with Sean Bukowski.	4.00
05/15/05	SCB	Prepare memo about process of creating issue reports; prepare list of requests from Kroll and whether we have fulfilled those requests.	5.50
05/15/05	MHIN	Prepare exhibits for witness files.	4.00
05/15/05	NEVA	Document review.	1.50
05/16/05	BSL	Respond to David Godschalk questions regarding document production issues.	0.25
05/16/05	PSM	E-mails Turner, City, continue work with group on Kroll requests.	4.50
05/16/05	DKG	Respond to audit committee requests; conferences with Paul Maco.	8.75
05/16/05	SCB	Review documents for responsiveness in Applied Discovery database.	6.00
05/16/05	REBA	Transfer all interview memos to public folder; phone conversation with IT Help Desk in Houston to find out how to search just within public folder.	4.75
05/16/05	MHIN	Prepare exhibits for witness files; prepare issue binders.	8.00

ATTACHMENT 3

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: distillation of financial reporting issues into discrete areas based on preliminary review of materials relating to the City's pension fund and finances, including the various reports prepared by the City Attorney and Vinson & Elkins; working with Vinson & Elkins as to preparation of summary memoranda and binders as to each issue area; efforts directed to the board of the San Diego City Employees' Retirement System concerning waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preliminary research of municipal bankruptcy law and cases relating to the rejection under Chapter 9 of employee benefits, including pension obligations, and preparation of a list of issues that the City should consider in deciding whether to seek Chapter 9 protection; projects directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and complete production of relevant documents to those authorities and KPMG, such projects including review of the relevant subpoenas and records of the City's past compliance efforts, discussions with the SEC, U.S. Attorney's Office, and the City's outside counsel concerning the status of the City's production, and preparation of a memorandum to City employees and others concerning document

;tention and production obligations; consideration of issues raised in fourth report of the City Attorney.	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

ATTACHMENT 4

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536044

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005 as set forth in the attached client statement	$ 25,406.50
Total this Statement	$ 25,406.50

SAN DIEGO AUDIT COMMITTEE
Statement No. 20504613
Client/Matter No. 115662.00001

AUDIT COMMITTEE INVESTIGATION

Date	Timekeeper	Description	Hours	Amount
3/3/05	B R	TCW Jack Nusbaum re: San Diego project; meeting L B.	0.40	$ 324.00
4/5/05	LMM	O/c with M. Young re possible representation of A. Levitt in his investigation of San Diego pension fund underfunding matters.	0.50	405.00
4/5/05	B R	Tcw M. Young; review various e-mails	0.40	324.00
4/6/05	B R	Review various e-mails from L. Turner; tcw Young; ocw Young. Review written material.	2.00	1,620.00
4/8/05	B R	Review documents received from L. Turner.	3.00	2,430.00
4/8/05	LMM	Read article and City Attorney Third Interim Report; begin preparing issues list, timeline, etc.	3.50	2,835.00
4/10/05	B R	Review engagement letter. Read materials.	2.20	1,782.00
4/11/05	T M	Conf B. Romano re: new case/assignment; review reports.	0.70	416.50
4/11/05	MBK	(San Diego) Conf. Romano re: case (.5). Review of Vinson & Elkins report (1.3).	1.80	1,170.00
4/12/05	T M	Review reports and correspondence.	1.50	892.50
4/13/05	MBK	(San Diego) Review of Vinson & Elkins report.	3.00	1,950.00
4/14/05	MBK	(San Diego) Review of KPMG corres.	0.80	520.00
4/15/05	T M	Review docs.	0.50	297.50
4/15/05	B R	Review engagement letter; tcw Young re: indemnity.	0.40	324.00
4/18/05	LMM	Email to M. Young re documents/due diligence and read news story re waiver attorney/client privilege.	0.10	81.00
4/18/05	B R	Redraft engagement letter to include indemnity. Tcw Klotz; review U&E materials.	4.00	3,240.00
4/19/05	MBK	(San Diego) Review of memo re: legal framework for investigation.	0.80	520.00
4/20/05	LMM	Begin reading Luce, Forward report 2/22/05.	0.50	405.00

Date	Timekeeper	Description	Hours	Amount
4/22/05	MRY	Matters as to recent developments and audit committee investigation.	1.30	1,053.00
4/23/05	MRY	Matters as to audit committee investigation and work needed to satisfy auditors.	0.40	324.00
4/26/05	LMM	Reviewing background materials.	3.50	2,835.00
4/28/05	LMM	Continue reading background materials.	1.50	1,215.00
4/29/05	MRY	Conference with Lynn Turner re upcoming trip to San Diego and issues to be addressed; related e-mail traffic; conference with Benito Romano re same; related activity; conference with KPMG.	0.40	324.00
4/30/05	T M	E-mail BR, review LT e-mail.	0.20	119.00

Timekeeper	Hours	Amount
KLOTZ, MARTIN	6.40	$ 4,160.00
MAZZA, LESLIE	9.60	7,776.00
MUNDIYA, TARIQ	2.90	1,725.50
ROMANO, BENITO	12.40	10,044.00
YOUNG, MICHAEL	2.10	1,701.00

Professional Fees	$ 25,406.50
Total this Statement	$ 25,406.50

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005	$ 25,406.50
Total this Statement	$ 25,406.50

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Exhibit 76

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Daniel

October 24, 2005

Matter No. 0005948-0002
Invoice No. 1311201-4

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From September 17, 2005 through September 30, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	5.00 hrs @ $ 750.00 per hour	3,750.00
Troy Dahlberg	87.50 hrs @ $ 450.00 per hour	39,375.00
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50
Lisa Jordan	69.50 hrs @ $ 300.00 per hour	20,850.00
Paul Donato	73.50 hrs @ $ 250.00 per hour	18,375.00
Mary Kreidell	44.00 hrs @ $ 350.00 per hour	15,400.00
Phil Mennona	96.00 hrs @ $ 350.00 per hour	33,600.00
Peter Kyviakidis	58.50 hrs @ $ 400.00 per hour	23,400.00
Michael Archibald	70.00 hrs @ $ 300.00 per hour	21,000.00
Jennifer Arnini	110.50 hrs @ $ 300.00 per hour	33,150.00
Mike Belov	77.00 hrs @ $ 250.00 per hour	19,250.00
Jeffrey Klein	105.50 hrs @ $ 300.00 per hour	31,650.00
Rachel Layboum	58.30 hrs @ $ 250.00 per hour	14,575.00
Javier Alvarez	89.00 hrs @ $ 300.00 per hour	26,700.00
Noah Blum	11.00 hrs @ $ 300.00 per hour	3,300.00
Jamal Ahmad	64.00 hrs @ $ 350.00 per hour	22,400.00
Jenny Dominguez	112.50 hrs @ $ 350.00 per hour	39,375.00
Jessie Ting	89.50 hrs @ $ 250.00 per hour	22,375.00
Lisa Han	94.00 hrs @ $ 300.00 per hour	28,200.00
Bruce Pixley	9.00 hrs @ $ 350.00 per hour	3,150.00
David Callaghan	88.00 hrs @ $ 400.00 per hour	35,200.00
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00
		$ 465,862.50
		(137,173.19) previous paid
		$ 379,645.48

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

See OK to pay from Tony Salmon

Out-of-Pocket Disbursements		
T&E - Air Transportation	13,205.49	
T&E - Ground Transportation	2,787.10	
T&E - Hotel Charges	18,142.00	
T&E - Meals	5,768.66	
T&E - Mileage Reimbursement	1,293.42	
Miscellaneous & Telephone	952.69	
Postage & Courier	233.72	
Reproduction Expense	8,143.86	
Office Supplies	429.23	
		50,956.17
Total Due:		$ 516,818.67

Exhibit 77

Kroll
The Risk Consulting Company

660 South Figueroa Street
9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

RECEIVED
APR 11 2005
City Manager

March 30, 2005

Matter No. 0005948-0002
Invoice No. 1310719

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From February 1, 2005 through February 28, 2005 (Troy Dahlberg)

RE Financial Review & Evaluation
Internal Controls Assessment

For Professional Services Rendered	$ 71,417.50
Out-of-Pocket Disbursements	2,617.91
Total Due:	$ 74,035.41

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310719

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
David M. Cogan	19.75	$350.00	$6,912.50
Laurie E. Capen	3	$175.00	$525.00
Lynn Turner	25	$750.00	$18,750.00
Troy Dahlberg	55.5	$450.00	$24,975.00
Jennifer Arnini	48.5	$300.00	$14,550.00
Regina Israel	3	$85.00	$255.00
Rachel Laybourn	9	$250.00	$2,250.00
David Callaghan	8	$400.00	$3,200.00
Total	171.75		$71,417.50

Detail of Out-of-Pocket Expenses

T&E - Air Transportation	$734.40
T&E - Ground Transportation	$50.00
T& E - Meals	$140.74
T&E - Mileage Reimbursement	$50.63
T&E - Travel & Lodging	$1,248.93
Telephone	$5.30
Reproduction Expense	$145.65
Office Supplies	$242.26
Total	$2,617.91

Kroll
The Risk Consulting Company

660 South Figueroa Street
9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

APR 0 8 2005

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310721

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005 (Troy Dahlberg)

RE Research Pension Board Nominees.

For Professional Services Rendered	$ 104,608.75
Out-of-Pocket Disbursements	4,216.70
Total Due:	$ 108,825.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310721

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Marcia R. Berss	20.25	$285.00	$5,771.25
Gary W. Hoffman	0.50	$235.00	$117.50
Kenneth W. Mate	85.00	$315.00	$26,775.00
Arnold G. Contreras	25.00	$240.00	$6,000.00
David M. Cogan	2.00	$350.00	$700.00
Adrian Maher	90.00	$250.00	$22,500.00
Alexis Keefe	5.00	$200.00	$1,000.00
Brandon Sprague	40.50	$220.00	$8,910.00
Theo Gragg	48.50	$220.00	$10,670.00
Richard Lucia	3.00	$250.00	$750.00
Giles G. Miller	31.50	$260.00	$8,190.00
Erin L. Walker	0.50	$50.00	$25.00
Kim M. Christensen	44.00	$300.00	$13,200.00
	395.75		$104,608.75

Detail of Out-of-Pocket Expenses

T& E - Meals	$141.03
Off-Line Databases	$2,039.75
On-line Database	$560.00
On-line Database	$1,063.64
Postage & Courier	$14.28
Off-Line Databases	$370.00
Telephone	$14.00
Reproduction Expense	$14.00
TOTAL	$4,216.70

Original to Loc
4/15

Kroll
The Risk Consulting Company

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City Manager

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310722

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005 (Troy Dahlberg)

RE Internal Investigation

For Professional Services Rendered	$ 135,100.00
Out-of-Pocket Disbursements	8,938.46
Total Due:	$ 144,038.46

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310722

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	42	$750.00	$31,500.00
Troy Dahlberg	79	$450.00	$35,550.00
Jennifer Arnini	92	$300.00	$27,600.00
Regina Israel	10	$85.00	$850.00
David Callaghan	99	$400.00	$39,600.00
Total	322		$135,100.00

Detail of Out-of-Pocket Expenses

Air Transportation	$1,280.60
Ground Transportation	$781.27
Hotel Charges	$4,319.49
Meals	$1,546.68
Misc	$53.67
Electronic Research	$956.75
Total	$8,938.46

Kroll

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fax: 213-443-6050

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City Manager

April 18, 2005

Matter No. 0005948-0002
Invoice No. 1310781

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 16, 2005 through March 31, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 123,650.00
Out-of-Pocket Disbursements	6,052.37
Total Due:	$ 129,702.37

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310781

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	1	$750.00	$750.00
Roger Siefert	4	$615.00	$2,460.00
Troy Dahlberg	67.5	$450.00	$30,375.00
Jennifer Arnini	87	$300.00	$26,100.00
Regina Israel	9	$85.00	$765.00
David Callaghan	102	$400.00	$40,800.00
Jenny Dominguez	64	$350.00	$22,400.00
Total	334.5		$123,650.00

Detail of Out-of-Pocket Expenses

Air Transportation	$0.00
Ground Transportation	$563.32
Hotel Charges	$3,079.93
Meals	$1,269.42
Misc	$905.62
Electronic Research	$234.08
Total	$6,052.37

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

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MAY 2 2005
City Manager

April 27, 2005

Matter No. 0005948-0002
Invoice No. 1310787

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From April 1, 2005 through April 15, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 135,405.00
Out-of-Pocket Disbursements	8,789.17
Total Due:	$ 144,194.17

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310787

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	4.5	$900.00	$4,050.00
Lynn Turner	9.5	$750.00	$7,125.00
Troy Dahlberg	73.5	$450.00	$33,075.00
Jennifer Arnini	97.5	$300.00	$29,250.00
Regina Israel	6	$85.00	$510.00
David Callaghan	31	$400.00	$12,400.00
Jenny Dominguez	99.5	$350.00	$34,825.00
Rachel Laybourn	48.7	$250.00	$12,175.00
Justin Bird	10.5	$190.00	$1,995.00
Total	380.7		$135,405.00

Detail of Out-of-Pocket Expenses

Air Transportation	$215.20
Ground Transportation	$736.26
Hotel Charges	$4,496.10
Meals	$2,711.80
Misc	$629.81
Electronic Research	$0.00
Total	$8,789.17

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

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MAY 11 2005
City Manager

May 9, 2005

Matter No. 0005948-0002
Invoice No. 1310822

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From April 15, 2005 through April 30, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 160,005.00
Out-of-Pocket Disbursements	33,880.16
Total Due:	$ 193,885.16

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310822

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	4	$900.00	$3,600.00
Lynn Turner	19.5	$750.00	$14,625.00
Troy Dahlberg	82.5	$450.00	$37,125.00
Jennifer Arnini	92	$300.00	$27,600.00
Regina Israel	8	$85.00	$680.00
David Callaghan	62	$400.00	$24,800.00
Jenny Dominguez	92	$350.00	$32,200.00
Rachel Laybourn	77.5	$250.00	$19,375.00
Total	437.5		$160,005.00

Detail of Out-of-Pocket Expenses

Air Transportation	$5,485.79
Ground Transportation	$2,538.06
Hotel Charges	$16,451.48
Meals	$6,840.11
Misc	$2,077.79
Electronic Research	$486.93
Total	$33,880.16

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

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MAY 23 2005
City Manager

May 20, 2005

Matter No. 0005948-0002
Invoice No. 1310854

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 1, 2005 through May 15, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 198,525.00
Out-of-Pocket Disbursements	16,632.22
Total Due:	$ 215,157.22

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310854

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	25.5	$900.00	$22,950.00
Lynn Turner	28.5	$750.00	$21,375.00
Troy Dahlberg	71.5	$450.00	$32,175.00
Jennifer Arnini	97.5	$300.00	$29,250.00
David Callaghan	73	$400.00	$29,200.00
Jenny Dominguez	93.5	$350.00	$32,725.00
Rachel Laybourn	110	$250.00	$27,500.00
David Cogan	4.5	$350.00	$1,575.00
Craig Resnick	3	$300.00	$900.00
Justin Bird	3.5	$250.00	$875.00
Total	510.5		$198,525.00

Detail of Out-of-Pocket Expenses

Air Transportation	$3,271.80
Ground Transportation	$1,644.81
Hotel Charges	$7,625.79
Meals	$3,373.10
Misc	$716.72
Electronic Research	$0.00
Total	$16,632.22

TO: Martin
6/6/05

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

JUN. 6 2005

June 3, 2005

Matter No. 0005948-0002
Invoice No. 1310863

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 16, 2005 through May 27, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 167,745.00
Out-of-Pocket Disbursements	29,966.53
Total Due:	$ 197,711.53

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310863

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	6	$750.00	$4,500.00
Arthur Levitt	6	$900.00	$5,400.00
Troy Dahlberg	70	$450.00	$31,500.00
Jennifer Arnini	34	$300.00	$10,200.00
Jeffrey Klein	71.7	$300.00	$21,510.00
David Callaghan	89	$400.00	$35,600.00
Jenny Dominguez	92	$350.00	$32,200.00
Rachel Laybourn	94.3	$250.00	$23,575.00
David Cogan	6.5	$350.00	$2,275.00
Arnold Contreras	2	$240.00	$480.00
Justin Bird	1	$250.00	$250.00
Regina Israel	3	$85.00	$255.00
Total	475.5		$167,745.00

Detail of Out-of-Pocket Expenses

Air Transportation	$6,681.60
Ground Transportation	$3,644.29
Hotel Charges	$14,656.10
Meals	$3,779.65
Misc	$1,204.89
Electronic Research	$0.00
Total	$29,966.53

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

June 24, 2005

Matter No. 0005948-0002
Invoice No. 1310917

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 28, 2005 through June 10, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered	$ 162,197.00
Out-of-Pocket Disbursements	31,997.05
Total Due:	$ 194,194.05

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310917

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	9.5	$750.00	$7,125.00
Arthur Levitt	6.48	$900.00	$5,832.00
Troy Dahlberg	68.5	$450.00	$30,825.00
Jennifer Amini	84.5	$300.00	$25,350.00
Jeffrey Klein	15.9	$300.00	$4,770.00
David Callaghan	91	$400.00	$36,400.00
Jenny Dominguez	74	$350.00	$25,900.00
Rachel Laybourn	87.7	$250.00	$21,925.00
David Cogan	4.5	$350.00	$1,575.00
Arnold Contreras	1	$240.00	$240.00
John Seeley Jr.	10	$200.00	$2,000.00
Regina Israel	3	$85.00	$255.00
Total	456.08		$162,197.00

Detail of Out-of-Pocket Expenses

Air Transportation	$6,382.60
Ground Transportation	$3,745.57
Hotel Charges	$14,987.66
Meals	$5,495.49
Misc	$1,060.71
Electronic Research	$325.02
Total	$31,997.05

Kroll
660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

June 29, 2005

Matter No. 0005948-0002
Invoice No. 1310933

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From June 13, 2005 through June 24, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered	$ 207,732.50
Out-of-Pocket Disbursements	28,548.95
Total Due:	$ 236,281.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310933

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	21	$750.00	$15,750.00
Arthur Levitt	33.85	$900.00	$30,465.00
Troy Dahlberg	33	$450.00	$14,850.00
Jennifer Amini	86.5	$300.00	$25,950.00
Jeffrey Klein	105	$300.00	$31,500.00
David Callaghan	79	$400.00	$31,600.00
Jenny Dominguez	67.5	$350.00	$23,625.00
Rachel Laybourn	110.7	$250.00	$27,675.00
David Cogan	3	$350.00	$1,050.00
Lisa Han	2	$300.00	$600.00
Lisa Jordan	14	$300.00	$4,200.00
Regina Israel	5.5	$85.00	$467.50
Total	561.05		$207,732.50

Detail of Out-of-Pocket Expenses

Air Transportation	$8,912.30
Ground Transportation	$2,256.91
Hotel Charges	$11,763.11
Meals	$2,999.44
Misc	$2,463.19
Electronic Research	$154.00
Total	$28,548.95

Original to Martin — 8/4/05

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

RECEIVED
AUG 4 2005
City Manager

August 1, 2005

Matter No. 0005948-0002
Invoice No. 1311010

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From July 9, 2005 through July 22, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	7.50 hrs @ $ 750.00 per hour	5,625.00	
Troy Dahlberg	83.50 hrs @ $ 450.00 per hour	37,575.00	
David Cogan	4.50 hrs @ $ 350.00 per hour	1,575.00	
Theo Gragg	7.00 hrs @ $ 245.00 per hour	1,715.00	
Lisa Jordan	36.00 hrs @ $ 300.00 per hour	10,800.00	
Peter Kyviakidis	20.50 hrs @ $ 400.00 per hour	8,200.00	
Jennifer Arnini	92.00 hrs @ $ 300.00 per hour	27,600.00	
Jeffrey Klein	101.70 hrs @ $ 300.00 per hour	30,510.00	
Rachel Laybourn	117.30 hrs @ $ 250.00 per hour	29,325.00	
Justin Bird	2.50 hrs @ $ 250.00 per hour	625.00	
Jenny Dominguez	75.50 hrs @ $ 350.00 per hour	26,425.00	
Lisa Han	81.00 hrs @ $ 300.00 per hour	24,300.00	
David Callaghan	52.00 hrs @ $ 400.00 per hour	20,800.00	
Regina Israel	13.00 hrs @ $ 85.00 per hour	1,105.00	
Arthur Levitt	3.58 hrs @ $ 900.00 per hour	3,222.00	
			$ 229,402.00

Out-of-Pocket Disbursements

Air Transportation	2,485.82	
Ground Transportation	2,877.25	
Hotel Charges	11,321.73	
Meals	4,348.10	
Miscellaneous	3,917.77	
Electronic Research	481.30	
		25,431.97

Total Due: $ 254,833.97

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Original TG Matter 8/24

AUG 1 9 2005

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

August 16, 2005

Matter No. 0005948-0002
Invoice No. 1311048

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

Professional Fees from July 25, 2005 through August 5, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	17.50 hrs @ $ 750.00 per hour	13,125.00	
Troy Dahlberg	72.00 hrs @ $ 450.00 per hour	32,400.00	
David Cogan	5.25 hrs @ $ 350.00 per hour	1,837.50	
Lisa Jordan	17.50 hrs @ $ 300.00 per hour	5,250.00	
Peter Kyviakidis	22.00 hrs @ $ 400.00 per hour	8,800.00	
Jennifer Arnini	90.50 hrs @ $ 300.00 per hour	27,150.00	
Jeffrey Klein	107.80 hrs @ $ 300.00 per hour	32,340.00	
Rachel Laybourn	98.80 hrs @ $ 250.00 per hour	24,700.00	
Noah Blum	1.00 hrs @ $ 300.00 per hour	300.00	
Jenny Dominguez	85.50 hrs @ $ 350.00 per hour	29,925.00	
Lisa Han	101.00 hrs @ $ 300.00 per hour	30,300.00	
David Callaghan	85.00 hrs @ $ 400.00 per hour	34,000.00	
Regina Israel	2.50 hrs @ $ 85.00 per hour	212.50	
Arthur Levitt	11.00 hrs @ $ 900.00 per hour	9,900.00	
			$ 250,240.00
	Total Due:		$ 250,240.00

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Original to Martin 7/26

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

CERTIFIED TRUE COPY JUL 29 2005
STILL OUTSTANDING SCREEN C7506 AS not paid
SIGNED Lynne Dance

July 27, 2005

Matter No. 0005948-0002
Invoice No. 1310995-02
8,331.14

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

~~From June 25, 2005 through July 8, 2005~~ ~~(Troy Dahlberg)~~

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	9.00 hrs @ $ 750.00 per hour	6,750.00	
Troy Dahlberg	41.00 hrs @ $ 450.00 per hour	18,450.00	
David Cogan	1.50 hrs @ $ 350.00 per hour	525.00	
Lisa Jordan	1.00 hrs @ $ 300.00 per hour	300.00	
Peter Kyviakidis	4.00 hrs @ $ 400.00 per hour	1,600.00	
Jennifer Amini	83.50 hrs @ $ 300.00 per hour	25,050.00	
Jeffrey Klein	92.70 hrs @ $ 300.00 per hour	27,810.00	
Rachel Laybourn	96.60 hrs @ $ 250.00 per hour	24,150.00	
Jenny Dominguez	33.00 hrs @ $ 350.00 per hour	11,550.00	
Lisa Han	82.00 hrs @ $ 300.00 per hour	24,600.00	
David Callaghan	91.00 hrs @ $ 400.00 per hour	36,400.00	
Arthur Levitt	7.83 hrs @ $ 900.00 per hour	7,047.00	
			$ 184,232.00

Out-of-Pocket Disbursements

Air Transportation	3,482.14	
Ground Transportation	3,776.28	
Hotel Charges	11,878.56	
Meals	2,977.22	
Miscellaneous	1,583.54	
Electronic Research	609.08	
		24,306.82

Total Due: $ ~~208,538.82~~ 8331.14

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, Ca 90017

-DUE UPON RECEIPT-

Original to Martin 7/29/05

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

JUL 29 2005

July 27, 2005

Matter No. 0005948-0002
Invoice No. 1310995-01

200,207.68

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From June 25, 2005 through July 8, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	9.00 hrs @ $ 750.00 per hour	6,750.00	
Troy Dahlberg	41.00 hrs @ $ 450.00 per hour	18,450.00	
David Cogan	1.50 hrs @ $ 350.00 per hour	525.00	
Lisa Jordan	1.00 hrs @ $ 300.00 per hour	300.00	
Peter Kyviakidis	4.00 hrs @ $ 400.00 per hour	1,600.00	
Jennifer Arnini	83.50 hrs @ $ 300.00 per hour	25,050.00	
Jeffrey Klein	92.70 hrs @ $ 300.00 per hour	27,810.00	
Rachel Laybourn	96.60 hrs @ $ 250.00 per hour	24,150.00	
Jenny Dominguez	33.00 hrs @ $ 350.00 per hour	11,550.00	
Lisa Han	82.00 hrs @ $ 300.00 per hour	24,600.00	
David Callaghan	91.00 hrs @ $ 400.00 per hour	36,400.00	
Arthur Levitt	7.83 hrs @ $ 900.00 per hour	7,047.00	
			$ 184,232.00

Out-of-Pocket Disbursements

Air Transportation	3,482.14	
Ground Transportation	3,776.28	
Hotel Charges	11,878.56	
Meals	2,977.22	
Miscellaneous	1,583.54	
Electronic Research	609.08	
		24,306.82

Total Due: $ 208,538.82

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, Ca 90017

$ 200,207.68

-DUE UPON RECEIPT-

TO: Martin/Lisa for payment

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

SEP 6 2005

August 30, 2005

Matter No. 0005948-0002
Invoice No. 1311068

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

Out-of-Pocket Disbursements
From July 23, 2005 through August 5, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Out-of-Pocket Disbursements

T&E - Air Transportation	2,622.98	
T&E - Ground Transportation	3,378.83	
T&E - Hotel Charges	13,953.49	
T&E - Meals	3,852.51	
T&E - Mileage Reimbursement	1,266.11	
Postage & Courier	1,818.09	
Reproduction Expense	3,581.39	
Office Supplies	384.44	
Miscellaneous	1,644.66	
		32,502.50
Total Due:		$ 32,502.50

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 7th Floor
900 Third Avenue
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

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STILL OUTSTANDING ON SCREEN C7506 AS Not found
SIGNED: Lynne Dance

September 9, 2005

Matter No. 0005948-0002
Invoice No. 1311095

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

Professional Fees from August 6, 2005 through August 19, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	20.00 hrs @ $ 750.00 per hour	15,000.00	
Troy Dahlberg	72.00 hrs @ $ 450.00 per hour	32,400.00	
David Cogan	1.50 hrs @ $ 350.00 per hour	525.00	
Lisa Jordan	9.50 hrs @ $ 300.00 per hour	2,850.00	
Phil Mennona	27.70 hrs @ $ 350.00 per hour	9,695.00	
Jennifer Arnini	92.00 hrs @ $ 300.00 per hour	27,600.00	
Jeffrey Klein	51.20 hrs @ $ 300.00 per hour	15,360.00	
Rachel Laybourn	114.60 hrs @ $ 250.00 per hour	28,650.00	
Justin Bird	2.00 hrs @ $ 250.00 per hour	500.00	
Noah Blum	20.00 hrs @ $ 300.00 per hour	6,000.00	
Jenny Dominguez	82.50 hrs @ $ 350.00 per hour	28,875.00	
Lisa Han	109.00 hrs @ $ 300.00 per hour	32,700.00	
David Callaghan	86.00 hrs @ $ 400.00 per hour	34,400.00	
Regina Israel	1.50 hrs @ $ 85.00 per hour	127.50	
Arthur Levitt	38.33 hrs @ $ 900.00 per hour	34,497.00	
			$ 269,179.50

AC260044
090

Total Due: $ 269,179.50

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

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STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Lynne Dance

September 23, 2005

Matter No. 0005948-0002
Invoice No. 1311127

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

Professional Fees From August 20, 2005 through September 2, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	4.00 hrs @ $ 750.00 per hour	3,000.00	
Troy Dahlberg	34.50 hrs @ $ 450.00 per hour	15,525.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
Lisa Jordan	38.50 hrs @ $ 300.00 per hour	11,550.00	
Phil Mennona	65.90 hrs @ $ 350.00 per hour	23,065.00	
Michael Archibald	9.00 hrs @ $ 300.00 per hour	2,700.00	
Jennifer Arnini	73.50 hrs @ $ 300.00 per hour	22,050.00	
Jeffrey Klein	95.20 hrs @ $ 300.00 per hour	28,560.00	
Rachel Laybourn	70.00 hrs @ $ 250.00 per hour	17,500.00	
Justin Bird	3.00 hrs @ $ 250.00 per hour	750.00	
Jenny Dominguez	83.50 hrs @ $ 350.00 per hour	29,225.00	
Jessie Ting	23.00 hrs @ $ 250.00 per hour	5,750.00	
Lisa Han	82.00 hrs @ $ 300.00 per hour	24,600.00	
David Callaghan	87.00 hrs @ $ 400.00 per hour	34,800.00	
Regina Israel	20.00 hrs @ $ 85.00 per hour	1,700.00	
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00	
			$ 231,912.50

Total Due: $ 231,912.50

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

October 13, 2005

Matter No. 0005948-0002
Invoice No. 1311173

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

For Out-of Pocket Expenses from August 6, 2005 through September 2, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Out-of-Pocket Disbursements

T&E - Air Transportation	479.60	
T&E - Ground Transportation	2,894.80	
T&E - Hotel Charges	22,993.84	
T& E – Meals	6,858.79	
T&E - Mileage Reimbursement	2,191.15	
Postage & Courier	1,002.09	
Reproduction Expense	10,375.75	
Office Supplies	523.12	
Miscellaneous	1,382.05	
		48,701.19
Total Amount:		$ 48,701.19
Less Adjustment		(10,868.00)
Total Due:		$ 37,833.19

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not for
SIGNED: Lynnie Dance

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Dance

October 20, 2005

Matter No. 0005948-0002
Invoice No. 1311199

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From September 3, 2005 through September 16, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	1.00 hrs @ $ 750.00 per hour	750.00	
Troy Dahlberg	75.00 hrs @ $ 450.00 per hour	33,750.00	
Kevin Cantwell	3.00 hrs @ $ 350.00 per hour	1,050.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
Lisa Jordan	57.00 hrs @ $ 300.00 per hour	17,100.00	
Phil Mennona	81.00 hrs @ $ 350.00 per hour	28,350.00	
Peter Kyviakidis	42.50 hrs @ $ 400.00 per hour	17,000.00	
Michael Archibald	23.00 hrs @ $ 300.00 per hour	6,900.00	
Jennifer Arnini	88.50 hrs @ $ 300.00 per hour	26,550.00	
Mike Belov	114.00 hrs @ $ 250.00 per hour	28,500.00	
Jeffrey Klein	109.60 hrs @ $ 300.00 per hour	32,880.00	
Rachel Laybourn	118.50 hrs @ $ 250.00 per hour	29,625.00	
Justin Bird	2.00 hrs @ $ 250.00 per hour	500.00	
Noah Blum	22.00 hrs @ $ 300.00 per hour	6,600.00	
Jamal Ahmad	8.00 hrs @ $ 350.00 per hour	2,800.00	
Jenny Dominguez	108.50 hrs @ $ 350.00 per hour	37,975.00	
Jessie Ting	106.00 hrs @ $ 250.00 per hour	26,500.00	
Lisa Han	95.00 hrs @ $ 300.00 per hour	28,500.00	
Bruce Pixley	8.00 hrs @ $ 350.00 per hour	2,800.00	
Sarah Halligan	2.00 hrs @ $ 250.00 per hour	500.00	
David Callaghan	91.00 hrs @ $ 400.00 per hour	36,400.00	
Arthur Levitt	7.50 hrs @ $ 900.00 per hour	6,750.00	
			$ 372,567.50

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Out-of-Pocket Disbursements

T&E - Air Transportation	6,487.60	
T&E - Ground Transportation	2,003.95	
T&E - Hotel Charges	14,282.00	
T&E - Meals	5,061.52	
T&E - Mileage Reimbursement	1,646.86	
Miscellaneous & Phone	620.54	
Electronic Research	31.78	
Postage & Courier	103.11	
Reproduction Expense	11,791.47	
Office Supplies	165.17	
		42,194.00
Total Due:		$ 414,761.50

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Dance

October 24, 2005

Matter No. 0005948-0002
Invoice No. 1311201-4

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From September 17, 2005 through September 30, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	5.00 hrs @ $ 750.00 per hour	3,750.00
Troy Dahlberg	87.50 hrs @ $ 450.00 per hour	39,375.00
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50
Lisa Jordan	69.50 hrs @ $ 300.00 per hour	20,850.00
Paul Donato	73.50 hrs @ $ 250.00 per hour	18,375.00
Mary Kreidell	44.00 hrs @ $ 350.00 per hour	15,400.00
Phil Mennona	96.00 hrs @ $ 350.00 per hour	33,600.00
Peter Kyviakidis	58.50 hrs @ $ 400.00 per hour	23,400.00
Michael Archibald	70.00 hrs @ $ 300.00 per hour	21,000.00
Jennifer Amini	110.50 hrs @ $ 300.00 per hour	33,150.00
Mike Belov	77.00 hrs @ $ 250.00 per hour	19,250.00
Jeffrey Klein	105.50 hrs @ $ 300.00 per hour	31,650.00
Rachel Laybourn	58.30 hrs @ $ 250.00 per hour	14,575.00
Javier Alvarez	89.00 hrs @ $ 300.00 per hour	26,700.00
Noah Blum	11.00 hrs @ $ 300.00 per hour	3,300.00
Jamal Ahmad	64.00 hrs @ $ 350.00 per hour	22,400.00
Jenny Dominguez	112.50 hrs @ $ 350.00 per hour	39,375.00
Jessie Ting	89.50 hrs @ $ 250.00 per hour	22,375.00
Lisa Han	94.00 hrs @ $ 300.00 per hour	28,200.00
Bruce Pixley	9.00 hrs @ $ 350.00 per hour	3,150.00
David Callaghan	88.00 hrs @ $ 400.00 per hour	35,200.00
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00
		$ 465,862.50
		(137,173.19) previously paid
		$ 379,645.48

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

See OK to pay from

Out-of-Pocket Disbursements

T&E - Air Transportation	13,205.49	
T&E - Ground Transportation	2,787.10	
T&E - Hotel Charges	18,142.00	
T&E - Meals	5,768.66	
T&E - Mileage Reimbursement	1,293.42	
Miscellaneous & Telephone	952.69	
Postage & Courier	233.72	
Reproduction Expense	8,143.86	
Office Supplies	429.23	
		50,956.17
Total Due:		$ 516,818.67

Exhibit 78

WILLKIE FARR & GALLAGHER LLP

JUN 1 2005

BENITO ROMANO
212 728 8258
bromano@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

May 19, 2005

Mr. Lamont P. Ewell
City Manager
The City of San Diego
202 "C" Street, MS9A
San Diego, CA 92101

Dear Mr. Ewell:

Enclosed is our statement for professional services rendered through April 30, 2005 in connection with the City of San Diego Audit Committee investigation. Also enclosed is a detailed record of diary entries relating thereto. I hope you find them in order and arrange for payment.

Please call me with any questions you may have.

Sincerely Yours,

Benito Romano

BR:jlp
Enclosures

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005 as set forth in the attached client statement	$ 25,406.50
Total this Statement	$ 25,406.50

AUDIT COMMITTEE INVESTIGATION

Date	Timekeeper	Description	Hours		Amount
3/3/05	B R	TCW Jack Nusbaum re: San Diego project; meeting L B.	0.40	$	324.00
4/5/05	LMM	O/c with M. Young re possible representation of A. Levitt in his investigation of San Diego pension fund underfunding matters.	0.50		405.00
4/5/05	B R	Tcw M. Young; review various e-mails	0.40		324.00
4/6/05	B R	Review various e-mails from L. Turner; tcw Young; ocw Young. Review written material.	2.00		1,620.00
4/8/05	B R	Review documents received from L. Turner.	3.00		2,430.00
4/8/05	LMM	Read article and City Attorney Third Interim Report; begin preparing issues list, timeline, etc.	3.50		2,835.00
4/10/05	B R	Review engagement letter. Read materials.	2.20		1,782.00
4/11/05	T M	Conf B. Romano re: new case/assignment; review reports.	0.70		416.50
4/11/05	MBK	(San Diego) Conf. Romano re: case (.5). Review of Vinson & Elkins report (1.3).	1.80		1,170.00
4/12/05	T M	Review reports and correspondence.	1.50		892.50
4/13/05	MBK	(San Diego) Review of Vinson & Elkins report.	3.00		1,950.00
4/14/05	MBK	(San Diego) Review of KPMG corres.	0.80		520.00
4/15/05	T M	Review docs.	0.50		297.50
4/15/05	B R	Review engagement letter; tcw Young re: indemnity.	0.40		324.00
4/18/05	LMM	Email to M. Young re documents/due diligence and read news story re waiver attorney/client privilege.	0.10		81.00
4/18/05	B R	Redraft engagement letter to include indemnity. Tcw Klotz; review U&E materials.	4.00		3,240.00
4/19/05	MBK	(San Diego) Review of memo re: legal framework for investigation.	0.80		520.00
4/20/05	LMM	Begin reading Luce, Forward report 2/22/05.	0.50		405.00

Date	Timekeeper	Description	Hours	Amount
4/22/05	MRY	Matters as to recent developments and audit committee investigation.	1.30	1,053.00
4/23/05	MRY	Matters as to audit committee investigation and work needed to satisfy auditors.	0.40	324.00
4/26/05	LMM	Reviewing background materials.	3.50	2,835.00
4/28/05	LMM	Continue reading background materials.	1.50	1,215.00
4/29/05	MRY	Conference with Lynn Turner re upcoming trip to San Diego and issues to be addressed; related e-mail traffic; conference with Benito Romano re same; related activity; conference with KPMG.	0.40	324.00
4/30/05	T M	E-mail BR, review LT e-mail.	0.20	119.00

Timekeeper	Hours	Amount
KLOTZ, MARTIN	6.40	$ 4,160.00
MAZZA, LESLIE	9.60	7,776.00
MUNDIYA, TARIQ	2.90	1,725.50
ROMANO, BENITO	12.40	10,044.00
YOUNG, MICHAEL	2.10	1,701.00

Professional Fees $ 25,406.50

Total this Statement $ 25,406.50

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005	$ 25,406.50
Total this Statement	$ 25,406.50

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

10: Marton
6/27/05

JUN 27 2005

WILLKIE FARR & GALLAGHER LLP

MICHAEL R. YOUNG
212 728 8280
myoung@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 9280

June 22, 2005

original invoice w/
DP 4132295

Mr. P. Lamont Ewell
City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in May in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Mil

Michael R. Young

Enclosure

2906820.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

2901883.1

20505598-02
CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not paid
SIGNED: Lynne Dance
balance of 8,131.56

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: distillation of financial reporting issues into discrete areas based on preliminary review of materials relating to the City's pension fund and finances, including the various reports prepared by the City Attorney and Vinson & Elkins; working with Vinson & Elkins as to preparation of summary memoranda and binders as to each issue area; efforts directed to the board of the San Diego City Employees' Retirement System concerning waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preliminary research of municipal bankruptcy law and cases relating to the rejection under Chapter 9 of employee benefits, including pension obligations, and preparation of a list of issues that the City should consider in deciding whether to seek Chapter 9 protection; projects directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and complete production of relevant documents to those authorities and KPMG, such projects including review of the relevant subpoenas and records of the City's past compliance efforts, discussions with the SEC, U.S. Attorney's Office, and the City's outside counsel concerning the status of the City's production, and preparation of a memorandum to City employees and others concerning document

retention and production obligations; consideration of issues raised in fourth report of the City Attorney.	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20506722
Client/Matter No. 115662.00001
July 15, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2005	$ 329,304.50
Disbursements and Other Charges	18,125.00
Total this Statement	$ 347,429.50

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: [illegible]

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Original to Martin 7/26

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

JUL 25 2005

July 18, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in June in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2934943.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20506722
Client/Matter No. 115662.00001
July 15, 2005

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: working with Vinson & Elkins as to preparation of summary memoranda and binders on reporting issue areas previously identified and reviewing completed Vinson & Elkins materials; efforts directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and KPMG, including drafting and distributing a memorandum and certification to all City employees concerning document retention and production, establishing procedures for review of completed certifications from employees, working with various City officials to establish an orderly and efficient process to ensure complete compliance with document production obligations, discussing with law enforcement authorities the scope of their document requests, and considering and answering questions and concerns of City employees concerning the scope of and compliance with document production obligations; projects concerning the board of the San Diego City Employees' Retirement System, including efforts directed toward waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities, such as appearing before the board to explain in public testimony the reasons supporting a waiver and the consequences

of failing to waive the privilege, and retention by the board of a new independent actuary; consideration of options in the event of a failure by the SDCERS board to waive the attorney-client privilege, including legal research on receivership and the authority of various City officials to remove members of the board; legal research on California's Brown Act and consideration of the implications of the law on efforts directed toward the SDCERS board; continued research of municipal bankruptcy law and cases related to the rejection under Chapter 9 of employee benefits, and further revision of list of issues that the City should consider in deciding whether to seek Chapter 9 protection; review and consideration of issues raised in fifth and sixth reports of the City Attorney.	$ 329,304.50
Disbursements and Other Charges	18,125.00
Total this Statement	$ 347,429.50

TO: Leo/Matt
9/7

WILLKIE FARR & GALLAGHER LLP

SEP 7 2005

MICHAEL R. YOUNG
212 728 8280
myoung@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 9280

August 31, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in July in connection with the Audit Committee investigation.

Based on the current status of your discussions with Benito Romano, hotel expenses are reflected at cost but the cost of meals has been reduced to the lower of the actual cost or $60 per person per day. I understand that you are in the process of finalizing an agreement with regard to future hotel expenses.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2968244.2

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20507856
Client/Matter No. 115662.00001
August 18, 2005

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: review of summary memoranda and binders reflecting work of Vinson & Elkins on reporting issue areas identified during its investigation; further efforts at distilling allegations identified in various sources, including the Vinson & Elkins memoranda and City Attorney reports, into issue areas requiring further investigation and substantive conclusions by the Audit Committee; working with Kroll to establish a work plan that outlines the Audit Committee's upcoming investigation and taking steps to present the work plan to the City's outside auditor and investigators; continued efforts directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and to other investigators, including review of certifications completed by City employees documenting the results of their search for responsive documents, contacting employees who indicated that they possessed responsive documents, and establishing procedures to ensure the orderly and efficient production of those documents; projects concerning the board of the San Diego City Employees' Retirement System, including continued efforts toward waiver of the board's assertion of the attorney-client privilege as to materials sought by

law enforcement authorities and consideration of options in the event that the board fails to waive the privilege; efforts directed at understanding the basis for and consequences of the City Attorney's action to impose a receivership on SDCERS through recently-filed litigation; consideration of issues raised by SEC's "wastewater" investigation and options for Audit Committee to address those issues as part of its existing investigation.	$ 395,113.50
Disbursements and Other Charges	24,961.42
Total this Statement	$ 420,074.92

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20507856
Client/Matter No. 115662.00001
August 18, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2005	$ 395,113.50
Disbursements and Other Charges	24,961.42
Total this Statement	$ 420,074.92

2967230.1

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Original to [illegible] 9/27

WILLKIE FARR & GALLAGHER LLP

SEP 26 2005

MICHAEL R. YOUNG
212 728 8280
myoung@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 9280

September 19, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in August in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2994247.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5530844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20508567
Client/Matter No. 115662.00001
September 13, 2005

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: investigation into underlying facts and circumstances as to Manager's Proposal I, Manager's Proposal II, Wastewater, and other matters warranting inquiry, including review of documents produced by City employees in response to the subpoenas issued by various law enforcement authorities and in response to the June 10 Mayor/Manager's Memo; continued efforts directed towards ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and to other investigators; working with the City Attorney's office to develop a process to ensure the speedy and thorough review of documents by the City Attorney's office for applicable privileges to allow the Audit Committee to have prompt access to produced documents; further projects concerning the board of the San Diego City Employees' Retirement System, including continued efforts toward waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preparation for and attendance at August 9 City Council meeting and various other related meetings; further discussion and refinement of the Audit Committee's work plan outlining the Audit Committee's upcoming investigatory efforts and steps to update the City's

outside auditor with current information concerning such efforts.	$ 448,001.50
Disbursements and Other Charges	40,038.70
Total this Statement	$ 488,040.20

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20508567
Client/Matter No. 115662.00001
September 13, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2005	$ 448,001.50
Disbursements and Other Charges	40,038.70
Total this Statement	$ 488,040.20

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Lennie Dauer

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20509756-2
Client/Matter No. 115662.00001
October 19, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2005	$ 918,604.00
Disbursements and Other Charges	61,577.57
Total this Statement	$ 980,181.57

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Dance

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Original to Lisa Martin 10/25/05

WILLKIE FARR & GALLAGHER LLP

MICHAEL R. YOUNG
212 728 8280
myoung@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 9280

October 19, 2005

RECEIVED
OCT 25 2005
City Manager

Mr. P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in September in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

cc: Mr. Troy A. Dahlberg

3023351.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20509756
Client/Matter No. 115662.00001
October 19, 2005

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: investigation into facts of pension and wastewater issues; efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests; matters involving a comprehensive review of City e-mail including efforts to resolve technological deficiencies and problems; continuing discussions with law enforcement authorities as to progress on investigative efforts; review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials; preparation for interviews of witnesses and scheduling of same; preparation for SEC presentation concerning initial views as to wastewater; preparation for wastewater interviews; formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, and identification of areas requiring additional activity; continued projects concerning the board of the San Diego City Employees' Retirement System, including resolution of attorney-client privilege issue concerning board documents and discussions concerning the scope and purpose of the separate investigation of the board and the Audit Committee's access to the information gathered and

conclusions reached in that investigation.	$ 918,604.00
Disbursements and Other Charges	61,577.57
Total this Statement	$ 980,181.57

Exhibit 79

From: "Dahlberg, Troy" <tdahlberg@KrollWorldwide.com>
To: <ravilaRuderman@sandiego.gov>
Date: 7/13/05 2:00PM
Subject: Invoice Detail
CC: <tstory@sandiego.gov>

Per your request attached is the description for the invoice related to the investigative background work that Kroll performed for the Mayor's office.

Please feel free to contact me with any other questions and requests.

Best Regards,

Kroll
The Risk Consulting Company

660 South Figueroa Street
9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310721

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005	(Troy Dahlberg)
RE Research Pension Board Nominees.	
For Professional Services Rendered	$ 104,608.75
Out-of-Pocket Disbursements	4,216.70
Total Due:	$ 108,825.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310721

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Marcia R. Berss	20.25	$285.00	$5,771.25
Gary W. Hoffman	0.50	$235.00	$117.50
Kenneth W. Mate	85.00	$315.00	$26,775.00
Arnold G. Contreras	25.00	$240.00	$6,000.00
David M. Cogan	2.00	$350.00	$700.00
Adrian Maher	90.00	$250.00	$22,500.00
Alexis Keefe	5.00	$200.00	$1,000.00
Brandon Sprague	40.50	$220.00	$8,910.00
Theo Gragg	48.50	$220.00	$10,670.00
Richard Lucia	3.00	$250.00	$750.00
Giles G. Miller	31.50	$260.00	$8,190.00
Erin L. Walker	0.50	$50.00	$25.00
Kim M. Christensen	44.00	$300.00	$13,200.00
	395.75		$104,608.75

Detail of Out-of-Pocket Expenses

T& E - Meals	$141.03
Off-Line Databases	$2,039.75
On-line Database	$560.00
On-line Database	$1,063.64
Postage & Courier	$14.28
Off-Line Databases	$370.00
Telephone	$14.00
Reproduction Expense	$14.00
TOTAL	$4,216.70

Billed and Unbilled Recap Of Time Detail - [0005948-0002 - Audit Committee Invoice]
Client:0005948 - The City of San Diego 7/12/2005 12:53:45 PM

Date	Initials	Name/Invoice Number	Hours	Amount	Description	Matter Number	Index
03/01/2005	243397	David Callaghan	11.00	3,190.00	Meetings with KPMG, city officials, attorneys	0005948-0002	2703361
04/05/2005		Invoice=1310722	11.00	4,400.00			
03/01/2005	025365	Jennifer Arnini	12.00	2,280.00		0005948-0002	2704424
04/05/2005		Invoice=1310722	12.00	3,600.00			
03/01/2005	025100	Troy Dahlberg	8.50	3,825.00		0005948-0002	2707123
04/05/2005		Invoice=1310722	8.50	3,825.00			
03/01/2005	024519	Lynn Turner	8.00	6,000.00		0005948-0002	2712606
04/05/2005		Invoice=1310722	8.00	6,000.00			
03/02/2005	024519	Lynn Turner	8.00	6,000.00		0005948-0002	2712608
04/05/2005		Invoice=1310722	8.00	6,000.00			
03/02/2005	025100	Troy Dahlberg	8.00	3,600.00		0005948-0002	2707124
04/05/2005		Invoice=1310722	8.00	3,600.00			
03/02/2005	004977	Alexis Keefe	5.00	1,000.00	Rasearch activities	0005948-0002	2723178
04/05/2005		Invoice=1310721	5.00	1,000.00			
03/02/2005	025365	Jennifer Arnini	9.00	1,710.00		0005948-0002	2704425
04/05/2005		Invoice=1310722	9.00	2,700.00			
03/02/2005	243397	David Callaghan	8.00	2,320.00	Preparation for and attendance at a meeting	0005948-0002	2703362
04/05/2005		Invoice=1310722	8.00	3,200.00	with city officials SEC US Attny		
03/02/2005	025756	Kim M. Christensen	2.00	600.00	Begin research on T. Roth, organize info on	0005948-0002	2689219
04/05/2005		Invoice=1310721	2.00	600.00	other subjects		
03/02/2005	000203	Kenneth W. Mate	2.00	630.00	analyze documentns; divide work	0005948-0002	2690828
04/05/2005		Invoice=1310721	2.00	630.00			
03/02/2005	021274	Giles G. Miller	3.50	910.00	Database searches regarding King, et al.	0005948-0002	2690875
04/05/2005		Invoice=1310721	3.50	910.00			
03/02/2005	000203	Kenneth W. Mate	4.00	1,260.00	assign reserach; divide subjects; start	0005948-0002	2689205
04/05/2005		Invoice=1310721	4.00	1,260.00	reserach regarding subjects		
03/02/2005	000678	Arnold G. Contreras	4.50	1,080.00	Conducted database research for public	0005948-0002	2692482
04/05/2005		Invoice=1310721	4.50	1,080.00	records on five individuals on a RUSH basis		
					per Ken Mate. Conducted searches for company		
					affiliations, litigation, and internet		
					mentions.		
03/03/2005	000678	Arnold G. Contreras	6.00	1,440.00	Conducted additional follow up research on	0005948-0002	2692475
04/05/2005		Invoice=1310721	6.00	1,440.00	five individuals. Conducted database research		
					on a new individual per K. Mate. Coordinated		
					field research in San Diego County.		
03/03/2005	021274	Giles G. Miller	10.00	2,600.00	Database searches regarding King, et al.;	0005948-0002	2690876
04/05/2005		Invoice=1310721	10.00	2,600.00	ordered litigation out of San Diego;		
					conference with investigators.		
03/03/2005	025756	Kim M. Christensen	10.00	3,000.00	Internet, press, SEC search on Harvey White;	[illegible]	[illegible]

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nber	Hours	Amount	Description	Matter Number	Index
	8.00	3,600.00		0005948-0002	2707126
	8.00	3,600.00			
	8.50	1,615.00		0005948-0002	2704427
	8.50	2,550.00			
	7.00	2,030.00	read project documents and summaries	0005948-0002	2703364
	7.00	2,800.00			
	3.00	255.00	File set up	0005948-0002	2699635
	3.00	255.00			
	10.00	3,000.00	Internet, press, SEC search on Harvey White;	0005948-0002	2690824
	10.00	3,000.00	additional research on Page, Roth		
	7.00	1,820.00	Reviewed litigation regarding King, et al.;	0005948-0002	2690878
	7.00	1,820.00	ordered litigation regarding Snow and her		
			companies; wrote memorandum.		

Date	Initials	Name/Invoice Nu
03/04/2005	025100	Troy Dahlberg
04/05/2005		Invoice=1310722
03/04/2005	025365	Jennifer Arnini
04/05/2005		Invoice=1310722
03/04/2005	243397	David Callaghan
04/05/2005		Invoice=1310722
03/04/2005	025535	Regina Israel
04/05/2005		Invoice=1310722
03/04/2005	025756	Kim M. Christensen
04/05/2005		Invoice=1310721
03/04/2005	021274	Giles G. Miller
04/05/2005		Invoice=1310721

Billed and Unbilled Recap Of Time Detail - [0005948-0002 - Audit Committee Invoice]
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Date	Initials	Name/Invoice Number	Hours	Amount	Description	Matter Number	Index
03/04/2005	025100	Troy Dahlberg	8.00	3,600.00		0005948-0002	2707126
04/05/2005		Invoice=1310722	8.00	3,600.00			
03/04/2005	025365	Jennifer Amini	8.50	1,615.00		0005948-0002	2704427
04/05/2005		Invoice=1310722	8.50	2,550.00			
03/04/2005	243397	David Callaghan	7.00	2,030.00	read project documents and summaries	0005948-0002	2703364
04/05/2005		Invoice=1310722	7.00	2,800.00			
03/04/2005	025535	Regina Israel	3.00	255.00	File set up	0005948-0002	2699635
04/05/2005		Invoice=1310722	3.00	255.00			
03/04/2005	025756	Kim M. Christensen	10.00	3,000.00	Internet, press, SEC search on Harvey White;	0005948-0002	2690824
04/05/2005		Invoice=1310721	10.00	3,000.00	additional research on Page, Roth		
03/04/2005	021274	Giles G. Miller	7.00	1,820.00	Reviewed litigation regarding King, et al.;	0005948-0002	2690878
04/05/2005		Invoice=1310721	7.00	1,820.00	ordered litigation regarding Snow and her		
					companies; wrote memorandum.		
03/04/2005	005185	Brandon Sprague	5.50	1,210.00	Did probes, accurints and pacer searches for	0005948-0002	2690913
04/05/2005		Invoice=1310721	5.50	1,210.00	five subjects: Paull, MacDonald, Ignell, Chu		
					and Shiplone.		
03/04/2005	005750	Theo Gragg	3.00	660.00	database work up	0005948-0002	2692472
04/05/2005		Invoice=1310721	3.00	660.00			
03/04/2005	000203	Kenneth W. Mate	10.00	3,150.00	analyze documents regarding applicants; draft	0005948-0002	2690825
04/05/2005		Invoice=1310721	10.00	3,150.00	meorandum; edit and ship to client		
03/05/2005	000678	Arnold G. Contreras	3.00	720.00	Conducted follow up research on specific	0005948-0002	2692489
04/05/2005		Invoice=1310721	3.00	720.00	entities tied to several individuals.		
03/05/2005	005185	Brandon Sprague	2.00	440.00	Analyzing probe information on subjects,	0005948-0002	2690917
04/05/2005		Invoice=1310721	2.00	440.00	synthesizing litigation data, figuring out		
					which jurisdictions we need to do searches		
					in, more probe searches for those subjects		
					who have changed names.		
03/06/2005	000203	Kenneth W. Mate	1.00	315.00	discuss case with dahlberh; oprder priorities	0005948-0002	2694696
04/05/2005		Invoice=1310721	1.00	315.00	for week		
03/07/2005	000203	Kenneth W. Mate	12.00	3,780.00	draft memorandum number #2 on various	0005948-0002	2694697
04/05/2005		Invoice=1310721	12.00	3,780.00	subjects; multiple fact checking, telephone		
					conferences with clients and investigtators		
03/07/2005	000022	Marcia R. Berss	5.25	1,496.25	talk to Ken Mate; begin research re	0005948-0002	2695763
04/05/2005		Invoice=1310721	5.25	1,496.25	Alliance's 2001 and 2004 private placements		
					and answers to Lynn Turner's questions		
03/07/2005	025756	Kim M. Christensen	9.00	2,700.00	Research on board candidates	0005948-0002	2693437
04/05/2005		Invoice=1310721	9.00	2,700.00			
03/07/2005	025535	Regina Israel	3.00	255.00	File set up	0005948-0002	2699637
04/05/2005		Invoice=1310722	3.00	255.00			
03/07/2005	021274	Giles G. Miller	8.00	2,080.00	Database searches regarding Sapper, et al.;	0005948-0002	2700026
04/05/2005		Invoice=1310721	8.00	2,080.00	telephone calls with investigators in San		
					Diego; reviewed litigation filings.		
03/07/2005	005185	Brandon Sprague	3.00	660.00	Looked at subject Ignell company, La Jolla	0005948-0002	2700263
04/05/2005		Invoice=1310721	3.00	660.00	Club, Forward Ventures, Avalon Captial on		
					Pacer and San Diego Court online. Ordered two		
					civil cases from Court Express. Analyzed		
					subject Ignell's other corporate affiliations.		
03/07/2005	005185	Brandon Sprague	3.00	660.00	Ran a lexis search of subject MacDonald in	0005948-0002	2700264
04/05/2005		Invoice=1310721	3.00	660.00	Texas. Found notice of default for MacDonald		
					and wife, called office of records to find		
					out information; did probe of Ingell's		
					company Avalon Capital Group.		
03/07/2005	005185	Brandon Sprague	3.00	660.00	Ran Pacer and san diego superior court checks	0005948-0002	2700265
04/05/2005		Invoice=1310721	3.00	660.00	for subject Chu and related companies;		
					compiled a list of business affiliations and		
					litigation.		

Billed and Unbilled Recap Of Time Detail - [0005948-0002 - Audit Committee Invoice]
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Date	Initials	Name/Invoice Number	Hours	Amount	Description	Matter Number	Index
03/07/2005	243397	David Callaghan	8.00	2,320.00	project planning, read project documents	0005948-0002	2703366
04/05/2005		Invoice=1310722	8.00	3,200.00			
03/07/2005	025365	Jennifer Armini	6.00	1,140.00		0005948-0002	2704433
04/05/2005		Invoice=1310722	6.00	1,800.00			
03/07/2005	025100	Troy Dahlberg	8.50	3,825.00		0005948-0002	2707127
04/05/2005		Invoice=1310722	8.50	3,825.00			
03/07/2005	024519	Lynn Turner	8.00	6,000.00		0005948-0002	2712618
04/05/2005		Invoice=1310722	8.00	6,000.00			
03/07/2005	005750	Theo Gragg	8.00	1,760.00	Conducted database and litigation searches	0005948-0002	2725599
04/05/2005		Invoice=1310721	8.00	1,760.00	for subjects in this case; examined		
					litigation records		
03/08/2005	005750	Theo Gragg	8.00	1,760.00	Conducted database and litigation searches	0005948-0002	2725600
04/05/2005		Invoice=1310721	8.00	1,760.00	for subjects in this case; examined corporate		
					affiliations of subjects		
03/08/2005	024519	Lynn Turner	8.00	6,000.00		0005948-0002	2712624
04/05/2005		Invoice=1310722	8.00	6,000.00			
03/08/2005	025100	Troy Dahlberg	8.00	3,600.00		0005948-0002	2707128
04/05/2005		Invoice=1310722	8.00	3,600.00			
03/08/2005	025365	Jennifer Armini	11.00	2,090.00		0005948-0002	2704434
04/05/2005		Invoice=1310722	11.00	3,300.00			
03/08/2005	243397	David Callaghan	11.00	3,190.00	Meetings & discussions of project issues	0005948-0002	2703367
04/05/2005		Invoice=1310722	11.00	4,400.00			
03/08/2005	005185	Brandon Sprague	7.00	1,540.00	Checked licenses for subject Paull on	0005948-0002	2700277
04/05/2005		Invoice=1310721	7.00	1,540.00	secretary of state websites, examined		
					litigation for Paull and companies;		
					identified a bankruptcy under Paull's company		
					SJP Inc. Ordered from court express, wrote up		
					details about bankruptcy. Did probe of Ignell		
					in south dakota, looked at her connections		
					with Gateway founder Ted Waitte.		
03/08/2005	005185	Brandon Sprague	6.00	1,320.00	Called family court clerk about subject	0005948-0002	2700279
04/05/2005		Invoice=1310721	6.00	1,320.00	Shipione divorce case in 89; ran searches for		
					Shipione husband Patrick Shea, probe		
					accurint, san diego courts; found		
					discrimination case. Looked at Shipione and		
					Shea corporate affiliations.		
03/08/2005	021274	Giles G. Miller	1.00	260.00	Followup database searches regarding Sapper.	0005948-0002	2700032
04/05/2005		Invoice=1310721	1.00	260.00			
03/08/2005	000678	Arnold G. Contreras	3.50	840.00	Conducted follow-up research on Thomas A.	0005948-0002	2694670
04/05/2005		Invoice=1310721	3.50	840.00	Page, et al. Coordianted with sub and		
					ordered copies of several cases naming Page		
					per K. Mate.		
03/08/2005	025535	Regina Israel	1.00	85.00	File set up	0005948-0002	2699615
04/05/2005		Invoice=1310722	1.00	85.00			
03/08/2005	025756	Kim M. Christensen	8.00	1,800.00	Research SEC regulations re S-3 filings;	0005948-0002	2693493
04/05/2005		Invoice=1310721	8.00	1,800.00	research candidates for board;		
03/08/2005	000022	Marcia R. Berss	7.50	2,137.50	talk to Ken and Kim. Draft memo re Alliance	0005948-0002	2696769
04/05/2005		Invoice=1310721	7.50	2,137.50	2001/2004 private placements sold below		
					market and possible undisclosed related party		
					transactions with Roth Capital Partners		
03/08/2005	000203	Kenneth W. Mate	12.00	3,780.00	multiple fact checking, document analysis	0005948-0002	2694698
04/05/2005		Invoice=1310721	12.00	3,780.00	regarding Ted Roth, Page and others.		
					Multiple telephone conferences with client		
					and investigators.		
03/09/2005	000203	Kenneth W. Mate	12.00	3,780.00	fact cecking document analyss regarding sec	0005948-0002	2694699
04/05/2005		Invoice=1310721	12.00	3,780.00	documents relating to related party		

Date	Initials	Name/Invoice Number	Hours	Amount	Description	Matter Number	Index
					transactions; telephone conference with sec		
					and others; multiple telephone conferences		
					with client and investigators; direct		
					investigation		
03/09/2005	000022	Marcia R. Berss	7.50	2,137.50	research, analysis re Ted Roth's	0005948-0002	2696772
04/05/2005		Invoice=1310721	7.50	2,137.50	compensation/stock holdings, including		
					forgiven $175,000 loan, significant 2001		
					stock sales; repricing of options, and		
					payout/departure.		
03/09/2005	025756	Kim M. Christensen	5.00	1,500.00	research SEC regulations regarding Roth	0005948-0002	2700185
04/05/2005		Invoice=1310721	5.00	1,500.00	disclosures.		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0005948-0002	2694667

Description	Matter Number	Index
hea, analyzed data on	0005948-0002	2700282
same Shea in article		
and.		
search for Avalon	0005948-0002	2700056
E, CA, and FL per Ken		
ate and property		
CA corp is affiliated		
search and telephone	0005948-0002	2700111
	0005948-0002	2703371
	0005948-0002	2699537
	0005948-0002	2707132
County litigation	0005948-0002	2725658
this case while		
Probes		
LER, ROTH, MACDONALD	0005948-0002	2700217
HERS		
e affiliations of Ignell	0005948-0002	2700260
ck and the probe as		
te websites. Talked		
connections between		
n Capital and another		
pital based in Boca		
Ignell's maiden name,		
2/05.	0005948-0002	2720037
search and coordinated	0005948-0002	2705624
Salinas, CA litigation		
tigation regarding	0005948-0002	2709804
	0005948-0002	2712792
County litigation	0005948-0002	2725670
this case while		
Probes		
	0005948-0002	2707133
	[illegible]	[illegible]

Date	Initials	Name/Invoice Number	Hours	Amount	Description
03/10/2005	005185	Brandon Sprague	0.50	110.00	Read clips on Patrick S
04/05/2005		Invoice=1310721	0.50	110.00	him to determine if the :
					was our subject's husb
03/10/2005	000678	Arnold G. Contreras	1.50	360.00	Conducted database re
04/05/2005		Invoice=1310721	1.50	360.00	Capital Group in SD, D
					Mate. Obtained corpor
					documents to see if the
					to the FL corp.
03/11/2005	000678	Arnold G. Contreras	1.50	360.00	Conducted database re
04/05/2005		Invoice=1310721	1.50	360.00	calls per K. Mate.
03/11/2005	243397	David Callaghan	8.00	2,320.00	review meeting issues
04/05/2005		Invoice=1310722	8.00	3,200.00	
03/11/2005	018473	Richard Lucia	3.00	750.00	Inquiries
04/05/2005		Invoice=1310721	3.00	750.00	
03/11/2005	025100	Troy Dahlberg	3.50	1,575.00	
04/05/2005		Invoice=1310722	3.50	1,575.00	
03/11/2005	005750	Theo Gragg	9.50	2,090.00	Conducted San Diego
04/05/2005		Invoice=1310721	9.50	2,090.00	searches for subjects i
					cross-checking against
03/11/2005	000203	Kenneth W. Mate	9.00	2,835.00	INVESTIGATE SHEFF
04/05/2005		Invoice=1310721	9.00	2,835.00	KIPPERMAN AND OT
03/11/2005	005185	Brandon Sprague	4.00	880.00	Tracked down corporat
04/05/2005		Invoice=1310721	4.00	880.00	using Accurint, Autotra
					well as secretary of sta
					to sub about looking for
					Ignell's company Avalo
					more shady Avalon Ca
					Raton, FL; ran probe o
					Lolacono.
03/12/2005	001755	Adrian Maher	90.00	22,500.00	Services from 3/2 - 3/1
04/05/2005		Invoice=1310721	90.00	22,500.00	
03/14/2005	000678	Arnold G. Contreras	1.00	240.00	Conducted database re
04/05/2005		Invoice=1310721	1.00	240.00	with sub to search for S
					per K. Mate.
03/14/2005	000203	Kenneth W. Mate	4.00	1,260.00	evluate documentds, lil
04/05/2005		Invoice=1310721	4.00	1,260.00	candidates
03/14/2005	025365	Jennifer Amini	7.00	1,330.00	190
04/05/2005		Invoice=1310722	7.00	2,100.00	300
03/14/2005	005750	Theo Gragg	5.50	1,210.00	Conducted San Diego
04/05/2005		Invoice=1310721	5.50	1,210.00	searches for subjects i
					cross-checking against
03/14/2005	025100	Troy Dahlberg	8.00	3,600.00	
04/05/2005		Invoice=1310722	8.00	3,600.00	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	

Billed and Unbilled Recap Of Time Detail - [0005948-0002 - Audit Committee Invoice]
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Date	Initials	Name/Invoice Number	Hours	Amount	Description	Matter Number	Index
03/10/2005	005185	Brandon Sprague	0.50	110.00	Read clips on Patrick Shea, analyzed data on	0005948-0002	2700282
04/05/2005		Invoice=1310721	0.50	110.00	him to determine if the same Shea in article		
					was our subject's husband.		
03/10/2005	000678	Arnold G. Contreras	1.50	360.00	Conducted database research for Avalon	0005948-0002	2700056
04/05/2005		Invoice=1310721	1.50	360.00	Capital Group in SD, DE, CA, and FL per Ken		
					Mate. Obtained corporate and property		
					documents to see if the CA corp is affiliated		
					to the FL corp.		
03/11/2005	000678	Arnold G. Contreras	1.50	360.00	Conducted database research and telephone	0005948-0002	2700111
04/05/2005		Invoice=1310721	1.50	360.00	calls per K. Mate.		
03/11/2005	243397	David Callaghan	8.00	2,320.00	review meeting issues	0005948-0002	2703371
04/05/2005		Invoice=1310722	8.00	3,200.00			
03/11/2005	018473	Richard Lucia	3.00	750.00	Inquiries	0005948-0002	2699537
04/05/2005		Invoice=1310721	3.00	750.00			
03/11/2005	025100	Troy Dahlberg	3.50	1,575.00		0005948-0002	2707132
04/05/2005		Invoice=1310722	3.50	1,575.00			
03/11/2005	005750	Theo Gragg	9.50	2,090.00	Conducted San Diego County litigation	0005948-0002	2725658
04/05/2005		Invoice=1310721	9.50	2,090.00	searches for subjects in this case while		
					cross-checking against Probes		
03/11/2005	000203	Kenneth W. Mate	9.00	2,835.00	INVESTIGATE SHEFFLER, ROTH, MACDONALD	0005948-0002	2700217
04/05/2005		Invoice=1310721	9.00	2,835.00	KIPPERMAN AND OTHERS		
03/11/2005	005185	Brandon Sprague	4.00	880.00	Tracked down corporate affiliations of Ignell	0005948-0002	2700280
04/05/2005		Invoice=1310721	4.00	880.00	using Accurint, Autotrack and the probe as		
					well as secretary of state websites. Talked		
					to sub about looking for connections between		
					Ignell's company Avalon Capital and another		
					more shady Avalon Capital based in Boca		
					Raton, FL; ran probe on Ignell's maiden name,		
					Loiacono.		
03/12/2005	001755	Adrian Maher	90.00	22,500.00	Services from 3/2 - 3/12/05.	0005948-0002	2720037
04/05/2005		Invoice=1310721	90.00	22,500.00			
03/14/2005	000678	Arnold G. Contreras	1.00	240.00	Conducted database research and coordinated	0005948-0002	2705624
04/05/2005		Invoice=1310721	1.00	240.00	with sub to search for Salinas, CA litigation		
					per K. Mate.		
03/14/2005	000203	Kenneth W. Mate	4.00	1,260.00	evluate documentds, litigation regarding	0005948-0002	2709804
04/05/2005		Invoice=1310721	4.00	1,260.00	candidates		
03/14/2005	025365	Jennifer Arnini	7.00	1,330.00		0005948-0002	2712792
04/05/2005		Invoice=1310722	7.00	2,100.00			
03/14/2005	005750	Theo Gragg	5.50	1,210.00	Conducted San Diego County litigation	0005948-0002	2725670
04/05/2005		Invoice=1310721	5.50	1,210.00	searches for subjects in this case while		
					cross-checking against Probes		
03/14/2005	025100	Troy Dahlberg	8.00	3,600.00		0005948-0002	2707133
04/05/2005		Invoice=1310722	8.00	3,600.00			
03/14/2005	024519	Lynn Turner	0.50	375.00		0005948-0002	2712627
04/05/2005		Invoice=1310722	0.50	375.00			
03/14/2005	243397	David Callaghan	7.00	2,030.00	review project issues	0005948-0002	2703372
04/05/2005		Invoice=1310722	7.00	2,800.00			
03/14/2005	000139	Gary W. Hoffman	0.50	117.50	Call title compnay on 3274 Min Lemon Grove	0005948-0002	2703970
04/05/2005		Invoice=1310721	0.50	117.50	and check chain and order instruments from		
					the chain.		
03/15/2005	243397	David Callaghan	9.00	2,610.00	review project issues	0005948-0002	2707173
04/05/2005		Invoice=1310722	9.00	3,600.00			
03/15/2005	001753	David M. Cogan	2.00	530.00	Research	0005948-0002	2704503
04/05/2005		Invoice=1310721	2.00	700.00			
03/15/2005	024519	Lynn Turner	0.50	375.00		0005948-0002	2712628

Billed and Unbilled Recap Of Time Detail - [0005948-0002 - Audit Committee Invoice]
Client:0005948 - The City of San Diego 7/12/2005 12:53:45 PM

Date	Initials	Name / Invoice Number	Hours	Amount	Description	Matter Number	Linkey
04/05/2005		Invoice=1310722	0.50	375.00			
03/15/2005	025100	Troy Dahlberg	8.00	2,700.00		0005948-0002	2707135
04/05/2005		Invoice=1310722	6.00	2,700.00			
03/15/2005	025365	Jennifer Amini	7.50	1,425.00		0005948-0002	2712793
04/05/2005		Invoice=1310722	7.50	2,250.00			
03/15/2005	025535	Regina Israel	3.00	255.00		0005948-0002	2714477
04/05/2005		Invoice=1310722	3.00	255.00			
03/16/2005	243397	David Callaghan	9.00	2,610.00	review project issues	0005948-0002	2707174
04/18/2005		Invoice=1310781	9.00	3,600.00			
03/16/2005	025100	Troy Dahlberg	6.50	2,925.00		0005948-0002	2707136
04/18/2005		Invoice=1310781	6.50	2,925.00			
03/16/2005	020294	Roger D. Siefert	3.00	1,845.00	Discussions with Turner, Dahlberg & Siefert	0005948-0002	2707234
04/18/2005		Invoice=1310781	3.00	1,845.00	about engagement		
03/16/2005	025365	Jennifer Amini	9.00	1,710.00		0005948-0002	2712794
04/18/2005		Invoice=1310781	9.00	2,700.00			
03/16/2005	025535	Regina Israel	1.00	85.00		0005948-0002	2714492
04/18/2005		Invoice=1310781	1.00	85.00			
03/17/2005	243397	David Callaghan	8.00	2,320.00	review project issues	0005948-0002	2715620
04/18/2005		Invoice=1310781	8.00	3,200.00			
03/17/2005	025100	Troy Dahlberg	6.50	2,925.00		0005948-0002	2716868
04/18/2005		Invoice=1310781	6.50	2,925.00			
03/17/2005	025365	Jennifer Amini	6.00	1,140.00		0005948-0002	2712795
04/18/2005		Invoice=1310781	6.00	1,800.00			
03/17/2005	020294	Roger D. Siefert	1.00	615.00	Discussion with Troy re: meeting with City	0005948-0002	2707236
04/18/2005		Invoice=1310781	1.00	615.00	Attorney, Aguire		
03/17/2005	025365	Jennifer Amini	1.00	300.00		0005948-0002	2747579
04/18/2005		Invoice=1310781	1.00	300.00			
03/18/2005	025365	Jennifer Amini	8.50	1,615.00		0005948-0002	2712796
04/18/2005		Invoice=1310781	8.50	2,550.00			
03/18/2005	025100	Troy Dahlberg	5.50	2,475.00		0005948-0002	2716869
04/18/2005		Invoice=1310781	5.50	2,475.00			
03/18/2005	243397	David Callaghan	6.00	1,740.00	review project issues	0005948-0002	2715621
04/18/2005		Invoice=1310781	6.00	2,400.00			
03/20/2005	025365	Jennifer Amini	1.00	190.00		0005948-0002	2712799
04/18/2005		Invoice=1310781	1.00	300.00			
03/21/2005	243397	David Callaghan	10.00	2,900.00		0005948-0002	2721031
04/18/2005		Invoice=1310781	10.00	4,000.00			
03/21/2005	025535	Regina Israel	1.50	127.50		0005948-0002	2714523
04/18/2005		Invoice=1310781	1.50	127.50			
03/21/2005	025100	Troy Dahlberg	1.50	675.00		0005948-0002	2716870
04/18/2005		Invoice=1310781	1.50	675.00			
03/21/2005	027448	Jenny N. Dominguez	7.00	1,750.00		0005948-0002	2720984
04/18/2005		Invoice=1310781	7.00	2,450.00			
03/21/2005	024519	Lynn Turner	1.00	750.00		0005948-0002	2738283
04/18/2005		Invoice=1310781	1.00	750.00			
03/21/2005	025365	Jennifer Amini	10.00	1,900.00		0005948-0002	2723328
04/18/2005		Invoice=1310781	10.00	3,000.00			
03/22/2005	025365	Jennifer Amini	9.00	1,710.00		0005948-0002	2723329
04/18/2005		Invoice=1310781	9.00	2,700.00			
03/22/2005	027448	Jenny N. Dominguez	8.00	2,000.00		0005948-0002	2720986

Date	Initials	Name / Invoice Number	Hours	Amount	Description	Matter Number	Index
04/27/2005		Invoice=1310787	9.50	4,275.00			
04/12/2005	025620	Rachel Laybourn	8.00	2,000.00	Document Review	0005948-0002	2748735
04/27/2005		Invoice=1310787	8.00	2,000.00			
04/12/2005	025365	Jennifer Amini	8.00	2,400.00		0005948-0002	2755239
04/27/2005		Invoice=1310787	8.00	2,400.00			
04/12/2005	027448	Jenny N. Dominguez	8.00	2,000.00		0005948-0002	2755248
04/27/2005		Invoice=1310787	8.00	2,800.00			
04/13/2005	027448	Jenny N. Dominguez	8.50	2,125.00		0005948-0002	2755249
04/27/2005		Invoice=1310787	8.50	2,975.00			
04/12/2005	025365	Jennifer Amini	8.50	2,550.00		0005948-0002	2755240

Client:0005948 - The City of San Diego 7/12/2005 12:53:45 PM

Kroll researched 24 candidates for City of San Diego pension board positions at the direction of the Mayor's office.

For each individual (and in many cases, the individual's spouse), Kroll performed the following research:

- Federal, state and local civil litigation research going back at least 10 years and in many cases 15 years for the individual, the individual's business entities, and any businesses the individual was associated with,

- Retrieval and analysis of significant federal, state and local civil litigation in appropriate and in many cases multiple jurisdictions going back at least 10 years and in many cases 15 years for the individual, the individual's business entities, and any businesses the individual was associated with. Litigation in this regard to include civil litigation, liens, judgments and bankruptcies.

- Research regarding other public record filings including business licenses, corporate records and UCC financing statements

- News and internet research going back at least 10 years and in many cases 15 years regarding the individual, the individual's business entities, and any businesses the individual was associated with,

- Research regarding Securities and Exchange Commission ("SEC") filings related to the individual, the individual's business entities (if public), and any businesses the individual was associated with (if public) for 10 years

- Where applicable, federal, state and local research regarding professional licensing of the individual

- Criminal record check for the individual dating back 15 years

Exhibit 80

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
Tel: 213-443-5090
fax: 213-443-5050

www.krollworldwide.com

November 16, 2005

Matter No. 0005948-0002
Invoice No. 1311253

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From October 1, 2005 through October 14, 2005

(Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	6.50 hrs @ $ 750.00 per hour	4,875.00
Troy Dahlberg	93.50 hrs @ $ 450.00 per hour	42,075.00
Ivette Morales	99.50 hrs @ $ 300.00 per hour	29,850.00
David Shapiro	77.50 hrs @ $ 300.00 per hour	23,250.00
David Cogan	2.50 hrs @ $ 350.00 per hour	875.00
Lisa Jordan	53.50 hrs @ $ 300.00 per hour	16,050.00
Glenn Lewis	16.00 hrs @ $ 350.00 per hour	5,600.00
Paul Donato	99.75 hrs @ $ 250.00 per hour	24,937.50
Mary Kreidell	51.50 hrs @ $ 350.00 per hour	18,025.00
Phil Mennona	104.00 hrs @ $ 350.00 per hour	36,400.00
Peter Kyriakidis	68.50 hrs @ $ 400.00 per hour	27,400.00
Ryan Tomme	102.00 hrs @ $ 250.00 per hour	25,500.00
Michael Archibald	52.50 hrs @ $ 300.00 per hour	15,750.00
Jennifer Armini	146.50 hrs @ $ 300.00 per hour	43,950.00
Mike Belov	105.50 hrs @ $ 250.00 per hour	26,375.00
Jeffrey Klein	93.20 hrs @ $ 300.00 per hour	27,960.00
Rachel Laybourn	119.50 hrs @ $ 250.00 per hour	29,875.00
Javier Alvarez	97.50 hrs @ $ 300.00 per hour	29,250.00
Noah Blum	17.00 hrs @ $ 300.00 per hour	5,100.00
Jamal Ahmad	80.00 hrs @ $ 350.00 per hour	28,000.00
Jenny Dominguez	119.00 hrs @ $ 350.00 per hour	41,650.00
Rex Homme	33.00 hrs @ $ 350.00 per hour	11,550.00
Jessie Ting	101.50 hrs @ $ 250.00 per hour	25,375.00
Lisa Han	91.00 hrs @ $ 300.00 per hour	27,300.00
Richard Cheng	15.00 hrs @ $ 250.00 per hour	3,750.00
Bruce Pixley	6.00 hrs @ $ 350.00 per hour	2,100.00
David Callaghan	97.00 hrs @ $ 400.00 per hour	38,800.00
Arthur Levitt	32.25 hrs @ $ 900.00 per hour	29,025.00

$ 640,647.50
(See Schedule A)

Out-of-Pocket Disbursements 44,761.18
(See Schedule B)

Total Due: $ 685,408.68

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 506124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-5453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	30,660.00
8)	Accounting and other research related to investigation.	875.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation.	75,975.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	62,750.00
13)	Perform accounting analysis related to investigative workplan.	89,475.00
14)	Perform electronic forensic procedures and analyses.	32,300.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	81,225.00
16)	Review electronic documents.	267,387.50
	Total Professional Fees	$640,647.50

Exhibit 81

Kroll Inc. employees	Billing rate per hour
Adrian Maher	$ 250.00
Alexis Keefe	$ 200.00
Andre D'Amico	$ 300.00
Arnold Contreras	$ 240.00
Arthur Levitt	$ 900.00
Brandon Sprague	$ 220.00
Bruce Pixley	$ 350.00
Candice Hirsch	$ 300.00
Cory Martin	$ 300.00
Craig Resnick	$ 300.00
David Callaghan	$ 400.00
David Cogan	$ 350.00
David Fielder	$ 450.00
David Shapiro	$ 300.00
Doug Farrow	$ 450.00
Erin Walker	$ 50.00
Gary Hoffman	$ 235.00
Giles Miller	$ 260.00
Glenn Lewis	$ 350.00
Greg Cauette	$ 350.00
Harold Cord Nuoffer	$ 300.00
Ivette Morales	$ 300.00
Jamal Ahmad	$ 350.00
Jason Thomas Wright	$ 250.00
Javier Alvarez	$ 300.00
Jeffery Klein - old	$ 300.00
Jeffery Klein - new	$ 350.00
Jennifer Arnini - old	$ 300.00
Jennifer Arnini - new	$ 350.00
Jenny Dominguez	$ 350.00
Jessie Ting	$ 250.00
John Seeley Jr.	$ 200.00
Justin Bird	$ 250.00
Katherine Fulson-Woytek	$ 250.00
Kenneth Mate	$ 315.00
Kevin Cantwell	$ 350.00
Kim Christensen	$ 300.00
La Tanya Squires	$ 250.00
Laura Singer	$ 350.00
Laurie E. Capen	$ 175.00
Lisa Han	$ 300.00
Lisa Jordan	$ 300.00
Lorraine Ciechanowicz	$ 300.00
Lynn Turner	$ 750.00
Marcia Berss	$ 285.00
Mark Lubin	$ 350.00

Mary Kreidell	$	350.00
Michael Archibald	$	300.00
Michael Shanahan	$	300.00
Mike Belov	$	250.00
Morgan Brazil	$	250.00
Noah Blum	$	300.00
Paul Donato	$	300.00
Pavel Pribylovskiy	$	300.00
Peter Kyviakidis	$	400.00
Peter Smith	$	300.00
Phil Mennona	$	350.00
Rachel Laybourn	$	250.00
Regina Israel	$	85.00
Rex Homme	$	350.00
Richard Cheng	$	250.00
Richard Lucia	$	250.00
Richard Vincent	$	250.00
Roger Siefert	$	615.00
Ryan Tomme	$	250.00
Sara Halligan	$	250.00
Thomas Kellner	$	350.00
T. Kellner	$	350.00
Theo Gragg	$	245.00
Thomas Avery	$	350.00
Troy Dahlberg	$	450.00
William Knoedelseder	$	350.00
William Martin	$	250.00

Exhibit 82

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

March 8, 2006

Matter No. 0005948-0002
Invoice No. 1311529

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From February 11, 2006 through February 24, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	8.50 hrs @ $ 750.00 per hour	6,375.00	
Troy Dahlberg	41.00 hrs @ $ 450.00 per hour	18,450.00	
David Cogan	83.25 hrs @ $ 350.00 per hour	29,137.50	
La Tanya Squires	88.00 hrs @ $ 250.00 per hour	22,000.00	
Glenn Lewis	5.00 hrs @ $ 350.00 per hour	1,750.00	
Paul Donato	90.25 hrs @ $ 300.00 per hour	27,075.00	
~~David Fielder~~	~~57.00 hrs @ $ 350.00 per hour~~	~~19,950.00~~	
Pavel Pribylovskiy	88.50 hrs @ $ 300.00 per hour	26,550.00	
Cory Martin	8.00 hrs @ $ 300.00 per hour	2,400.00	
Jennifer Arnini	104.50 hrs @ $ 350.00 per hour	36,575.00	
Jeffrey Klein	106.10 hrs @ $ 350.00 per hour	37,135.00	
Rachel Laybourn	99.30 hrs @ $ 250.00 per hour	24,825.00	
Jenny Dominguez	106.00 hrs @ $ 350.00 per hour	37,100.00	
Lisa Han	75.25 hrs @ $ 300.00 per hour	22,575.00	
Bill Knoedelseder	110.00 hrs @ $ 350.00 per hour	38,500.00	
Harold C. Nuoffer	105.30 hrs @ $ 300.00 per hour	31,590.00	
Jason Thomas Wright	102.00 hrs @ $ 250.00 per hour	25,500.00	
Candice Hirsch	88.35 hrs @ $ 300.00 per hour	26,505.00	
Morgan Brazil	94.50 hrs @ $ 250.00 per hour	23,625.00	
David Callaghan	58.00 hrs @ $ 400.00 per hour	23,200.00	
			$ 480,817.50
Less Fee Adjustment			(3,600.00)
			(See Schedule A)
Out-of-Pocket Disbursements			45,331.68
			(See Schedule B)
Total Due:			$ 522,549.18

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	24,825.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	21,795.00
13)	Perform accounting analysis related to investigative workplan.	13,200.00
14)	Perform electronic forensic procedures and analyses.[1]	42,945.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	374,452.50
	Total Professional Fees	$477,217.50

[1] A credit of $3,600 is included in this invoice and has been applied to Task 14. This credit is a result of applying an incorrect billing rate for David Fielder on Invoice #1311506. The incorrect rate billed was $450.00 per hour. The correct rate, as it appears on this invoice, is $350.00 per hour.

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[2]	$ 14,486.35
T&E - Ground Transportation[3]	3,204.58
T&E - Hotel Charges[4]	21,368.85
T&E – Meals[5]	4,102.37
T&E – Mileage Reimbursement[6]	136.32
Miscellaneous & Telephone	728.03
Electronic Research	583.64
Postage & Courier	304.58
Temporary Personnel[7]	416.96
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 45,331.68

[2] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 5 roundtrip tickets between Los Angeles, CA and New York, NY
- 6 roundtrip tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Chicago, IL and New York, NY
- 1 one-way ticket between Cape Girardeau, MO and Los Angeles, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and San Diego, CA
- 2 roundtrip tickets between Denver, CO and Los Angeles, CA

[3] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[4] Hotel Charges include costs for 63 nights of hotel accommodations in San Diego, CA (1 night), New York, NY (52 nights), and Los Angeles, CA (10 nights) for 7 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $376.26 per night, including applicable taxes. Before taxes, the New York rate ranged between $149.00 and $345.00 per night. In Los Angeles, CA, the average rate was $154.42 per night including applicable taxes. Before taxes the rate ranged between $127.00 and $163.00. Hotel Charges also includes San Diego Occupancy Tax not included on the previous invoice of $71.40.

[5] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 69 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.45 ($4,102.37 ÷ 69).

[6] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[7] Temporary Personnel include costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

April 4, 2006

Matter No. 0005948-0002
Invoice No. 1311585

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From March 11, 2006 through March 24, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	2.00 hrs @ $ 750.00 per hour	1,500.00	
Troy Dahlberg	65.00 hrs @ $ 450.00 per hour	29,250.00	
Ivette Morales	92.25 hrs @ $ 300.00 per hour	27,675.00	
David Shapiro	35.00 hrs @ $ 300.00 per hour	10,500.00	
David Cogan	74.85 hrs @ $ 350.00 per hour	26,197.50	
La Tanya Squires	101.25 hrs @ $ 250.00 per hour	25,312.50	
Glenn Lewis	6.00 hrs @ $ 350.00 per hour	2,100.00	
Paul Donato	106.00 hrs @ $ 300.00 per hour	31,800.00	
David Fielder	47.00 hrs @ $ 350.00 per hour	16,450.00	
Pavel Pribylovskiy	99.50 hrs @ $ 300.00 per hour	29,850.00	
Michael Shanahan	96.50 hrs @ $ 300.00 per hour	28,950.00	
Richard Vincent	8.00 hrs @ $ 250.00 per hour	2,000.00	
Jennifer Arnini	94.50 hrs @ $ 350.00 per hour	33,075.00	
Jeffrey Klein	100.10 hrs @ $ 350.00 per hour	35,035.00	
Rachel Laybourn	109.30 hrs @ $ 250.00 per hour	27,325.00	
Mark Lubin	111.00 hrs @ $ 350.00 per hour	38,850.00	
Jenny Dominguez	107.50 hrs @ $ 350.00 per hour	37,625.00	
Rex Homme	83.00 hrs @ $ 350.00 per hour	29,050.00	
Lisa Han	64.00 hrs @ $ 300.00 per hour	19,200.00	
Bill Knoedelseder	101.00 hrs @ $ 350.00 per hour	35,350.00	
Harold C. Nuoffer	117.00 hrs @ $ 300.00 per hour	35,100.00	
Jason Thomas Wright	113.50 hrs @ $ 250.00 per hour	28,375.00	
Morgan Brazil	108.25 hrs @ $ 250.00 per hour	27,062.50	
David Callaghan	98.00 hrs @ $ 400.00 per hour	39,200.00	
Regina Israel	14.50 hrs @ $ 85.00 per hour	1,232.50	
Arthur Levitt	2.00 hrs @ $ 900.00 per hour	1,800.00	
Greg Cauette	35.00 hrs @ $ 350.00 per hour	12,250.00	
			$ 632,115.00
			(See Schedule A)

Out-of-Pocket Disbursements 48,098.22
(See Schedule B)

Total Due: $ 680,213.22

okay to pay
4/24/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	32,550.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	46,195.00
13)	Perform accounting analysis related to investigative workplan.	64,800.00
14)	Perform electronic forensic procedures and analyses.	45,290.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	443,280.00
	Total Professional Fees	$632,115.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 11,785.51
T&E - Ground Transportation[2]	2,628.92
T&E - Hotel Charges[3]	25,451.01
T&E – Meals[4]	5,238.08
T&E – Mileage Reimbursement[5]	21.36
Miscellaneous & Telephone	993.62
Electronic Research	-
Postage & Courier	485.42
Temporary Personnel[6]	1,029.37
Office Supplies	491.93
Total Out-of-Pocket Disbursements	$ 48,098.22

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 2 roundtrip tickets between Los Angeles, CA and New York, NY
- 2 one-way tickets between St. Louis, MO and Los Angeles, CA
- 2 one-way tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Philadelphia, PA and Los Angeles, CA
- 1 roundtrip ticket between Chicago, IL and Los Angeles, CA
- 1 roundtrip ticket between Chicago, IL and San Diego, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between Oakland, CA and Los Angeles, CA
- 1 one-way ticket between Philadelphia, PA and Los Angeles, CA
- 1 one-way ticket between Philadelphia, PA and San Diego, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 79 nights of hotel accommodations in New York, NY (54 nights), San Diego, CA (15 nights) and Los Angeles, CA (10 nights) for 9 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $386.25 per night, including applicable taxes. Before taxes, the New York rate ranged between $309.00 and $345.00 per night. In Los Angeles, CA, the average rate was $169.86 per night including applicable taxes. Before taxes the rate ranged between $149.00 and $169.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 88 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.52 ($5,238.08 ÷ 88).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel include costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents for the weeks ending February 21, and March 3, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

April 19, 2006

Matter No. 0005948-0002
Invoice No. 1311628

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From March 25, 2006 through April 7, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	2.00 hrs @ $ 750.00 per hour	1,500.00	
Troy Dahlberg	59.50 hrs @ $ 450.00 per hour	26,775.00	
David Cogan	57.25 hrs @ $ 350.00 per hour	20,037.50	
La Tanya Squires	7.00 hrs @ $ 250.00 per hour	1,750.00	
Paul Donato	103.75 hrs @ $ 300.00 per hour	31,125.00	
David Fielder	25.00 hrs @ $ 350.00 per hour	8,750.00	
Cory Martin	2.00 hrs @ $ 300.00 per hour	600.00	
Michael Shanahan	99.00 hrs @ $ 300.00 per hour	29,700.00	
Jennifer Amini	145.50 hrs @ $ 350.00 per hour	50,925.00	
Jeffrey Klein	131.90 hrs @ $ 350.00 per hour	46,165.00	
Rachel Laybourn	136.80 hrs @ $ 250.00 per hour	34,200.00	
Mark Lubin	56.00 hrs @ $ 350.00 per hour	19,600.00	
Jenny Dominguez	129.50 hrs @ $ 350.00 per hour	45,325.00	
Rex Homme	48.00 hrs @ $ 350.00 per hour	16,800.00	
Lisa Han	66.00 hrs @ $ 300.00 per hour	19,800.00	
Bill Knoedelseder	4.00 hrs @ $ 350.00 per hour	1,400.00	
Harold C. Nuoffer	93.50 hrs @ $ 300.00 per hour	28,050.00	
Jason Thomas Wright	113.00 hrs @ $ 250.00 per hour	28,250.00	
Morgan Brazil	101.25 hrs @ $ 250.00 per hour	25,312.50	
David Callaghan	100.00 hrs @ $ 400.00 per hour	40,000.00	
Katherine Fulson-Woytek	10.00 hrs @ $ 250.00 per hour	2,500.00	
William Martin	11.50 hrs @ $ 250.00 per hour	2,875.00	
Arthur Levitt	12.50 hrs @ $ 900.00 per hour	11,250.00	
			$ 492,690.00
			(See Schedule A)
Out-of-Pocket Disbursements			64,486.78
			(See Schedule B)
Total Due:			$ 557,176.78

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	39,525.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	8,190.00
13)	Perform accounting analysis related to investigative workplan.	85,475.00
14)	Perform electronic forensic procedures and analyses.	13,725.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	345,775.00
	Total Professional Fees	$492,690.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 14,453.43
T&E - Ground Transportation[2]	3,209.69
T&E - Hotel Charges[3]	31,078.15
T&E – Meals[4]	6,120.00
T&E – Mileage Reimbursement[5]	184.69
Miscellaneous & Telephone	951.88
Electronic Research	-
Postage & Courier	173.04
Temporary Personnel[6]	3,863.59
Reproduction Expense	4,452.31
Total Out-of-Pocket Disbursements	$ 64,486.78

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 5 roundtrip tickets between Los Angeles, CA and New York, NY
- 5 roundtrip tickets between Chicago, IL and New York, NY
- 5 one-way tickets between Los Angeles, CA and New York, NY
- 2 one-way tickets between Newark, NJ and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between Chicago, IL and New York, NY

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 90 nights of hotel accommodations in New York, NY (73 nights), San Diego, CA (4 nights) and Los Angeles, CA (13 nights) for 12 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $382.34 per night, including applicable taxes. Before taxes, the New York rate ranged between $308.10 and $369.00 per night. In Los Angeles, CA, the average rate was $185.82 per night including applicable taxes. Before taxes the rate ranged between $149.00 and $169.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 102 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($6,120.00 ÷ 102).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel include costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist in the review of City email and electronic documents for the weeks ending February 24, March 10, and March 24, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

May 18, 2006

Matter No. 0005948-0002
Invoice No. 1311679

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From April 22, 2006 through May 5, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	16.00 hrs @ $ 750.00 per hour	12,000.00	
Troy Dahlberg	81.50 hrs @ $ 450.00 per hour	36,675.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
David Fielder	52.00 hrs @ $ 350.00 per hour	18,200.00	
Pavel Pribylovskiy	45.00 hrs @ $ 300.00 per hour	13,500.00	
Michael Shanahan	103.00 hrs @ $ 300.00 per hour	30,900.00	
Jennifer Arnini	95.50 hrs @ $ 350.00 per hour	33,425.00	
Jeffrey Klein	102.30 hrs @ $ 350.00 per hour	35,805.00	
Rachel Laybourn	108.50 hrs @ $ 250.00 per hour	27,125.00	
Jenny Dominguez	91.75 hrs @ $ 350.00 per hour	32,112.50	
Lisa Han	64.00 hrs @ $ 300.00 per hour	19,200.00	
Harold C. Nuoffer	101.00 hrs @ $ 300.00 per hour	30,300.00	
Thomas Kellner	5.25 hrs @ $ 350.00 per hour	1,837.50	
David Callaghan	104.00 hrs @ $ 400.00 per hour	41,600.00	
Arthur Levitt	2.00 hrs @ $ 900.00 per hour	1,800.00	
			$ 335,267.50
			(See Schedule A)
Out-of-Pocket Disbursements			33,604.71
			(See Schedule B)

Total Due: $ 368,872.21

okay to pay
JVT
6/6/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g.,,Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	37,875.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	21,555.00
13)	Perform accounting analysis related to investigative workplan.	76,600.00
14)	Perform electronic forensic procedures and analyses.	30,870.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	32,262.50
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	53,907.50
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	82,197.50
	Total Professional Fees	$ 335,267.50

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 3,819.61
T&E - Ground Transportation[2]	4,524.84
T&E - Hotel Charges[3]	6,537.48
T&E – Meals[4]	1,980.00
T&E – Mileage Reimbursement[5]	325.65
Miscellaneous & Telephone	247.29
Reproduction	4,479.11
Postage & Courier	99.48
Temporary Personnel[6]	11,591.25
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 33,604.71

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Philadelphia, PA and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between Cape Girardeau, MO and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 28 nights of hotel accommodations in New York, NY (7 nights), San Diego, CA (4 nights) and Los Angeles, CA (17 nights) for 5 professionals. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $402.36 per night, including applicable taxes. Before taxes, the New York rate ranged between $329.00 and $369.00 per night. In Los Angeles, CA, the average rate was $173.47 per night including applicable taxes. Before taxes the rate ranged between $129.00 and $178.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 33 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($1,980.00 ÷ 33).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel include costs for temporary employees engaged through Core Staffing Services, Inc. to assist in the review of City email and electronic documents for the weeks ending March 24 & 31, and April 7 & 14.

Kroll
660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

June 20, 2006

Matter No. 0005948-0002
Invoice No. 1311750

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From May 20, 2006 through June 2, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	10.00 hrs @ $ 750.00 per hour	7,500.00	
Troy Dahlberg	46.50 hrs @ $ 450.00 per hour	20,925.00	
Doug Farrow	9.00 hrs @ $ 450.00 per hour	4,050.00	
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50	
David Fielder	15.00 hrs @ $ 350.00 per hour	5,250.00	
Jennifer Arnini	96.50 hrs @ $ 350.00 per hour	33,775.00	
Jeffrey Klein	84.30 hrs @ $ 350.00 per hour	29,505.00	
Rachel Laybourn	96.00 hrs @ $ 250.00 per hour	24,000.00	
Jenny Dominguez	92.50 hrs @ $ 350.00 per hour	32,375.00	
Lisa Han	81.00 hrs @ $ 300.00 per hour	24,300.00	
Harold C. Nuoffer	61.50 hrs @ $ 300.00 per hour	18,450.00	
David Callaghan	114.00 hrs @ $ 400.00 per hour	45,600.00	
Arthur Levitt	3.00 hrs @ $ 900.00 per hour	2,700.00	
			$ 248,867.50
			(See Schedule A)
Out-of-Pocket Disbursements			6,613.46
			(See Schedule B)
Total Due:			$ 255,480.96

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	31,125.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	31,650.00
14)	Perform electronic forensic procedures and analyses.	7,875.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	27,065.00
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	3,605.00
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	111,122.50
19)	Prepare investigative report.	36,425.00
	Total Professional Fees	$ 248,867.50

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 813.60
T&E - Ground Transportation[2]	86.00
T&E - Hotel Charges[3]	2,033.54
T&E – Meals[4]	125.00
T&E – Mileage Reimbursement[5]	395.23
Miscellaneous & Telephone	50.00
Electronic Research	-
Postage & Courier	1,537.54
Temporary Personnel[6]	338.14
Reproduction Expense	1,234.41
Total Out-of-Pocket Disbursements	$ 6,613.46

[1] Air Transportation includes the following economy class ticket (which might be a full-fare rate):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[3] Hotel Charges include costs for 6 nights of hotel accommodations in New York, NY (2 nights) and Los Angeles, CA (4 nights) for 2 professionals. The rate in New York averaged $354.76 per night, including applicable taxes. Before taxes, the New York rate was approximately $300.00 per night. In Los Angeles, CA, the average rate was $293.84 per night, including applicable taxes. Before taxes the rate ranged between $219.00 and $269.00 per night. Additionally, meal costs of $148.67 are included in Hotel Charges.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY and Los Angeles, CA. Traveling professionals spent approximately 8 days out of town during this billing period. This equates to an average meal cost per day of approximately $34.21 ($273.67 ÷ 8), including meal costs of $148.67 that were included in Hotel Charges.

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel includes costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents for the week ending Saturday, May 13, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

July 6, 2006

Matter No. 0005948-0002
Invoice No. 1311771

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From June 3, 2006 through June 16, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	29.00 hrs @ $ 750.00 per hour	21,750.00	
Troy Dahlberg	65.00 hrs @ $ 450.00 per hour	29,250.00	
Doug Farrow	6.00 hrs @ $ 450.00 per hour	2,700.00	
Jennifer Arnini	135.00 hrs @ $ 350.00 per hour	47,250.00	
Jeffrey Klein	114.90 hrs @ $ 350.00 per hour	40,215.00	
Rachel Laybourn	135.05 hrs @ $ 250.00 per hour	33,762.50	
Jenny Dominguez	126.00 hrs @ $ 350.00 per hour	44,100.00	
Lisa Han	50.00 hrs @ $ 300.00 per hour	15,000.00	
Harold C. Nuoffer	10.00 hrs @ $ 300.00 per hour	3,000.00	
Tomas Kellner	5.75 hrs @ $ 350.00 per hour	2,012.50	
David Callaghan	127.00 hrs @ $ 400.00 per hour	50,800.00	
Arthur Levitt	20.00 hrs @ $ 900.00 per hour	18,000.00	
			$ 307,840.00 (See Schedule A)
Out-of-Pocket Disbursements			11,033.19 (See Schedule B)
Total Due:			$ 318,873.19

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa St.
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG Jetters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	69,000.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	7,700.00
14)	Perform electronic forensic procedures and analyses.	4,900.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	5,580.00
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	-
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	77,832.50
19)	Prepare investigative report.	142,827.50
	Total Professional Fees	$ 307,840.00

Schedule B

Out-of-Pocket Disbursements

T&E - Ground Transportation[1]	$ 20.00
T&E - Hotel Charges[2]	843.70
T&E – Meals[3]	180.00
Miscellaneous & Telephone	5.00
Postage & Courier	708.93
Temporary Personnel[4]	4,199.62
Reproduction Expense[5]	5,075.94
Total Out-of-Pocket Disbursements	$ 11,033.19

[1] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[2] Hotel Charges include costs for 2 nights of hotel accommodations in New York, NY for 1 professional. The rate in New York averaged $421.85 per night, including applicable taxes. Before taxes, the New York rate was $369.00 per night.

[3] Meal costs include direct out-of-pocket expenses on meals for a professional traveling to New York, NY. The traveling professional spent approximately 3 days out of town during this billing period. This equates to an average meal cost per day of approximately $60.00 ($180.00 ÷ 3).

[4] Temporary Personnel includes costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist with administrative tasks directly related to this project for the weeks ending May 13, 2006.

[5] Reproduction Expense includes reproduction costs directly related to this project.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

July 13, 2006

Matter No. 0005948-0002
Invoice No. 1311794

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From June 16, 2006 through June 30, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	38.50 hrs @ $ 750.00 per hour	28,875.00	
Troy Dahlberg	49.00 hrs @ $ 450.00 per hour	22,050.00	
Douglas Farrow	3.00 hrs @ $ 450.00 per hour	1,350.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
Michael Shanahan	1.00 hrs @ $ 300.00 per hour	300.00	
Jennifer Amini	128.50 hrs @ $ 350.00 per hour	44,975.00	
Jeffrey Klein	104.35 hrs @ $ 350.00 per hour	36,522.50	
Rachel Laybourn	144.50 hrs @ $ 250.00 per hour	36,125.00	
Jenny Dominguez	119.50 hrs @ $ 350.00 per hour	41,825.00	
Lisa Han	10.00 hrs @ $ 300.00 per hour	3,000.00	
David Callaghan	136.00 hrs @ $ 400.00 per hour	54,400.00	
Arthur Levitt	4.25 hrs @ $ 900.00 per hour	3,825.00	
			$ 274,035.00
			(See Schedule A)
Out-of-Pocket Disbursements			9,441.77
			(See Schedule B)
Total Due:			$ 283,476.77

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa St.
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	787.50
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	54,750.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	1,650.00
14)	Perform electronic forensic procedures and analyses.	4,725.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	-
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	80,900.00
19)	Prepare investigative report.	131,222.50
	Total Professional Fees	$ 274,035.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 2,116.49
T&E - Ground Transportation[2]	940.75
T&E - Hotel Charges[3]	2,585.90
T&E – Meals[4]	660.00
Mileage Reimbursement[5]	172.73
Miscellaneous & Telephone	322.75
Postage & Courier	15.75
Temporary Personnel[6]	2,552.40
Data Acquisition	75.00
Total Out-of-Pocket Disbursements	$ 9,441.77

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY
- 1 one-way ticket between Denver, CO and New York, NY
- 1 one-way ticket between Denver, CO and San Diego, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[3] Hotel Charges include costs for 8 nights of hotel accommodations in New York, NY for 3 professionals. The rate in New York averaged $323.24 per night, including applicable taxes. Before taxes, the New York rate ranged between $259.00 and $369.00 per night.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY. The traveling professionals spent approximately 11 days out of town during this billing period. This equates to an average meal cost per day of approximately $60.00 ($660.00 ÷ 11).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel includes costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist with administrative tasks directly related to this project for the weeks ending May 20, May 27, and June 3, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

July 21, 2006

Matter No. 0005948-0002
Invoice No. 1311836

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From July 1, 2006 through July 14, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Troy Dahlberg	21.00 hrs @ $ 450.00 per hour	9,450.00	
David Cogan	1.00 hrs @ $ 350.00 per hour	350.00	
Jennifer Arnini	47.75 hrs @ $ 350.00 per hour	16,712.50	
Jeffrey Klein	34.70 hrs @ $ 350.00 per hour	12,145.00	
Rachel Laybourn	3.00 hrs @ $ 250.00 per hour	750.00	
Jenny Dominguez	39.25 hrs @ $ 350.00 per hour	13,737.50	
David Callaghan	64.00 hrs @ $ 400.00 per hour	25,600.00	
Regina Israel	4.50 hrs @ $ 85.00 per hour	382.50	
Arthur Levitt	11.00 hrs @ $ 900.00 per hour	9,900.00	
			$ 89,027.50 (See Schedule A)

Out-of-Pocket Disbursements 12,271.68 (See Schedule B)

Total Due: $ 101,299.18

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa St.
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	350.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	19,350.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	-
14)	Perform electronic forensic procedures and analyses.	-
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	-
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	-
19)	Prepare investigative report.	69,327.50
	Total Professional Fees	$ 89,027.50

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 2,127.90
T&E - Ground Transportation[2]	255.00
T&E - Hotel Charges	-
T&E – Meals	-
Mileage Reimbursement	-
Miscellaneous & Telephone	65.74
Postage & Courier	2,369.42
Temporary Personnel[3]	234.00
Reproduction Expense[4]	7,219.62
Total Out-of-Pocket Disbursements	$ 12,271.68

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 3 one-way tickets between Los Angeles, CA and New York, NY

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[3] Temporary Personnel includes costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist with administrative tasks directly related to this project for the week ending May 27, 2006.

[4] Reproduction Expense includes reproduction costs directly related to this project.

KROLL

777 South Figueroa Street, Suite 2400
Los Angeles, CA 90017
213 443 6090 Fax 213 443 6050
www.kroll.com

August 3, 2006

Matter No. 0005948-0002
Invoice No. 1311845

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From July 15, 2006 through July 28, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	20.50 hrs @ $ 750.00 per hour	15,375.00	
Troy Dahlberg	76.00 hrs @ $ 450.00 per hour	34,200.00	
David Cogan	6.25 hrs @ $ 350.00 per hour	2,187.50	
David Fielder	88.00 hrs @ $ 350.00 per hour	30,800.00	
Jennifer Arnini	104.00 hrs @ $ 350.00 per hour	36,400.00	
Jeffrey Klein	72.40 hrs @ $ 350.00 per hour	25,340.00	
Rachel Laybourn	27.00 hrs @ $ 250.00 per hour	6,750.00	
Jenny Dominguez	50.50 hrs @ $ 350.00 per hour	17,675.00	
Lisa Han	34.00 hrs @ $ 300.00 per hour	10,200.00	
David Callaghan	88.00 hrs @ $ 400.00 per hour	35,200.00	
Arthur Levitt	10.00 hrs @ $ 900.00 per hour	9,000.00	
			$ 223,127.50
			(See Schedule A)
Out-of-Pocket Disbursements			25,660.23
			(See Schedule B)
Total Due:			$ 248,787.73
			— 4,246.86
			244,540.87

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 24th Floor
777 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

MMC Companies

KROLL

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	2,187.50
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	58,575.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	-
14)	Perform electronic forensic procedures and analyses.	30,800.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	-
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	-
19)	Prepare investigative report.	131,565.00
	Total Professional Fees	$ 223,127.50

KROLL

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 8,093.78
T&E - Ground Transportation[2]	891.84
T&E - Hotel Charges[3]	7,112.99
T&E – Meals[4]	943.59
Mileage Reimbursement	-
Miscellaneous & Telephone	159.47
Postage & Courier	535.85
Temporary Personnel[5]	3,106.69
Reproduction Expense[6]	569.16
Other Outside Vendor[7]	4,246.86
Total Out-of-Pocket Disbursements	$ 25,660.23

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 7 one-way tickets between Los Angeles, CA and New York, NY
- 2 one-way tickets between Nashville, TN and Los Angeles, CA
- 1 roundtrip ticket between Denver, CO and New York, NY
- 1 one-way ticket between San Diego, CA and Denver, CO
- 1 roundtrip ticket between Denver, CO and San Diego, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[3] Hotel Charges include costs for 21 nights of hotel accommodations in New York, NY (14 nights), San Diego, CA (4 nights) and Los Angeles, CA (3 nights) for 6 professionals. The rate in New York averaged $421.88 per night, including applicable taxes. Before taxes, the New York rate was $369.00 per night. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. In Los Angeles, the average rate was $144.88 per night including applicable taxes. Before taxes the rate was $127.00 per night.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY and Los Angeles, CA. Traveling professionals spent approximately 29 days out of town during this billing period. This equates to an average meal cost per day of $32.54 ($943.59 ÷ 29).

[5] Temporary Personnel includes costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist with administrative tasks directly related to this project for the weeks ending July 1 and July 15, 2006 (AppleOne) and April 2, 2006 (Core Staffing).

[6] Reproduction Expense includes reproduction costs directly related to this project.

[7] Other Outside Vendor costs are for services performed by NTI Breakwater in relation to this project.

Exhibit 83

Willkie Farr & Gallagher employee	Billing rate per hour
James Dugan	$ 595
Martin Klotz	$ 685
Jack Nusbaum	$ 865
Stephen Lindo	$ 830
Benito Romano	$ 850
Carolyn Miller	$ 580
Leslie Mazza	$ 850
Michael Young	$ 850
Peter Allman	$ 590
Michael Schachter	$ 590
Sharon Blaskey	$ 505
Paul Horan	$ 563
Heath Rosenthal	$ 435
Michael Shapiro	$ 435
Jonah Safer	$ 220
Judith Jean	$ 325
Jesenia Ruiz de la Torre	$ 325
Brian Turetsky	$ 450
Brian Faerstein	$ 255
Anna Hershenberg	$ 255
Amina Jafri	$ 255
Judith Jean	$ 325
Raymond Sarola	$ 255
Jennifer Beauharnais	$ 190
Ana Calle	$ 140
Roger Francis	$ 190
Tamieka Goulbourne	$ 170
Jamar Haywood	$ 190
Rick Lusk	$ 170
Christopher Lisciandro	$ 140
Salvatore Manusco	$ 200
Cynthia Chan	$ 140
Tamieka Goulbourne	$ 170
Laura Han	$ 140
Amanda Niu	$ 140
Simon Raymundo	$ 65
Angela Smedley	$ 150
Zachary Stendig	$ 140
Damian Vargas	$ 65
Caitlin Williams	$ 140

Exhibit 84

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

TROY A. DAHLBERG

KROLL

WILLKIE FARR & GALLAGHER LLP

Appendix Q

Report of the City of San Diego Audit Committee

Other Issues Addressed by the Audit Committee

1. City of San Diego Grants

The Audit Committee investigated City grants in addition to the Wastewater grants and loans discussed previously. The Audit Committee was informed of, and investigated, potential improper activity related to the Fox Canyon Park and Euclid Avenue grants.

The Audit Committee received information that the City intended to use the proceeds of the $2.4 million Fox Canyon Park grant to build a road instead of a park. We obtained and considered the grant application and other documentation. We also discussed this grant with individuals, City employees, and employees of the California State Department of Parks and Recreation. Based on the evidence we obtained, our analysis indicated that the City operated appropriately with respect to the Fox Canyon Grant.

The Audit Committee received information the City improperly administrated the $162,000 Euclid Avenue grant. We obtained and considered the grant application and other documentation. We also discussed this grant with individuals, City employees, and employees of the California Department of Transportation. Based on the evidence we obtained, our analysis indicated the City operated appropriately with respect to the Euclid Avenue Grant.

In performing Single Audit Act work for the fiscal year ended June 30, 2004, the City's external auditors analyzed a significant portion of the City's Federal grants. The Audit Committee considered their analyses, which identified several issues: (1) Costs were recorded in the incorrect fiscal year; (2) the City did not maintain approval documentation in accordance with the requirements of the Department of Housing and Urban Development; and, (3) the City did not maintain documentation related to the suspension or debarment of vendors. The auditors provided recommendations for improvement in these areas. The Audit Committee has reached the conclusion that the issues identified by the auditors do not appear to have compromised the overall integrity of the City's grant monitoring and related financial reporting.

2. City Attorney's Office Billing Practices

During the Audit Committee's interview with Diann Shipione on June 21, 2006, Ms. Shipione informed the Audit Committee of an allegation regarding the billing practices of the City Attorney's Office.[1] After her interview, Ms. Shipione provided documents revealing that this allegation had been raised by a former employee of the City Attorney's Office. It appeared that one of the documents Ms. Shipione provided had been sent to a number of agencies; however, the Audit Committee has been unable to confirm whether those agencies investigated this issue.[2] The document authored by a former City Attorney Office employee alleged that the City

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1 Interview by the Audit Committee with Diann Shipione (June 21, 2006).

2 Letter from William R. Newsome, III to Carol Lam, United States Attorney, Jeffrey Koch,

Supervising Assistant Attorney General, Bonnie Dumanis, District Attorney, and Michael Aguirre, City Attorney (Dec. 6, 2004).

not move forward.[16] Recently, the City Attorney issued Interim Report No. 10, which is a report on the results of the City Attorney's investigation into this allegation.[17]

It appears that a majority of the Management Team, along with prior City Attorneys who created and advocated this practice, no longer work at the City Attorney's Office.[18] Additionally, Mr. Aguirre has indicated that approximately 80% of the attorneys who worked in the Civil Division where this practice was most prevalent, are no longer employed by the City.[19] The Audit Committee has confirmed that the current City Attorney learned of this practice when he took office in December 2004 and immediately instructed his office's employees to accurately record their time.[20] However, recently Mr. Aguirre discovered that employees of the City Attorney's Office billing time for the Civil Enforcement Unit SLA were not complying with Mr. Aguirre's instructions and that their billing was based on a formula instead of reflecting the actual time worked. Mr. Aguirre indicated that he stopped this practice once it was discovered and reiterated his policy of billing actual time to all staff of the City Attorney's Office.[21]

The City provided financial information that the legal expenses charged directly to the enterprise funds by the City Attorney's Office totaled approximately $20 million from FY 1996 to FY 2003. It appears that it may be difficult if not impossible to determine what the actual charges should have been. However, the evidence which we credit indicates that there were not significant amounts that were overcharged.[22]

The billing practices of the City Attorney's Office – in particular, the falsification of time records resulting in improper charges to enterprise funds – implicate a number of statutes and legal prohibitions. Most prominently, the officials and employees of the City Attorney's Office may be held criminally liable under the California Penal Code pursuant to either Section 72 ("Presenting False Claims") or Section 424 ("Embezzlement and Falsification of Accounts").[23]

---

16 Interview by Mayer Hoffman with Robert Hoffman (July 17, 2006).

17 The City Attorney's Interim Report No. 10 identified instances where time cards were altered after they were submitted by an employee. This issue was not identified during our discussions with past and current City employees over the course of our work with Mayer Hoffman.

18 Interview by Mayer Hoffman with Michael Aguirre (July 28, 2006).

19 Interview by Mayer Hoffman with Michael Aguirre (July 28, 2006).

20 City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 3 (July 28, 2006).

21 City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 3-4 (July 28, 2006).

22 Interview by Mayor Hoffman with Robert Abel (July 17, 2006); Interview by Mayor Hoffmann with Dannell Scarborough (July 19, 2008).

23 Cal. Penal Code § 72 (West 2006); Cal. Penal Code § 424 (West 2006). Section 72 prohibits "every person...with intent to defraud" from making "any false or fraudulent claim, bill, account, voucher, or writing" to a public board or officer. Section 424 prohibits public "officers" from, among other things, knowingly making false entries into any account or fraudulently altering an account. As a general intent crime, Section 424 only requires a showing that a violator had a general intent to commit a false act and is easier to prove than Section 72, a specific intent crime requiring a showing of a specific intent to defraud. *People v. Battin*, 77 Cal. App. 3d 635, 664 (Cal. Ct. App. 1978) ("A violation of Penal Code section 72

The latter provision has been applied to the specific context of the falsification of employee time records.[24] While in that particular case the defendant profited from the falsification of time cards, a violator of Section 424 does not necessarily have to personally benefit from the false claim or transaction or have direct control over the funds at issue.[25] Under the facts at hand, any officials of the City Attorney's Office who are found to have intentionally falsified their time records or directed and encouraged others to do so could be held liable under Section 424 for the misappropriation of public funds. While Section 424 applies explicitly to public officers, courts have found that it may apply to secondary employees as well under a theory of liability for aiding and abetting a principal violation.[26] Thus, subordinates within the City Attorney's Office who recorded false billing entries at the prompting of their superiors may also be held liable for aiding and abetting their superior's breach of Section 424.[27]

Several provisions of the San Diego City Charter and San Diego Municipal Code may also apply to the false billing scheme at the City Attorney's Office. In particular, City Charter Section 71 sets limitations on the appropriations of the general operations of the City, restricting the growth in expenses from the City's General Fund from year-to-year to a certain percentage.[28] The City Attorney's Office's billing practices – which, in all likelihood, were motivated by a desire to circumvent this fiscal limitation by qualifying for and siphoning monies from the City's separate enterprise funds – most likely violated Section 71. San Diego Municipal Code Section 11.0401 provides that all applicants for "City licenses, permits, certificates, employment *or other City actions*...should be required to furnish true and complete information."[29] To the extent falsified time records were presented to City Council and served as the basis of an action taken by the City (for example, allocating budget expenses or providing the foundation to transfer money from one fund to another) this provision was likely violated.[30]

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cannot be accomplished without the requisite intent to defraud. No such intent, however, is required of a violation of section 424"), *superceded by statute on other grounds,* Cal. Penal Code § 1424 (West 2006).

24 *People v. Groat,* 19 Cal. App. 4th 1228, 1235 (Cal. Ct. App. 1993) (holding the manager of the City Department of Public Safety liable for misappropriating funds under Section 424 for "acts of falsifying her time cards and accepting pay for work not performed").

25 *Webb v. The Superior Court of Tulare County,* 202 Cal. App. 3d 872, 887 (Cal. Ct. App. 1988) ("[I]t is not necessary that [the violator] have actual custody of the public moneys. The fact that petitioner was not directly, in his job description or the common responsibilities of his position, charged with receipt, safekeeping, transfer or disbursement of public funds does not necessarily preclude a prosecution under section 424."); *People v. Johnson,* 14 Cal. App. 2d 373, 381 (Cal. Ct. App. 1936) (holding that Section 424 covers a case where an official "intentionally and knowingly disobeys the law and it is not necessary to prove that in thus disregarding the law he also intended to defraud the public or to acquire financial gain for himself.").

26 *People v. Qui Mei Lee,* 48 Cal. App. 3d 516, 520 (Cal. Ct. App. 1975) (holding a secretary liable as an aider and abettor of her supervisor's violations of Section 424 for misappropriating public funds).

27 Additionally, if it is demonstrated that either officials or non-officials had the specific intent to present the falsified billing records to City Council (a city "board") in order to defraud (a stricter standard than presented by Section 424), those individuals may also be held accountable under Section 72. *People v. Battin,* 77 Cal. App. 3d 635, 664 (Cal. Ct. App. 1978), *superceded by statute on other grounds,* Cal. Penal Code § 1424 (West 2006).

28 San Diego City Charter art. VII, § 71.

29 San Diego Municipal Code § 11.0401 (emphasis added).

30 Municipal Code Section 12.0102 provides for the enforcement of violations of the Code by the City Manager, the City Clerk or any of their designated Enforcement Officials. San Diego Municipal Code §

Exhibit 85

California Penal Code Section 424

(a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either: 1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or, 2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or, 3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or, 4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or, 5. Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or, 6. Willfully omits to transfer the same, when transfer is required by law; or, 7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same;-- Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

(b) As used in this section, "public moneys" includes the proceeds derived from the sale of bonds or other evidence or indebtedness authorized by the legislative body of any city, county, district, or public agency.

(c) This section does not apply to the incidental and minimal use of public resources authorized by Section 8314 of the Government Code.

Last modified: January 30, 2006

http://law.onecle.com/california/penal/424.html

Exhibit 86

Article 1: Definitions and General Provisions

Division 4: General Offenses

("General Offenses"
added 8–10–1993 by O–17956 N.S.)

§11.0401 Furnishing False or Incomplete Information Prohibited

(a) Purpose and intent. It is the purpose and intent of the Council that every applicant for City licenses, permits, certificates, employment or other City actions under the provisions of the San Diego Municipal Code should be required to furnish true and complete information.

(b) No person willfully shall make a false statement or fail to report any material fact in any application for City license, permit, certificate, employment or other City action under the provisions of the San Diego Municipal Code.

("Furnishing False or Incomplete Information Prohibited" renumbered from Sec. 13.0101 on 8–10–1993 by O–17956 N.S.)

§11.0402 Acts Include Causing, Aiding and Abetting

Whenever in this Code any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.

("Acts Include Causing, Aiding and Abetting" renumbered from Sec. 13.0102 on 8–10–1993 by O–17956 N.S.)

Exhibit 87

INTERIM REPORT NO. 1

REGARDING POSSIBLE ABUSE,

FRAUD, AND ILLEGAL ACTS BY

SAN DIEGO CITY OFFICIALS AND EMPLOYEES

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE: (619) 236-6220

14 JANUARY 2005

INTERIM REPORT NO. 2

REGARDING POSSIBLE ABUSE,

ILLEGAL ACTS OR FRAUD BY

CITY OF SAN DIEGO OFFICIALS

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE: (619) 236-6220

9 FEBRUARY 2005

AMENDED

INTERIM REPORT NO. 6

REGARDING THE SAN DIEGO CITY

EMPLOYEES' RETIREMENT SYSTEM FUNDING SCHEME

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE: (619) 236-6220

1 JULY 2005

INTERIM REPORT NO. 7

SDCERS ATTORNEY-CLIENT PRIVILEGE

DOCUMENTS RELEASED UNDER FEDERAL COURT ORDER

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE: (619) 236-6220

6 DECEMBER 2005

Exhibit 88

From: <LynnETurne@aol.com>
To: <pewell@sandiego.gov>
Date: 2/16/2005 3:51:00 AM
Subject: SAn Diego

Lamont - just to let you know I had a good call with Paul Maco yesterday and was able to communicate with Les Hand who was in NYC. Paul and I set up a reporting arrangement whereby he will report to us as if we were an independent audit committee. That is, anything he would typically communicate to such a committee he will pass on to us.

Troy and I have a call set up with Les for Friday afternoon.

Best wishes

Lynn

CC: <tdahlberg@Krollzolfocooper.com>, <pmaco@velaw.com>

Exhibit 89

TO: Martin
6/8/05

Vinson&Elkins

Paul S. Maco pmaco@velaw.com
Tel 202.639.6705 Fax 202.879.8905

JUN 8 2005

June 7, 2005

Mr. P. Lamont Ewell
City Manager
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Dear Mr. Ewell:

Enclosed please find our firm's invoice for legal services rendered and disbursements and additional charges incurred through May 31, 2005, in connection with matters relating to San Diego Municipal Bond Securities Offerings (MLA-2842). As always, we appreciate the opportunity to be of assistance to the City of San Diego.

If you have any questions regarding this invoice, please do not hesitate to contact me.

Sincerely,

Paul S. Maco

Enclosure

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
05/23/05	LAJO	Assist Veronica Loa with organizing and preparing all exhibits, files, binders and documents; create and prepare labels for multiple binders.	6.50
05/24/05	WEL	Work regarding USAO information and document requests; review of binders and indexes for same; conferences regarding same; correspondence regarding same.	1.00
05/24/05	BSL	Confer with David Godschalk regarding status of projects; confer with Bill Lawler regarding CERS privilege issue; contact Anita Noone regarding same; confer with Katheryn Mereigh regarding production to U.S. attorney; review and revise document production binders; obtain additional responsive memoranda; confer with David Godschalk and Paul Maco regarding case issues.	4.50
05/24/05	PSM	Prepare materials for and work with Kroll team on investigation.	9.00
05/24/05	DKG	Conferences with Kroll staff; conferences with Paul Maco; conference with Ben Lippard; respond to audit committee requests.	10.75
05/24/05	SCB	Conference with David Godschalk about the status of Kroll investigation.	0.25
05/24/05	KJME	Conferences with Bill Lawler, Ben Lippard; revise index of material contained in comments notebooks; finalize notebooks for transmittal to City Attorney and SEC.	7.50
05/24/05	REBA	Continue to prepare for visit by auditors.	5.75
05/24/05	RCSA	Electronic document review; draft memo regarding disclosure issues.	6.25
05/24/05	VMLA	Assist Kathy Mereigh with the assembly of Final Interview Memorandum and their corresponding exhibits and witness comments; prepare package of these binders to be sent to SEC, USAO, and KPMG per request Bill Lawler; create indices as needed for specific binders; create labels for Common Interview Document Binders; revise subject file index per request Paul Maco.	5.50
05/24/05	KMLA	Continue to assist Paul Maco with preparation of materials for visitation of Kroll Zolfo Cooper representatives.	11.75
05/25/05	BSL	Review and revise methodology memorandum; confer with Anita Noone regarding CERS privilege issue; confer with David Godschalk regarding case issues; review additional questions provided by Kroll.	2.00

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
05/25/05	PSM	Work with Kroll team on investigation.	8.50
05/25/05	DKG	Conferences with Kroll staff; conferences with Paul Maco; conference with Ben Lippard; respond to audit committee requests.	11.75
05/25/05	RCSA	Document review.	3.50
05/25/05	NDBO	Update Audit Committee Request Log.	0.50
05/26/05	TMF	Meeting with Paul Maco regarding background and project; communication from David Godschalk; discussion with same; begin reviewing background materials; telephone call from Paul Maco and discussion with same.	3.25
05/26/05	BSL	Review outline of summary memoranda; confer with Paul Maco regarding case issues; contact Anita Noone regarding Webster documents.	0.75
05/26/05	BSL	Revise interview memoranda and draft additional interview memoranda.	6.50
05/26/05	PSM	Work with Kroll team on investigation.	9.00
05/26/05	DKG	Conferences with Kroll staff; conferences with Paul Maco; conference with Ben Lippard; respond to audit committee requests.	9.75
05/26/05	NEVA	Document review.	4.00
05/27/05	BSL	Confer with Tegan Flynn regarding case issues; confer with David Godschalk regarding same; review status of document production and review; conference with Paul Maco, Rick Sauer, Tegan Flynn, and David Godschalk regarding document issues and investigation status; set up coding structure on Applied Discovery for document review project; email Tegan Flynn regarding document review issues and plans for future work.	5.25
05/27/05	PSM	Work with Kroll.	7.50
05/27/05	DKG	Conferences with Kroll staff; conferences with Paul Maco; conference with Ben Lippard; conference with Paul Maco, Rick Sauer, Tegan Flynn, and Ben Lippard; arrange conference call; respond to audit committee requests.	11.00
05/27/05	CAS	Meet with Tegan Flynn regarding document review project going forward.	0.25
05/27/05	RCSA	Meeting with Kroll; team conferences; draft memo.	5.50
05/28/05	BSL	Prepare for and participate in teleconference with review	2.75

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
		team regarding document review project; draft email memorandum summarizing review codes and instructions; confer with Alex Okuliar and Charles Stormont regarding document review issues; review memorandum summarizing document review categories and propose revisions.	
05/28/05	APO	Attend organizational conference call; begin document review; draft and revise memorandum summarizing salient points from organizational call.	4.00
05/28/05	PSM	Coordinate review for culpability binders and draft memo on securities liability.	5.00
05/28/05	DKG	Conference call regarding electronic discovery review; review electronic production.	2.25
05/28/05	JMSH	Review background materials forwarded by David Godschalk; conference call with Paul Maco, Rick Sauer, Tegan Flynn, Ben Lippard, and other attorneys regarding document review process; review Terri Webster documents for production; email conferences with attorney group, Tegan Flynn, Paul Maco, Charles Stormont and telephone conference with Ben Lippard regarding review.	4.25
05/28/05	CAS	Conference call with team regarding background and procedures for document review project going forward; conference call with Alex Okuliar and Ben Lippard regarding same; conference call with Tegan Flynn, Paul Maco, and Alex Okuliar regarding same; work with Alex Okuliar on drafting summary of team conference call for background purposes.	4.50
05/28/05	NEVA	Attend conference call; document review.	2.50
05/28/05	RCSA	Draft disclosure analysis, possible illegal acts.	8.00
05/28/05	NDBO	Conference call to discuss document review.	1.25
05/28/05	WWOL	Conference with San Diego review team; review documents per data requests.	3.75
05/29/05	BSL	Review status of document review project.	0.25
05/29/05	APO	Review documents.	6.00
05/29/05	PSM	Draft memo on securities liability.	3.50
05/29/05	DKG	Review electronic production.	1.00
05/29/05	CAS	Review documents for responsiveness and privilege; email correspondence with team regarding issues relating to same.	7.00
05/29/05	NEVA	Document review.	3.00

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours
		team regarding document review project; draft email memorandum summarizing review codes and instructions; confer with Alex Okuliar and Charles Stormont regarding document review issues; review memorandum summarizing document review categories and propose revisions.	
05/28/05	APO	Attend organizational conference call; begin document review; draft and revise memorandum summarizing salient points from organizational call.	4.00
05/28/05	PSM	Coordinate review for culpability binders and draft memo on securities liability.	5.00
05/28/05	DKG	Conference call regarding electronic discovery review; review electronic production.	2.25
05/28/05	JMSH	Review background materials forwarded by David Godschalk; conference call with Paul Maco, Rick Sauer, Tegan Flynn, Ben Lippard, and other attorneys regarding document review process; review Terri Webster documents for production; email conferences with attorney group, Tegan Flynn, Paul Maco, Charles Stormont and telephone conference with Ben Lippard regarding review.	4.25
05/28/05	CAS	Conference call with team regarding background and procedures for document review project going forward; conference call with Alex Okuliar and Ben Lippard regarding same; conference call with Tegan Flynn, Paul Maco, and Alex Okuliar regarding same; work with Alex Okuliar on drafting summary of team conference call for background purposes.	4.50
05/28/05	NEVA	Attend conference call; document review.	2.50
05/28/05	RCSA	Draft disclosure analysis, possible illegal acts.	8.00
05/28/05	NDBO	Conference call to discuss document review.	1.25
05/28/05	WWOL	Conference with San Diego review team; review documents per data requests.	3.75
05/29/05	BSL	Review status of document review project.	0.25
05/29/05	APO	Review documents.	6.00
05/29/05	PSM	Draft memo on securities liability.	3.50
05/29/05	DKG	Review electronic production.	1.00
05/29/05	CAS	Review documents for responsiveness and privilege; email correspondence with team regarding issues relating to same.	7.00
05/29/05	NEVA	Document review.	3.00

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Date	Initials	Description	Hours	
		review; review Uberuaga documents.		
05/31/05	CAS	Review documents for responsiveness and privilege; correspondence with Tegan Flynn regarding same.	3.75	
05/31/05	NEVA	Document review.	3.00	
05/31/05	NDBO	Review Mike Uberuaga groupwise documents; conference with Cheryl Curtis to update her on new aspects of May document review.	3.50	
05/31/05	WWOL	Review documents electronically for responsiveness to new document coding issues per Paul Maco's request.	6.50	
05/31/05	KMLA	Copy and print final outstanding interview memorandum and draft transmittal letter to SEC, USAO and Kroll; file in all applicable binders and witness files; create folder on computer drive of all finalized memoranda in preparation for burning onto cd and sending to Wilkie Farr; coordinate with DSG for burning of cd.	6.00	
Total			**1,812.25**	**$467,185.00**

Disbursements and other charges posted through May 31, 2005:

Travel			
02/28/05	PSM	VENDOR: AMEX INVOICE#: CON162351 DATE: 5/16/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85
03/01/05	PSM	VENDOR: AMEX INVOICE#: CON162351 DATE: 5/16/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85
03/02/05	PSM	VENDOR: AMEX INVOICE#: CON162351 DATE: 5/16/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85
03/04/05	PSM	VENDOR: AMEX INVOICE#: CON159202 DATE: 4/15/2005 Tkt#:0161070326202-03/04/05-United Airlines-IAD/SAN/IAD-San Diego travel.	813.40
03/06/05	PSM	VENDOR: AMEX INVOICE#: CON162450 DATE: 5/17/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85
03/07/05	PSM	VENDOR: AMEX INVOICE#: CON162450 DATE: 5/17/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85
03/08/05	KMLA	VENDOR: Yellow Cab Company of DC, Inc; INVOICE#: 040805; DATE: 4/8/2005 - Car Service on 03/08/05 to 2100 Conn Ave	13.34
03/08/05	PSM	VENDOR: AMEX INVOICE#: CON162450 DATE: 5/17/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85
03/10/05	KMLA	VENDOR: Yellow Cab Company of DC, Inc; INVOICE#: 040805; DATE: 4/8/2005 - Car Service on 03/10/05 to 2100 Conn Ave	13.34
03/10/05	PSM	VENDOR: AMEX INVOICE#: CON162450 DATE: 5/17/2005 Parking-San Diego-Valet	76.25
03/14/05	PSM	VENDOR: AMEX INVOICE#: CON162462 DATE: 5/17/2005 Lodging-THE WESTGATE HOTEL-San Diego-San Diego travel.	187.85

Exhibit 90

COUNCIL MEETING OF JUNE 14, 2005, ITEM NUMBER S500

In the matter of the Audit Committee's Status Report

MAYOR MURPHY:

WE'RE GOING TO GO TO ITEM S500, AN ACTION REGARDING THE MATTER OF THE AUDIT COMMITTEE STATUS REPORT. AND I WOULD CALL ON THE CITY MANAGER TO INTRODUCE THE ITEM.

CITY MANAGER EWELL:

THANK YOU, YOUR HONOR, MEMBERS OF THE COUNCIL.AS YOU KNOW, YOU HAVE HIRED OUTSIDE LEGAL COUNSEL VINSON AND ELKINS LAW FIRM OUT OF WASHINGTON, D.C. TO REPRESENT YOU IN TWO MATTERS. ONE, AS A CITY ENTITY REPRESENTING US AND COORDINATING WITH THE SEC. HOWEVER, THEY WERE ALSO RETAINED BY THE CITY TO DO ADDITIONAL INVESTIGATIVE WORK TO ASSIST WITH THE KPMG AUDIT.YOU ASKED AND DIRECTED ME TO INSURE THAT WE PROVIDE UPDATED REPORTS AND SO MR. MAYCO IS HERE TO BEGIN THE PRESENTATION BY GIVING YOU A STATUS REPORT IN PARTICULAR ON THE INVESTIGATIONS RELATED TO KPMG.

MR. MACO:

GOOD AFTERNOON YOUR HONOR, MEMBERS OF THE CITY COUNCIL. WE HAVE BEEN PROVIDING YOU WITH PERIODIC WRITTEN UPDATES ON THE PROGRESS OF OUR WORK SINCE LAST FALL. THIS AFTERNOON I AM PLEASED TO PROVIDE YOU WITH ANOTHER UPDATE. THIS TIME, A COMPREHENSIVE REPORT OF OUR PROGRESS, AND THIS TIME IN PERSON. YOU RECALL THAT OUR WORK BEGAN LAST FEBRUARY 12TH WHEN THE MAYOR AND THE FEBRUARY 12TH A YEAR AGO WHEN THE MAYOR AND THE CITY ATTORNEY ISSUED A PRESS RELEASE THAT STATED IN LIGHT OF THE QUESTIONS THAT HAD BEEN RAISED ABOUT THE CITY'S FINANCIAL STATEMENTS AND DISCLOSURES, THE CITY HAD RETAINED OUR SERVICES TO CONDUCT A COMPREHENSIVE REVIEW OF THE CITY'S PAST AND CURRENT DISCLOSURE PRACTICES. SOON AFTER THAT THE GOVERNMENT INQUIRIES BEGAN AND THE CITY ANNOUNCED ITS FULL COOPERATION WITH THE INVESTIGATIONS. AND WE WERE THEN ASKED TO REPRESENT THE CITY IN THE SEC INQUIRY. WE SIGNED A CONTRACT WITH YOU TO CARRY OUT THAT INQUIRY. IT SAID, WE WILL CONDUCT AN INTERNAL REVIEW OF CITY DISCLOSURE RELATING TO PENSION MATTERS AND ITS MUNICIPAL BOND OFFERINGS FROM 1996 TO THE PRESENT, AND PREPARE A REPORT WITH OBSERVATIONS, CONCLUSIONS, AND RECOMMENDATIONS. WE FILED OUR REPORT WITH YOU ON SEPTEMBER 16TH, 2004. AND AS CALLED FOR UNDER OUR CONTRACT, WE RECOMMENDED AN ORDINANCE WHICH

OKAY, THAT'S WHAT I'M ASKING. WHAT CAN BE DEFINED THE NEXT TIME WE SEE YOU? WHAT TYPES OF THINGS CAN WE EXPECT I MEAN HOW LONG HAS IT BEEN NOW? IT'S BEEN A FEW YEARS NOW, RIGHT?

TROY:
A FEW YEARS? NOT FOR US. [LAUGHTER]

COUNCILMEMBER YOUNG/MADAFFER:
WELL IT SEEMS LIKE TEN YEARS FOR US.

COUNCILMEMBER YOUNG:
IT'S BEEN A WHILE AND SO I REALLY WANT TO BE CLEAR ABOUT AND YOU KNOW. I WANT TO KNOW WHAT TO EXPECT.

TROY DAHLBERG:
AGAIN, WERE ON VARIOUS TRACKS. BUT LET'S START WITH ONE OF THE CRITICAL TRACKS WHICH IS VINSON AND ELKINS. RIGHT NOW THEY HAVE PUT TOGETHER OR ARE IN THE PROCESS OF COMPLETING 19 SEPARATE ANALYSES THAT REPRESENT A TOTALITY OF ABOUT 125 ALLEGATIONS THAT ARE OUT THERE THAT WE HAVE OVERSEEN AND REVIEWED AND HELPED THEM STRUCTURE IN A WAY THAT KPMG WILL MOST LIKELY BE EASY TO WORK WITH AND WILL FIND USEFUL. WE ARE IN THE PROCESS RIGHT NOW OF FINALIZING THAT AND GOING THROUGH THAT WITH THEM. PROBABLY BY THE TIME WE COME BACK IN FOUR WEEKS, THAT PROCESS SHOULD BE DRAWING NEAR TO A CONCLUSION WHERE WE WILL HAVE AT LEAST VERY SUBSTANTIAL DRAFTS. THERE ARE CERTAIN THINGS LIKE THE CERS DOCUMENTS AND THAT KIND OF THING THAT MAY NOT BE COMPLETE, BUT BY AND LARGE WE EXPECT THAT IN A MONTH WE WOULD BE VERY, VERY CLOSE TO BEING DONE WITH OUR REVIEW OF THAT AND BE FAR ALONG THE WAY OF DECIDING WHAT IF ANY ADDITIONAL PROCEDURES WE'RE GOING TO HAVE TO DO TO BE COMFORTABLE. AND THERE WILL BE SOME. WE KNOW THAT ALREADY. SOME ADDITIONAL THINGS WE'RE GONNA NEED TO DO. WE ARE WORKING DILIGENTLY ON THE DOCUMENT PRODUCTION MATTER SO THAT THE LETTER THAT WENT OUT LAST WEEK WE WILL BE FOLLOWING UP ON FOR THE NEXT WEEK OR TWO. IT IS OUR FULL HOPE THAT PROBABLY WITHIN A MONTH WE WILL HAVE CLOSED THAT OUT AND BEEN ABLE TO TURN OVER ALL THE DOCUMENTS THAT WERE PRODUCED TO THE CITY ATTORNEY AND THEN TO HAVE THEM PRODUCED OUT TO THE SEC AND THE U.S. ATTORNEY. WE ARE GOING TO KEEP THE PRESSURE UP ON THE CERS BOARD AND WITH YOUR HELP AND OTHER PEOPLES HELP HOPEFULLY BE ABLE TO GET MOVEMENT ON THE PRIVILEGE

Exhibit 91

Waiver of Attorney-Client Protections with respect to Vinson & Elkins Documents

ED PLANK:
THANK YOU. GOOD AFTERNOON, DEPUTY MAYOR AND COUNCIL MEMBERS. THE ITEM BEFORE YOU REQUESTS THAT YOU WAIVE ATTORNEY CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT DOCTRINE WITH RESPECT TO DOCUMENTS GATHERED AND PREPARED BY VINSON AND ELKIN IN IN ITS INVESTIGATION TO THE CITY'S FINANCIAL DISCLOSURE PRACTICES. THE CITY'S AUDIT COMMITTEE PROPOSES TO SCHEDULE MEETINGS WITH THE SEC, U.S. ATTORNEY AND KPMG TO REVIEW AND DISCUSS BACK V E' S WORK PRODUCT AND THE RESULTS OF ITS INVESTIGATION. THIS INFORMATION IS SUBJECT TO ATTORNEY CLIENT AND ATTORNEY WORK PRODUCT PROTECTIONS. IN ORDER TO FULLY COOPERATE WITH THE AUDITOR AND THE INVESTIGATION AUTHORITIES AND TO FACILITATE AN OPEN DIALOGUE AND TRANSPARENCY, IT IS REQUESTED THAT THESE PROTECTIONS BE WAIVED. MR. TROY DAHLBERG WITH THE AUDIT COMMITTEE IS HERE IN CASE YOU HAVE ANY QUESTIONS.

ATKINS:
WE DON'T. WE DO HAVE A PUBLIC SPEAKER ON THIS. MR. HART, PHIL HART, ARE YOU STILL HERE? OKAY. I DON'T SEE MR. HART. MR. PETERS.

PETERS:
I WOULD JUST ASK MR. DAHLBERG IF HE WOULD WANT TO MAKE A COMMENT ABOUT WHY IT IS IMPORTANT TO DO IT TODAY. THE QUESTION WOULD BE WHETHER THIS IS SOMETHING THAT COULD WAIT UNTIL WE ARE MORE FAMILIAR WITH THE DOCUMENTS. WHAT IS THE NEED TO DO THIS TODAY?

DAHLBERG:
ACTUALLY, THERE WAS A NEED DO IT PROBABLY ABOUT A WEEK AGO. MR. MACO CONTACTED ME FROM VINSON ELKINS NOT LAST WEEK, BUT THE WEEK BEFORE LAST, LETTING ME KNOW THAT HE

HAD BEEN CONTACTED BY THE U.S. ATTORNEY WHO HAD REQUESTED I THINK IT WAS JOHN OWENS, TO GET HIS NOTES FROM THE INTERVIEWS THAT HE HAD DONE, WHICH THEY HAD NOT YET TURNED OVER AND WERE PART OF THE ATTORNEY CLIENT PRIVILEGE. AND THEN ALSO, WE HAD GOTTEN A REQUEST, NOT LAST WEEK, BUT THE WEEK BEFORE LAST FROM THE SEC TO ALLOW THEM TO HAVE VINSON ELKINS WORK PAPERS AND REPORTS. SO THOSE TWO THINGS WERE SITTING AT THE TABLE. THIS WAS ACTUALLY PART OF THIS RESOLUTION OR MOTION WAS PART OF ANOTHER ONE THAT WAS DRAFTED, NOT LAST WEEK, BUT THE BEFORE LAST, BUT GOT BOGGED DOWN BECAUSE IT WAS WRAPPED INTO SOMETHING INVOLVING WASTEWATER SUBPOENA. AND THERE WAS SOME LITIGATION OUTSTANDING ON THAT. SO THAT NEEDED TO BE CLEARED UP AND DISCUSSED WITH THE SEC AND THE CITY ATTORNEYS OFFICE. SO ACTUALLY THIS IS ABOUT A WEEK LATE IN GETTING HERE AND THE SEC AND THE U.S. ATTORNEY ARE VERY, VERY INTERESTED IN GET THING THIS INFORMATION AS QUICKLY AS POSSIBLE.

PETERS:

OK. THANK YOU. WELL, UNLESS I HEAR OTHERWISE, THIS COUNCIL HAS DONE EVERYTHING WE CAN TO COOPERATE WITH THE U.S. ATTORNEY AND THE SEC. I SEE NO REASON TO CHANGE THAT STRATEGY NOW AND SO NOW I WOULD JUST MOVE THE WAIVER.

ATKINS:

DO I HAVE A SECOND? OKAY, I HAVE A MOTION BY MR. PETERS, A SECOND BY MR. MADAFFER. MR. AGUIRRE.

AGUIRRE:

GO AHEAD. I DEFER.

ATKINS:

OKAY. GO AHEAD, MR. MADAFFER. OH, I APOLOGIZE. YOU KNOW, YOU LOOK AWAY FOR A MINUTE AND LIGHTS GO ON, I'M SO SORRY. I WILL LEARN THIS JOB. MRS. FRYE IS NEXT, AND THEN MR. MADAFFER.

WELL, THIS ACTION SPECIFICALLY RELATES TO BEING ABLE TO REVEAL TO JUST ANYBODY. CERTAINLY IF WE CAME HERE AND SET ALL THE BINDERS DOWN AND STARTED TALKING ABOUT THEM, YOU HAVE WAIVED THE PRIVILEGE BECAUSE IT WOULD BE PUBLIC. THE WAY THAT YOU WOULD KEEP THE PRIVILEGE THAT YOU SO DETERMINED THAT YOU WANT IT TO, WOULD BE THAT WE WOULD HAVE TO MEET IN CLOSE SESSION OR SOMETHING LIKE THAT, WITH COUNCIL AND THEN WALK YOU THROUGH THE THIRTY ODD BINDERS AND THE TWO HUNDRED PAGES OF THE VINSON ELKINS REPORT AND THEN YOU CAN DECIDE FROM THAT IF YOU WANT TO PUT IT UP ON A WEB SITE, SCAN IT AND IMAGE IT, HOWEVER, WE WOULD WANT TO DO THAT AND I THINK WE WOULD PROBABLY WANT TO TALK TO YOU FIRST ABOUT HOW YOU WANT TO DO THAT WE HAVE ESTABLISHED THAT NEXT TUESDAY WE WERE GOING TO COME IN OUR SORT OF ANNUAL UPDATE AND GO THROUGH IN MORE DETAIL WHERE WE CURRENTLY ARE.

ATKINS:
YOU MEAN REGULAR HOPEFULLY MONTHLY UPDATE PERIODIC.

DAHLBERG:
I APOLOGIZE. BUT ANYWAY, THAT HAS ACTUALLY BEEN SCHEDULED I THINK FOR SOME TIME. WHAT HAPPENED WAS THAT THE MINUTE THAT THE WORD GOT OUT THAT VINSON ELKINS HAD THIS STUFF, WE GOT CALLS. I MEAN FROM THE SEC AND FROM THE U.S. ATTORNEYS. THEY WANTED TO SEE IT AS SOON AS POSSIBLE. THAT IS WHY WE ARE COMING TO YOU NOW WITH THIS PARTICULAR

FRYE:
RIGHT. AND I GUESS I WOULD PROBABLY BE IN AGREEMENT WITH THE SEC AND THE U.S. ATTORNEYS OFFICE AND KPMG. I WITH LIKE SEE IT, TOO.

DAHLBERG:
IF YOU'VE GOT TIME, WE HAVE IT UPSTAIRS.

BEFOREHAND BECAUSE OF OTHER EVENTS THAT ARE MOVING ALONG BEFORE NEXT TUESDAY'S MEETING.

FRYE:
OKAY. I GUESS THEN WE'LL TRY AGAIN. WILL WE THEN NEXT WEEK BE GETTING SOME KIND OF A REPORT FROM VINSON AND ELKINS OR ARE WE JUST GOING TO GET A REPORT THAT JUST SAYS, WE'VE LOOKED AT A BUNCH OF DOCUMENTS AND NOW WE ARE MEETING, IN OTHER WORDS WILL IT BE MUCH MORE OF A REPORT THAN WHAT WE ARE GETTING NOW?

DAHLBERG:
I DON'T EXACTLY KNOW WHAT PAUL MACO IS PLANNING ON TELLING YOU. I DO KNOW THAT THE INFORMATION WE HAVE IS AVAILABLE TO YOU AND STAFF ANY TIME YOU WANT TO SIT DOWN AND GO THROUGH IT. WE ARE NOT HOLDING THAT BACK. TO THE EXTENT YOU WANT TO PUT THAT UP SOMEPLACE AND MAKE IT PUBLIC THAT WOULD BE FINE TOO.

ATKINS:
FRYE, I THINK MR. EWELL MAY HAVE A COMMENT.

EWELL:
NOT NECESSARILY DIRECTLY ADDRESSING YOUR QUESTION, BUT I JUST WANTED TO REFRAME IT FOR MR. DAHLBERG. I THINK SHE IS REFERRING TO A SUMMARY REPORT THAT REFLECTS THE 19 BINDERS, ALL THE WORK THAT HAS BEEN FOR A FINAL REPORT TO BE ISSUED, TO SUGGEST HERE ARE THE FINDINGS.

DAHLBERG:
THE WAY THEY ENDED UP DOING WAS THEY CONTRACTED TO PREPARE SUMMARY MEMORANDUM THAT WAS WHAT WAS LAID OUT IN THEIR ENGAGEMENT LETTER THERE ARE ISSUES THERE ARE MANY ISSUES, HUNDREDS MORE ISSUES. AND THEY'VE GONE THROUGH AND ADDRESSED THESE IN THESE SUMMARY MEMOS AND THERE ARE PROBABLY- OFF THE TOP OF MY HEAD, A COUPLE HUNDRED PAGES WORTH OF THESE SUMMARY MEMORANDUMS THAT KIND OF ADDRESS VARIOUS ISSUES AND SORT OF

ANALYTICAL BASIS BEYOND THAT, IT IS NOT PAIRED DOWN TO LIKE A FIVE PAGE OR ONE PAGE THING.

FRYE:
I CAN READ MORE THAN FIVE PAGES. BUT ARE THOSE PARTICULAR PAGES, THOSE HUNDRED PAGES PART OF THE ATTORNEY CLIENT PRIVILEGE THAT WE ARE WAIVING?

DAHLBERG:
EVERYTHING THAT VINSON ELKINS HAS DONE FOR YOU IN THIS INVESTIGATION IS PART OF THIS THAT WE ARE TALKING ABOUT.

FRYE:
FOR EXAMPLE RECORDED CONVERSATIONS THAT THEY HAD INTERVIEWING THE EMPLOYEES?

DAHLBERG:
RIGHT BUT SPECIFICALLY, I DON'T KNOW THAT THEY EVER RECORDED ANYTHING, BUT THE U.S. ATTORNEY SPECIFICALLY WANTED THEIR HANDWRITTEN NOTES REGARDING THE INTERVIEWS. I THINK WHY NOT IF THE U.S. ATTORNEY ALREADY

EWELL:
THAT WILL COME BEFORE COUNCIL NEXT WEEK, REQUESTING WAIVERS FOR HANDWRITTEN NOTES ON MEMORANDA THAT WAS PUT TOGETHER THROUGH INTERVIEWS BY VINSON AND ELKINS, THAT IS SCHEDULED -

FRYE:
SO BASICALLY, IM NOT SURE EXACTLY WHAT IT IS WE ARE BEING ASKED TO WAIVE BECAUSE NOW YOUR SAYING THAT THERE IS MORE STUFF TO WAIVE.

EWELL:
THE SEC, U.S. ATTORNEY'S OFFICE ONE OF THE TWO FEDERAL AGENCIES MADE A FORMAL REQUEST ASKING FOR HANDWRITTEN NOTES DRAFT MEMORANDA NOTES THROUGH INTERVIEWS THAT WERE TAKEN BY VINSON & ELKINS AND THEN SO THAT WILL COME BEFORE YOU NEXT WEEK. THAT IS BEING HANDLED BY THE

BUT NOW THE SECOND QUESTION I HAVE FOR YOU IS THAT IN THE DOCUMENT THAT 2:53:00 ORGANIZED YOUR PRESENTATION TODAY THAT WAS PRESENTED TO THE COUNCIL IT ALSO SAYS THAT YOU ARE ASKING TO SCHEDULE MEETINGS WITH THE SEC AND THE U.S. ATTORNEY'S OFFICE TO REVIEW AND DISCUSS V&E'S WORK PRODUCT IN RESULTS OF ITS INVESTIGATION. IS THAT A CORRECT STATEMENT OF YOUR INTENT IN TERMS OF WHAT YOU ARE ASKING THE COUNCIL TO DO TODAY?

DAHLBERG:
I DON'T THINK WE ARE ASKING THE COUNCIL TO DO THAT. I THINK WE WERE USING THAT AS AN EXPLANATION OF WHY WE WANTED THE WAIVER. UNDER BEING THE AUDIT COMMITTEE. I DIDN'T DRAFT THIS OK. WE HAVE A LETTER THAT WE DRAFTED THAT JUST REQUESTED THE WAIVER SO THAT WE CAN SHARE THE INFORMATION.

AGUIRRE:
SO WOULD IT BE FAIR TO SAY THAT THE CITY'S AUDIT COMMITTEE DOES NOT PROPOSE TO SCHEDULE MEETINGS WITH THE SEC, U.S. ATTORNEY'S OFFICE, AND KPMG TO REVIEW AND DISCUSS V&E'S WORK PRODUCT AND RESULTS OF INVESTIGATION?

DAHLBERG:
NO, THAT'S NOT WHAT I SAID. WE ARE ACTUALLY PLANNING- WE HAVE THE MEETING SET. WE'VE GOT THE MEETING SET WITH THE SEC AND WITH KPMG TO DO SO.

AGUIRRE:
SO THE CITY'S AUDIT COMMITTEE IS PROPOSING TO SET MEETINGS WITH SEC, U.S. ATTORNEY'S OFFICE, AND KPMG. REVIEW AND DISCUSS V&E'S WORK PRODUCT AND RESULTS OF INVESTIGATION. IS THAT CORRECT?

DAHLBERG:
RIGHT. I DIDN'T BELIEVE THAT WAS SOMETHING WE NEEDED TO ASK VOTING PERMISSION ON. THAT WAS ALREADY OUTLAID IN OUR ENGAGEMENT LETTERS.

DAHLBERG:
WELL THAT IS SORT OF WHY I THOUGHT THIS WAS SORT OF A NO BRAINERD TO TELL YOU THE TRUTH, I DIDN'T EVEN PLAN ON COMING BECAUSE I FIGURED YOU'VE GONE WITH EVERY WAIVER THAT IT WAS UNDERSTOOD THAT, WE PROBABLY WOULDN'T HAVE TAKEN ON THE JOB-ENGAGEMENT IF YOU WOULD OF SAID YOU WOULD WITHHOLD ATTORNEY-CLIENT PRIVILEGE ON INVESTIGATIONS IT'S JUST NOT DONE. SO, THE MINUTE THE SEC CAME TO US WE WHERE LIKE GOING SURE WE WILL TURN IT OVER THIS IS BASICALLY A FORMALITY I BELIEVE.

MAIENSCHEIN:
I'LL GO TO WAIVE IT RIGHT NOW. MYSELF. I'LL GO TO WAIVE IT RIGHT NOW I VOTED SEVEN OTHER TIMES TO WAIVE IT, I'LL WAIVE IT RIGHT NOW. I'M TRYING TO TALK ABOUT, YOU'VE TALKED ABOUT THE ISSUES WITH PREVIOUS PEOPLE. I WANT TO TALK ABOUT.

DAHLBERG:
SOMEONE GETTING IN THE WAY OF FINISHING THE INVESTIGATION AND RIGHT NOW THERE IS NOBODY GETTING IN THE WAY. WE WORKED WITH VINSON AND ELKIN TO GET THIS THING DONE, WE'VE BEEN WORKING VERY HARD WITH THE CITY ATTORNEY'S OFFICE AND WE'VE BEEN WORKING HARD WITH THE CITY MANAGER'S OFFICE. RIGHT NOW THERE IS NOBODY. WE WOULD LIKE TO GET SOME INFORMATION FROM MR. AGUIRRE'S OFFICE AT SOME POINT AND TIME AND HE'S SAID HE WILL TRY TO WORK WITH US ON THAT, WE ARE HOPING THAT WILL HAPPEN, BUT GENERALLY SPEAKING EVERYONE IS TRYING TO GET THIS THING DONE. AS QUICK AS POSSIBLE.

MAIENSCHEIN:
THAT'S MY POINT. I THINK WE ARE UNDER AN UNDERSTANDING NOW. OK THAT'S THE POINT.

DAHLBERG:
NOW IF WE DIDN'T GET THIS WAIVER TODAY, WE WOULD HAVE TO CANCEL THESE MEETING WITH KPMG AND SEC THAT WOULD

Exhibit 92

Progress Reports from Kroll (Audit Committee), Willkie Farr, Vinson & Elkins, and KPMG, regarding the Audit and Financial Investigation of the City of San Diego's Pension Systems and Disclosure Practices.

ATKINS:
ITEMS THAT MANY PEOPLE ARE HERE TO DISCUSS TODAY, STARTING WITH ITEM 330. WE HAVE A COLLECTION OF ITEMS, 330, 331 AND 332. AND I WITH LIKE TO SUGGEST THAT WE HAVE THE CITY MANAGER OPEN THE ITEM. WE HEAR THE REPORTS FROM THE CONSULTANTS IN ORDER OF, AS I UNDERSTAND IT, VINSON AND ELKINS, THE AUDIT COMMITTEE, AND THEN KPMG AND THEN I WOULD LIKE TO GO TO OUR CITY ATTORNEY AND THEN PROCEED THROUGH THE COUNCIL COMMENTS AND QUESTIONS AFTER, OF COURSE, WE HAVE HEARD THE SPEAKERS. SO, IF WE CAN DO IT IN THAT ORDER. MR. EWELL, WILL YOU SET US UP ON THE FIRST ITEM?

EWELL:
I WOULD BE MORE THAN HAPPY TO, YOUR HONOR. YOUR HONOR, AS YOU KNOW, IN JUNE AT YOUR JUNE MEETING, YOU DIRECTED THAT I INVITE MEMBERS OF VINSON AND ELKINS LAW FIRM, THE AUDIT COMMITTEE AND REPRESENTATIVES OF KPMG TO COME BEFORE YOU AND PROVIDE STATUS REPORTS WITH RESPECT TO WHERE WE ARE WITH THE INVESTIGATION AND THE AUDITS. YOU HAVE IN YOUR PACKAGES STATUS REPORTS THAT EACH OF THEM HAVE SUBMITTED. AND AS YOU STATED, YOUR HONOR, WE WITH ASK THAT VINSON AND ELKINS PROVIDE THE FIRST UPDATE FOLLOWED BY THE AUDIT COMMITTEE. THEN IT WOULD BE PRECEDED BY KPMG.

MACO:
GOOD AFTERNOON, DEPUTY MAYOR ATKINS AND MEMBERS OF THE CITY COUNCIL. MY COLLEAGUE, RICK SAUER AND I ARE PLEASED TO PROVIDE YOU WITH THIS UPDATE ON OUR WORK UNDER OUR AGREEMENT OF OCTOBER 15TH, 2004. THAT AGREEMENT PROVIDES THAT WE WILL CONDUCT THE INVESTIGATION SUBSTANTIALLY ALONG THE LINES OF A PROGRAM FOR INQUIRY ADDRESSING CERTAIN MATTERS OF

INTEREST TO THE CITY'S INDEPENDENT AUDITOR. AND PREPARE AND PRESENT THE RESULTS OF THE INVESTIGATION IN A SUMMARY MEMORANDUM. THE CITY, WORKING WITH ITS OUTSIDE CONSULTANT PARTNER CHICAGO DEVELOPED WORKS PLANS ONE AND TWO TO ADDRESS CONCERNS OF THE CITY'S INDEPENDENT AUDITOR. AT MEETINGS WITH THE MAYOR AND CITY MANAGER, SENIOR REPRESENTATIVES OF THE INDEPENDENT AUDITOR INDICATED THEY VIEWED FAVORABLY THESE PLANS AND WORK PLANS ONE AND TWO BECAME THE PROGRAM FOR INQUIRY REFERRED TO IN THE AGREEMENT OF OCTOBER 15, 2004. WORK PLAN ONE IDENTIFIED TEN ISSUES OF INTEREST TO THE INDEPENDENT AUDITORS. WORK PLAN TWO PROVIDED OVER FORTY ALLEGATIONS OF FRAUD MADE BY A THIRD PARTY ALSO OF INTEREST TO THE INDEPENDENT AUDITORS. WE WERE TO MAKE INQUIRIES AS TO POSSIBLE ILLEGAL ACTS. IN ADDITION, WE WERE TO ADDRESS ADDITIONAL ISSUES IDENTIFIED IN THE COURSE OF THE INVESTIGATION. A COMPILATION OF ALLEGATIONS MADE OVER TIME BY MS. SHCIPIONE WAS ASSEMBLED IN WORK PLAN TWO. WE CONDUCTED PROCEDURES INTENDED TO GATHER INFORMATION RELATING TO THOSE ALLEGATIONS AND CITY ISSUES IDENTIFIED IN WORK PLAN ONE, AND TO IDENTIFY POTENTIAL ILLEGAL ACTS AS PART OF THE ADDITIONAL WORK PERFORMED. AS CALLED FOR BY THE PLANS, TWENTY-EIGHT HARD DRIVES OF CITY OFFICIALS WERE PULLED FOR FORENSIC ANALYSIS AND RECOVERY OF DOCUMENTS AND COMMUNICATIONS. THIRTY-FIVE GROUPWISE EMAIL ACCOUNTS OF CITY OFFICIALS AND EMPLOYEES WERE REVIEWED FOR RECOVERY OF ELECTRONIC DOCUMENTS AND COMMUNICATIONS. THIRTY-ONE NETWORK DRIVES OF CITY OFFICIALS AND EMPLOYEES WERE REVIEWED FOR RECOVERY OF ELECTRONIC DOCUMENTS AND COMMUNICATIONS. ALL THESE MATERIALS, AS WELL AS ELECTRONIC PRODUCTION PROVIDED BY SDCERS WERE ANALYZED USING SELECTED KEYWORD TERMS AND PROVIDED TO A VENDOR FOR POSTING ON A SECURE WEB SITE, PROVIDED BY THE VENDOR, APPLIED DISCOVERY. STAFF OF THE CITY ATTORNEY'S OFFICE, KPMG, AND THE SEC WERE PROVIDED TRAINING IN THE USE OF AND ACCESS TO THIS MATERIAL. THIS PROCESS, AFTER FILTERING PRODUCED OVER FIFTY THOUSAND ELECTRONIC DOCUMENTS. A PORTION OF THESE DOCUMENTS,

WERE WHAT IS TERMED AN ALLOCATED SPACE, OR FRAGMENTS OF TEXT, AND ARE IDENTIFIED AS SUCH ON APPLIED DISCOVERY. IN ADDITION, WE WERE PROVIDED APPROXIMATELY FIFTY-TWO THOUSAND ELECTRONIC DOCUMENTS BY COUNSEL FOR SDCERS. REVIEW OF THESE DOCUMENTS WAS AN ENORMOUS TASK. MANY OF THESE DOCUMENTS WERE ONES IN WHICH ONE OF THE SEARCH TERMS APPEARED, BUT WERE OTHERWISE IRRELEVANT. FOR EXAMPLE, WORDS SUCH AS ACCOUNTANT OR DISCLOSURE MAY BE USED IN A VARIETY OF CONTEXTS, NOT ALL RELEVANT TO THE INVESTIGATION. ID LIKE TO PAUSE AND ASK YOU TO CONSIDER HOW LONG IT TAKES TO READ A ONE PAGE MEMO FOR UNDERSTANDING. NOW, CONSIDER HOW MANY YOU MAY READ EFFECTIVELY IN ONE HOUR. NOW, THEN, CONSIDER HOW MANY HOURS IT WILL TAKE YOU TO EFFECTIVELY READ THREE-HUNDRED-THOUSAND SUCH MEMORANDA. THAT GIVES YOU A LITTLE BIT OF THE IDEA OF THE WORK THAT WE HAD TO ACCOMPLISH. THEN REALIZE THAT MANY OF THESE DOCUMENTS ARE MULTIPLE PAGES AND THEN CONSIDER AS WELL YOU HAVE TO CLASSIFY THEM. ELECTRONIC DISCOVERY IS A TIME CONSUMING AND COSTLY UNDERTAKING. FIRST LEVEL OF REVIEW SORTED OUT RELEVANT DOCUMENTS. TO MINIMIZE COST TO THE CITY, THIS WAS PERFORMED BY EXPERIENCED PARALEGALS AND JUNIOR ATTORNEYS. OVER THIRTY-THOUSAND DOCUMENTS WHERE CONSIDERED IRRELEVANT CITY PRODUCTION AND MORE THAN TEN-THOUSAND FROM SDCERS. RELEVANT DOCUMENTS WERE REVIEWED BY MORE SENIOR ATTORNEYS AND CERTAIN DOCUMENTS WERE CLASSIFIED AS IMPORTANT. INCLUDING APPROXIMATELY 1400 FROM CITY PRODUCTION AND IS 160 FROM SDCERS PRODUCTION. DOCUMENTS OF INTEREST WERE THEN SELECTED FOR USE IN INTERVIEWS. IN ADDITION TO OUR ELECTRONIC DOCUMENT, OVER 100 BOXES OF PAPER DOCUMENTS PRODUCED AS A RESULT OF INTERVIEWS CONDUCTED TO CHECK COMPLIANCE WITH SEC SUBPOENAS WERE REVIEWED. WE CONDUCTED 59 INTERVIEWS IN ADDITION TO THE 65 CONDUCTED FOR OUR SEPTEMBER 16, 2004 REPORT. WITH OFFICIALS AND EMPLOYEES OF THE CITY AND OF SDCERS. THESE INTERVIEWS EXPLORED DOCUMENTS RELEVANT TO THE ANALYSIS OF POTENTIAL ILLEGAL ACTS DURING THE COURSE OF THE INTERVIEW ALONG WITH DOCUMENTS RELATING TO

IDENTIFIED AREAS OF INQUIRY. ALL INTERVIEW PARTICIPANTS WERE ASKED APPLICABLE QUESTIONS FROM AN ILLEGAL ACTS QUESTIONNAIRE THAT HAD BEEN REVIEWED WITH THE CITY'S INDEPENDENT AUDITOR. A TOTAL OF 79 INDIVIDUALS WERE INTERVIEWED IN 124 INDIVIDUALS WERE INTERVIEWED IN 124 INTERVIEWS IN CONNECTION WITH THE SEPTEMBER 16TH, 2004 REPORT, AND THIS INVESTIGATION. THE COMBINED SET OF 124 INTERVIEWS PLUS EXHIBITS FILLED TO CAPACITY SIX THICK BINDERS. FULL SETS OF THESE BINDERS HAVE BEEN PROVIDED TO THE AUDIT COMMITTEE, KPMG, THE SEC AND U.S. ATTORNEY. THE TOTAL MATERIALS AVAILABLE TO THE INVESTIGATION THAT WE REVIEWED INCLUDE THE ELECTRONIC AND PAPER DOCUMENTS I HAVE JUST DESCRIBED TOGETHER WITH THE INTERVIEW MEMORANDA, THE DISKS OF EMAILS AND MORE THAN 160 BOXES OF PAPER DOCUMENTS GATHERED AND PRODUCED IN CONNECTION WITH OUR SEPTEMBER REPORT, EIGHT YEARS OF CITY DISCLOSURE DOCUMENTS INCLUDING OFFICIAL STATEMENTS, CAFRS AND ANNUAL REPORTS, AS WELL AS SDCERS CAFRS AND ANNUAL ACTUARIAL REPORTS. MORE THAN EIGHT YEARS OF CITY PUBLIC RECORDS, INCLUDING AUDIO AND VIDEOTAPES OF CITY COUNCIL SESSIONS SUCH AS THIS ONE. MINUTES OF CERS SESSIONS AND OTHER PUBLIC DOCUMENTS. THESE MATERIALS FORM THE FACTUAL FOUNDATION FOR OUR REPORTS. WORKING WITH THE AUDIT COMMITTEE TEAM AND STAFF FROM KROLL, WE ORGANIZED THESE MATERIALS INTO TOPIC AREAS ADDRESSING POTENTIAL ILLEGAL ACTS. ULTIMATELY THE MATERIALS WERE ORGANIZED INTO 20 TOPIC AND PROCEDURE AREAS. THE ELECTRONIC PRODUCTION WAS SORTED INTO THESE TOPIC AREAS. THE STATEMENTS MADE IN THE 124 INTERVIEWS WERE CODED ACCORDING TO CERTAIN TOPIC AREAS AND USING CASE MAP SOFTWARE; THIS ALLOWED GENERATION OF INTERVIEW STATEMENTS MADE BY ANY AND ALL INTERVIEWEES ON A PARTICULAR TOPIC. DRAFT SUMMARY MEMORANDA WERE PREPARED FOR EACH OF THE TOPIC AREAS. DRAWING ON THE INTERVIEW STATEMENTS CLASSIFIED BY CASE MAP, THE ELECTRONIC DOCUMENT PRODUCTION CODED BY TOPIC, THE HARD COPY DOCUMENTS AND OTHER MATERIALS AVAILABLE TO THE INVESTIGATION AND PRESENTED TO THE AUDIT COMMITTEE. IN ADDITION, IN ACCORDANCE WITH THE

CONTRACT WITH THE CITY, WE PREPARED A DRAFT COMPREHENSIVE SUMMARY MEMORANDUM COVERING THE INVESTIGATION. IN ADDITION TO THIS WORK, WE CONDUCTED IN CONJUNCTION WITH THE CITY ATTORNEYS OFFICE 40 DOCUMENT PRODUCTION QUALITY CONTROL INTERVIEWS OF CITY EMPLOYEES DESIGNATED AS DOCUMENT CUSTODIANS FOR SUBPOENA COMPLIANCE SERVICES. WE ALSO CONDUCTED INTERVIEWS AND PREPARED REPORTS IN RESPONSE TO THE UNEXPECTED EVENT NOW REFERRED TO AS FILE CLAIMING DAY. THROUGHOUT THIS PROCESS WE HAVE BEEN IN COMMUNICATION WITH THE STAFF OF THE SEC PROVIDING ASSISTANCE WITH RESPECT TO THE MANY COMPLEX AREAS OF THE CITY'S PENSION SYSTEM AND OTHER AREAS. WE HAVE ALSO PROVIDED SIMILAR ASSISTANCE TO THE U.S. ATTORNEYS OFFICE WHEN REQUESTED. THE TOTAL AMOUNT ON BILLS SENT DURING THE MONTHS OF NOVEMBER 2004 THROUGH AUGUST 2005 IS FOUR-MILLION-ONE-HUNDRED AND SIXTY-SIX THOUSAND EIGHT-HUNDRED AND FIFTEEN DOLLARS. OF THIS AMOUNT, 1 MILLION AND ONE-HUNDRED-NINETY-EIGHT THOUSAND DOLLARS APPROXIMATELY IS OUTSTANDING. OUR CHARGES FROM FEBRUARY 2004 THROUGH SEPTEMBER 2004 IN CONNECTION WITH THE SEPTEMBER REPORT AND OUR REPRESENTATION OF THE CITY BEFORE THE SEC TOTALED TWO-MILLION-ONE-HUNDRED-FORTY-FOUR-THOUSAND-FOURTEEN DOLLARS AND ELEVEN CENTS. AFTER JULY 15, 2005, WE ACCOMMODATE PLEATED DRAFT MEMORANDA AND 32 ACCOMPANYING BINDERS TO THE CITY'S AUDIT COMMITTEE FOR REVIEW BY THE CITY'S INDEPENDENT AUDITOR. THESE MATERIALS INCLUDE A DRAFT OF THE SUMMARY MEMORANDUM CONTEMPLATED BY OCTOBER 15TH AGREEMENT. THE SUMMARY MEMORANDA REMAIN IN DRAFT FORM PENDING RELEASE AND REVIEW OF CERTAIN DOCUMENTS NOW RETAINED AS PRIVILEGED BY THE PENSION SYSTEM. COME MOTION OF SEVERAL FOLLOW UP INTERVIEWS CURRENTLY POSTPONED AT THE INSTRUCTION OF THE AUDIT COMMITTEE AND ANY ADDITIONAL MATTERS IDENTIFIED BY THE AUDIT COMMITTEE. RECEIPT OF CERTAIN DOCUMENTS THAT REQUESTED FROM THE CITY ATTORNEYS OFFICE AND MODIFICATIONS IF ANY MADE IN RESPONSE TO INPUT RECEIVED FROM THE INDEPENDENT AUDITOR. THERE IS NO FURTHER WORK WE CAN DO AT THIS TIME. OUR WORK FOR THE

CITY IS SUBSTANTIALLY COMPLETE. WE BELIEVE THIS IS AN OPPORTUNE TIME TO RECOMMEND TO THE CITY AS BEING IN THE CITY'S BEST INTEREST THAT IT SELECT NEW COUNSEL TO REPRESENT THE CITY BEFORE THE SEC. WE WOULD BE GLAD TO ASSIST THE CITY IN IDENTIFYING SUCH COUNSEL. WE ARE ALSO GLAD TO CONTINUE OUR SEC REPRESENTATION UNTIL NEW COUNSEL IS SELECTED AND TO PROVIDE FOR SMOOTH TRANSITION. WE ARE HONORED TO HAVE SERVED THE CITY IN THESE MOST IMPORTANT MATTERS AND THANK YOU FOR ALLOWING US THAT PRIVILEGE.

ATKINS:
THANK YOU, MR. MACO. MR. EWELL, DO YOU WANT TO INTRODUCE THE NEXT SPEAKER?

EWELL:
YES, YOU'RE HONOR. MEMBERS OF THE COUNCIL. I WILL LIKE TO INTRODUCE YOUR AUDIT COMMITTEE AND I THINK MR. LEVITT IS GOING TO FIRST ADDRESS YOU, IF IM NOT MISTAKEN.

LEVITT:
MADAM MAYOR, MEMBERS OF THE CITY COUNCIL, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO APPEAR BEFORE YOU AND REPORT ON OUR COMMITTEES PROGRESS. WE COME TOGETHER THIS AFTERNOON UNDER EXCEEDINGLY DIFFICULT AND TRYING CIRCUMSTANCES. FROM THE RECENT DOWNGRADING OF THE RATING OF THE CITY'S BONDS TO THE ONGOING INVESTIGATIONS OF VARIOUS CITY OFFICIALS. THE FISCAL AND POLITICAL CRISIS FACING SAN DIEGO HAS ONLY DEEPENED. AMERICA'S FINEST CITY HAS BEEN TARNISHED BEYOND ALMOST ALL RECOGNITION. REALIZING THE EXTENT OF THE PROBLEMS FACING SAN DIEGO AND THE NECESSITY FOR INDEPENDENT ASSESSMENT OF ITS FINANCES, THE CITY'S OUTSIDE AUDITORS KPMG SUGGESTED THAT THIS BODY ESTABLISH AN INDEPENDENT AUDIT COMMITTEE IN THE MODEL OF THOSE REQUIRED BY PUBLIC COMPANIES UNDER THE SARBANES OXLEY ACT. IN ESTABLISHING THE AUDIT COMMITTEE, THE CITY COUNCIL WISELY RECOGNIZED THE IMPORTANT ROLE THAT QUALIFIED, COMMITTED, INDEPENDENT AND TOUGH MINDED AUDIT COMMITTEES PLAY AS GUARDIANS

Exhibit 93

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20510775
Client/Matter No. 115662.00001
November 16, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2005	$ 757,820.50
Disbursements and Other Charges	91,336.61
Total this Statement	**$ 849,157.11**
Less Credit for Lodging	$ (1,618.89)
Less Credit for Airfare	$ (1,712.24)
Total Amount Due	**$ 845,825.98**

NEW YORK WASHINGTON, DC PARIS LONDON MILAN ROME FRANKFURT BRUSSELS

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

December 5, 2005

Client/Matter No. 115662-00001
Statement No. 20510775

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through October 31, 2005

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
James Dugan	67.90 hours	$595 per hour	$40,400.50
Martin Klotz	46.90 hours	$685 per hour	$32,126.50
Jack Nusbaum	6.00 hours	$860 per hour	$5,158.00
Benito Romano	138.90 hours	$850 per hour	$118,065.00
Michael Young	17.80 hours	$850 per hour	$15,130.00
Peter Allman	5.20 hours	$590 per hour	$3,068.00
Michael Schachter	101.90 hours	$590 per hour	$60,121.00
Sharon Blaskey	192.10 hours	$505 per hour	$97,010.50
Paul Horan	112.20 hours	$563 per hour	$63,134.50
Heath Rosenthal	21.20 hours	$435 per hour	$9,222.00
Michael Shapiro	173.30 hours	$435 per hour	$75,385.50
Brian Turetsky	160.70 hours	$450 per hour	$72,315.00
Brian Faerstein	97.50 hours	$255 per hour	$24,862.50
Anna Hershenberg	47.10 hours	$255 per hour	$12,010.50
Amina Jafri	106.90 hours	$255 per hour	$27,259.50
Judith Jean	127.60 hours	$325 per hour	$41,470.00
Raymond Sarola	84.90 hours	$255 per hour	$21,649.50
Jennifer Beauharnais	4.50 hours	$190 per hour	$855.00
Ana Calle	102.50 hours	$140 per hour	$14,350.00
Cynthia Chan	13.80 hours	$140 per hour	$1,932.00
Simon Raymundo	40.60 hours	$65 per hour	$2,639.00
Zachary Stendig	140.40 hours	$140 per hour	$19,656.00
Total Billed Time	1,809.90 hours		$757,820.50
Disbursements/Other			$91,336.61
Total this Statement			$849,157.11
Credit from Previous Invoice			$3,331.13
Total Due			$845,825.98

[1] Hourly rates of all professionals at Willkie Farr & Gallagher LLP increased on October 1, 2005.

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$0.00
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$70,914.30
3)	Review of City e-mail and electronic documents.	$158,210.60
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$49,233.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$23,652.50
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$211,859.70
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$123,861.90
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$10,521.90
9)	Activities related to oversight and management of investigative team.	$109,566.60
	Total Professional Fees	$757,820.50

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES

Air Transportation[1]	$9,799.67
Ground Transportation[2]	$1,143.18
Hotel Charges[3]	$12,530.19
Meals[4]	$1,943.46
Postage/Messenger	$62.00
Telephone & Fax	$1800.13
Reproduction[5]	$9,957.68
Air Freight	$1,375.89
Data Acquisition[6]	$4,480.66
Outside Consultants[7]	$48,243.75
Total	**$91,336.61**

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1 Air Transportation includes the following full-fare economy class tickets:
- 2 roundtrip tickets between New York, NY or Newark, NJ and San Diego, CA
- 12 one-way tickets between New York, NY or Newark, NJ and San Diego, CA
- 1 roundtrip ticket between New York, NY and Los Angeles, CA
- 4 one-way tickets between New York, NY or Newark, NJ and Los Angeles, CA
- 2 one-way tickets between Sacramento, CA and San Diego, CA
- 2 one-way tickets between San Diego and Syracuse, NY
- 1 one-way ticket between Los Angeles, CA and Syracuse, NY
- 5 roundtrip tickets between New York, NY and Washington, DC

2 Ground Transportation consists of taxis and one car rental (San Diego, CA to Los Angeles, CA).

3 Hotel charges include costs for 67 nights of hotel accommodations for 10 professionals at an average rate of $187 per night, including Occupancy Tax.

4 Meal costs include direct out-of-pocket expenses for professionals traveling outside of New York City. Traveling professionals spent a total of approximately 78 days out of town during this billing period. This equates to an average meal cost per day of $24.91 ($1,943.46/78).

5 Reproduction Expense includes costs paid to outside vendors used to provide reproduction services as well as to costs incurred related to in-house reproduction services.

6 Data Acquisition includes costs for electronic legal research services, such as Lexis and Westlaw.

7 Outside Consultants include 12 temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents.

From: Tony Salmon
To: Stacy Roberts
Date: 1/30/2006 6:43:41 PM
Subject: Re: Willkie Farr DP

Stacy,

The following invoices (20509756 & 20510775) submitted by Willkie Farr were reviewed by the Audit Division and were found to be accurate. Therefore, I approve these invoices for payment.

Tony Salmon
Audit Manager

>>> Stacy Roberts 01/30/06 4:57 PM >>>
Hi Tony,

The Willkie Farr invoices submitted for payment are as follows:

20509756 $980,181.57 ($886,323.82 was paid on a previous DP, therefore only $93.857.75 will be paid on this DP)
20510775 845,825.98

Please verify that you have reviewed these invoices for billing accuracy and that they are "OK" to pay.

Thanks!
Stacy

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20601923
Client/Matter No. 115662.00001
March 7, 2006

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2006	$ 233,473.50
Disbursements and Other Charges	72,280.02
Total this Statement	$ 305,753.52

okay to pay
JK
3/7/06

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$1,214.50
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$20,379.00
3)	Review of City e-mail and electronic documents.	$41,988.50
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$2,720.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$1,530.00
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$1,232.00
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$31,281.00
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$8,039.00
9)	Activities related to oversight and management of investigative team.	$125,089.50
	Total Professional Fees	$233,473.50

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES[1]

Air Transportation[2]	- $5,639.12
Ground Transportation[3]	$158.00
Hotel Charges[4]	$1,672.62
Meals[5]	$423.85
Telephone & Fax	$507.95
Reproduction[6]	$13,702.10
Air Freight	$3,061.51
Outside Consultants[7]	$54,605.41
Other Disbursements[8]	$3,787.70
Total	$72,280.02

---

1 Disbursements from previous billing periods that had not previously been booked to the earlier billing periods by the Willkie Accounting Department appear on this invoice. These disbursements have not previously been billed to the City.

2 Air Transportation includes two roundtrip tickets between Newark, NJ and San Diego, CA at or below the cost of full-fare economy class ticket. It also includes credits for seven flights that were canceled after the cost was booked to a previous invoice.

3 Ground Transportation consists of taxis used during travel in San Diego and Washington, DC.

4 Hotel charges includes the cost for five nights of hotel accommodation for two professionals, including Occupancy Tax, in San Diego, CA, at an average cost of $193 per night. It also includes the cost for two nights of hotel accommodation for two professionals, including Occupancy Tax, in Washington, DC, at an average cost of $353.81 per night.

5 Meal costs include direct out-of-pocket expenses for professionals traveling outside of New York City. Traveling professionals spent a total of approximately nine days out of town during this billing period. This equates to an average meal cost per day of $47.09 ($423.85/9).

6 Reproduction Expense includes costs incurred related to both in-house and outside reproduction services.

7 Outside Consultants includes temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents ($53,304.50 for two weeks of work by temporary attorneys in October 2005). It also includes reimbursement of copy costs for documents requested from a former consultant to the City.

8 Other Disbursements consists of charges related to the rental of laptop computers in September and October 2005 for use by Willkie Attorneys during projects out of the office.

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

March 7, 2006

Client/Matter No. 115662-00001
Statement No. 20601923

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through January 31, 2005

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
Jack Nusbaum	1.80 hours	$865 per hour	$1,557.00
Benito Romano	65.10 hours	$850 per hour	$55,335.00
Michael Young	3.20 hours	$850 per hour	$2,720.00
James Dugan	4.00 hours	$595 per hour	$2,380.00
Sharon Blaskey	91.70 hours	$505 per hour	$46,308.50
Paul Horan	27.00 hours	$535 per hour	$14,445.00
Heath Rosenthal	27.90 hours	$435 per hour	$12,136.50
Michael Shapiro	59.50 hours	$435 per hour	$25,882.50
Brian Turetsky	51.90 hours	$450 per hour	$23,355.00
Anna Hershenberg	1.70 hours	$255 per hour	$433.50
Amina Jafri	5.90 hours	$255 per hour	$1,504.50
Raymond Sarola	12.30 hours	$255 per hour	$3,136.50
Ana Calle	88.30 hours	$140 per hour	$12,362.00
Cynthia Chan	14.10 hours	$140 per hour	$1,974.00
Tamieka Goulbourne	78.50 hours	$170 per hour	$13,345.00
Laura Han	8.00 hours	$140 per hour	$1,120.00
Amanda Niu	20.00 hours	$140 per hour	$2,800.00
Simon Raymundo	8.10 hours	$65 per hour	$526.50
Zachary Stendig	86.8 hours	$140 per hour	$12,152.00
Total Billed Time	655.80 hours		$233,473.50
Disbursements/Other			$72,280.02
Total Due			$305,753.52

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20601923
Client/Matter No. 115662.00001
March 7, 2006

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2006	$ 233,473.50
Disbursements and Other Charges	72,280.02
Total this Statement	$ 305,753.52

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

BENITO ROMANO
212 728 8258
bromano@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

March 7, 2006

John Torell
San Diego City Auditor and Comptroller
The City of San Diego
202 "C" Street, MS 6A
San Diego, CA 92101

Re: *Audit Committee of the City of San Diego*

Dear Mr. Torell:

Enclosed is our statement for professional services rendered through January 31, 2006 in connection with the City of San Diego Audit Committee investigation. Also enclosed are detailed schedules of time/cost per attorney; detailed professional fees by task (Schedule A), as well as a list of disbursements and other charges (Schedule B). I hope you find it in order and arrange for payment.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Benito Romano

Enclosure

3132601.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20602264
Client/Matter No. 115662.00001
March 16, 2006

FOR PROFESSIONAL SERVICES RENDERED through February 28, 2006	$ 310,166.00
Disbursements and Other Charges	87,499.50
Total this Statement	$ 397,665.50

okay to pay
[illegible]
3/23/06

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

March 16, 2006

Client/Matter No. 115662-00001
Statement No. 20602264

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through February 28, 2006

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
Martin Klotz	1.50 hours	$685 per hour	$1,027.50
Benito Romano	19.10 hours	$850 per hour	$16,235.00
Michael Young	1.60 hours	$850 per hour	$1,360.00
Sharon Blaskey	57.00 hours	$505 per hour	$28,785.00
Paul Horan	11.90 hours	$535 per hour	$6,366.50
Heath Rosenthal	14.00 hours	$435 per hour	$6,090.00
Jonah Safer	74.70 hours	$220 per hour	$16,434.00
Michael Shapiro	139.80 hours	$435 per hour	$60,813.00
Brian Turetsky	141.50 hours	$450 per hour	$63,675.00
Brian Faerstein	16.20 hours	$255 per hour	$4,131.00
Amina Jafri	13.40 hours	$255 per hour	$3,417.00
Judith Jean	63.50 hours	$325 per hour	$20,637.50
Raymond Sarola	126.50 hours	$255 per hour	$32,257.50
Ana Calle	81.20 hours	$140 per hour	$11,368.00
Tamieka Goulbourne	105.90 hours	$170 per hour	$18,003.00
Jamar Haywood	8.00 hours	$190 per hour	$1,520.00
Zachary Stendig	128.90 hours	$140 per hour	$18,046.00
Total Billed Time	1,004.70 hours		$310,166.00
Disbursements/Other			$87,499.50
Total Due			$397,665.50

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$0.00
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$114,393.50
3)	Review of City e-mail and electronic documents.	$93,023.50
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$4,575.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$1,867.50
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$6,500.50
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$21,732.00
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$8,312.50
9)	Activities related to oversight and management of investigative team.	$59,761.50
	Total Professional Fees	$310,166.00

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES

Air Transportation[1]	$1,257.10
Ground Transportation[2]	$105.00
Hotel Charges[3]	$579.00
Meals[4]	$106.80
Telephone & Fax	$208.91
Reproduction[5]	$7,186.23
Air Freight	$59.50
Outside Consultants[6]	$76,143.75
Other Disbursements[7]	$1,853.21
Total	$87,499.50

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1 Air Transportation includes one roundtrip full-fare, fully-refundable coach ticket between new York, New York and Los Angeles, CA.

2 Ground Transportation consists of taxis used during travel to Los Angeles.

3 Hotel charges includes the cost for 3 nights of hotel accommodation for one professional, including Occupancy Tax, in Los Angeles, CA, at an average cost of $193 per night.

4 Meal costs include direct out-of-pocket expenses for professionals traveling outside of New York City. Traveling professionals spent a total of approximately 3 days out of town during this billing period. This equates to an average meal cost per day of $35.60 ($106.80/3).

5 Reproduction Expense includes costs incurred related to both in-house and outside reproduction services.

6 Outside Consultants includes temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents.

7 Other Disbursements consists of charges related to the rental of laptop computers for use by Willkie Attorneys during projects out of the office.

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20602264
Client/Matter No. 115662.00001
March 16, 2006

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through February 28, 2006	$ 310,166.00
Disbursements and Other Charges	87,499.50
Total this Statement	$ 397,665.50

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

BENITO ROMANO
212 728 8258
bromano@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

March 16, 2006

John Torell
San Diego City Auditor and Comptroller
The City of San Diego
202 "C" Street, MS 6A
San Diego, CA 92101

Re: *Audit Committee of the City of San Diego*

Dear Mr. Torell:

Enclosed is our statement for professional services rendered through February 28, 2006 in connection with the City of San Diego Audit Committee investigation. Also enclosed are detailed schedules of time/cost per attorney; detailed professional fees by task (Schedule A), as well as a list of disbursements and other charges (Schedule B). I hope you find it in order and arrange for payment.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Benito Romano

Enclosure

3132601.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20603008
Client/Matter No. 115662.00001
April 14, 2006

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through March 31, 2006	$ 850,249.00
Disbursements and Other Charges	417,746.96
Total this Statement	$ 1,267,995.96
DISALLOWED LUNCH REIMBURSEMENTS →	<8679.65>
	$ 1,259,316.31

okay to pay
JH
5/25/06

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5336844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20603008
Client/Matter No. 115662.00001
April 14, 2006

FOR PROFESSIONAL SERVICES RENDERED through March 31, 2006	$ 850,249.00
Disbursements and Other Charges	417,746.96
Total this Statement	$ 1,267,995.96

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

April 14, 2006

Client/Matter No. 115662-00001
Statement No. 20603008

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through March 31, 2006

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
Benito Romano	73.00 hours	$850 per hour	$62,050.00
Carolyn Miller	113.80 hours	$580 per hour	$66,004.00
Sharon Blaskey	207.90 hours	$505 per hour	$104,989.50
Brian Turetsky	198.40 hours	$450 per hour	$89,280.00
Heath Rosenthal	170.90 hours	$435 per hour	$74,341.50
Michael Shapiro	205.30 hours	$435 per hour	$89,305.50
Jonah Safer	217.70 hours	$220 per hour	$47,894.00
Judith Jean	159.20 hours	$325 per hour	$51,740.00
Jesenia Ruiz de la Torre	131.10 hours	$325 per hour	$42,607.50
Brian Faerstein	190.70 hours	$255 per hour	$48,628.00
Amina Jafri	102.40 hours	$255 per hour	$26,112.00
Raymond Sarola	176.30 hours	$255 per hour	$44,956.50
Ana Calle	189.30 hours	$140 per hour	$26,502.00
Roger Francis	7.00 hours	$190 per hour	$1,330.00
Tamieka Goulbourne	223.40 hours	$170 per hour	$37,978.00
Jamar Haywood	6.00 hours	$190 per hour	$1,140.00
Rick Lusk	6.40 hours	$170 per hour	$1,088.00
Salvatore Mancuso	21.60 hours	$200 per hour	$4,320.00
Amanda Niu	8.30 hours	$140 per hour	$1,162.00
Angela Smedley	5.00 hours	$150 per hour	$750.00
Zachary Stendig	200.50 hours	$140 per hour	$28,070.00
Total Billed Time	**2,614.20 hours**		**$850,249.00**
Disbursements/Other			**$417,746.96**
Total Due			**$1,267,995.96**

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$404.00
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$15,557.50
3)	Review of City e-mail and electronic documents.	$435,873.50
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$1,275.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$15,396.50
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$89,746.50
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$189,472.00
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$0
9)	Activities related to oversight and management of investigative team.	$102,524.00
	Total Professional Fees	$850,249.00

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES

Air Transportation	$0.00
Ground Transportation	$0.00
Hotel Charges	$0.00
Meals	$0.00
Postage/Messenger/Air Freight	$820.24
Telephone & Fax	$315.64
Reproduction[1]	$11,367.09
Data Acquisition[2]	$14,008.83
Outside Consultants[3]	$382,237.40
Other Disbursements[4]	$8,997.76
Total	**$417,746.96**

---

1 Reproduction Expenses includes costs incurred related to both in-house and outside reproduction and scanning services.

2 Data Acquisition includes expenses for electronic legal research using Lexis and Westlaw and docket pulls associated with monitoring related ongoing legal matters.

3 Outside Consultants includes temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents. The review, which commenced on February 8, 2006, is ongoing.

4 Other Disbursements includes temporary administrative workers engaged through CORE Staffing Services to assist with ongoing administrative tasks and projects.

WILLKIE FARR & GALLAGHER LLP

BENITO ROMANO
212 728 8258
bromano@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

April 14, 2006

John Torell
San Diego City Auditor and Comptroller
The City of San Diego
202 "C" Street, MS 6A
San Diego, CA 92101

Re: *Audit Committee of the City of San Diego*

Dear Mr. Torell:

Enclosed is our statement for professional services rendered through March 31, 2006 in connection with the City of San Diego Audit Committee investigation. Also enclosed are detailed schedules of time/cost per attorney; detailed professional fees by task (Schedule A), as well as a list of disbursements and other charges (Schedule B). I hope you find it in order and arrange for payment.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Benito Romano

Enclosure

3132601.1

Exhibit 94

Audit Committee
of the
City of San Diego

June 10, 2005

Hon. Richard Murphy
Mayor of the City of San Diego
San Diego City Council
202 C Street, Suite 900
San Diego, CA 92101

Re: Audit Committee – Investigation Status Update

Mr. Mayor & Council Members:

A fundamental objective of the Audit Committee is the completion of the audit of the City's 2003 financial statements in accordance with the appropriate auditing and governmental professional standards. This will facilitate the City's completion of its Comprehensive Annual Financial Report with the required audited financial statements prepared in accordance with the generally accepted governmental accounting standards. In order to achieve that objective a complete and thorough independent investigation must be completed and the criteria for a Seaboard investigation satisfied. This includes the City and related entities cooperating fully with the investigating bodies and developing and implementing a thorough remediation plan in a timely fashion.

This letter is part of our continuing effort to update you on the status of the Audit Committee's investigation. The Audit Committee has or is currently performing the following:

- Reviewing the work of Vinson and Elkins ("V&E"). With our active encouragement, V&E has been preparing binders of materials with drafts of their findings, procedures, and conclusions, with the applicable supporting evidential matter. This process is subject to obtaining San Diego City Employees' Retirement System ("SDCERS") waiver of privilege, reviewing recently obtained documents and completion of approximately fifteen interviews. This process includes assessing their work product and supporting documentation for Phase II of their investigation (as set forth in their October 15, 2004 engagement letter with the City Manager) in order to determine whether additional procedures need to be performed. The V&E product will include V&E's memorandums and documentation related to securities law and other potential legal violations. Upon V&E completing the documentation noted above, it is expected the remaining interviews they have planned will be completed and the Audit Committee will also participate in that process. We will also determine what, if any, additional

interviews or requests for evidence will be necessary. The Audit Committee and Kroll have been reviewing V&E's work product, in their Washington DC office, over the past few weeks. We have provided V&E guidance as to the structure and format for presenting their findings and work product to KPMG. To the extent possible, it is expected the Audit Committee will use the work completed by V&E, including documents and evidence retrieved. We also note that the original engagement letter between the City and V&E sets forth V&E will issue a summary memorandum.

- Coordinating with the outside auditor KPMG. We have been working with KPMG as part of an intense effort to provide investigative results and conclusions that it will find sufficiently thorough and concrete to constitute the basis for an audit report. We are also developing a remediation plan as part of the investigation as requested by KPMG.

- Seeking input from the City Attorney. We have requested the City Attorney provide a complete listing of his concerns with respect to the matters under investigation and other relevant issues. Additionally, we have requested the documentation supporting the concerns and investigation, including all of these procedures and methodologies applied and all documents identified. We followed up on these verbal requests with a written request on May 20, 2005. In order to complete a thorough investigation, it is important for the Audit Committee to understand and follow-up on all of the issues raised by the City Attorney. We are awaiting this information and documentation.

- Preparing correspondence to the SDCERS Board. A key objective is to seek waiver of privilege consistent with the request of the City Council, City Attorney, and United States Attorney. Representatives of the Audit Committee and their legal counsel have attended SDCERS Board meetings and/or meetings with representatives of SDCERS and their advisors regarding various issues involved with the investigation. At a meeting with representatives of SDCERS and their outside legal counsel, the Audit Committee requested SDCERS waive their privilege and engage a new actuary. The SDCERS representatives asked the Audit Committee to put their requests in writing and the Audit Committee has done so. The Audit Committee provided a letter dated May 19, 2005 addressing the waiver of privilege and provided a letter dated June 7, 2005 related to the actuary.

- Additional investigation. The Audit Committee is currently investigating issues arising from several sources. Sources of these issues and allegations are the City Attorney's Interim Reports, correspondence between the City and KPMG, and correspondence between the City and Diann Shipione.

- Ongoing communication with law enforcement agencies. The issues being addressed with the United States Attorney and the Securities and Exchange Commission include completion of a comprehensive document production for the City and SDCERS. Due to issues with prior production of material subpoenaed by the law enforcement agencies, we have provided a memorandum to City employees and Council Members requesting complete production of subpoenaed materials and individual certification of completion of that task. We are also developing a remediation plan as part of the ongoing investigation.

As is set forth in our engagement letter, to the extent necessary to complete an independent and thorough investigation, the Audit Committee expects to identify and perform additional procedures. Currently outstanding tasks include working with V&E on their remaining interviews, performing other interviews the audit committee and its legal counsel determines are necessary and appropriate, reviewing with V&E recently received documents and electronic data, and further analysis of documents that have not yet been produced. We also expect with the assistance of our legal counsel to reach our own independent conclusions regarding alleged violations of law, taking into consideration, and reconciling the views expressed in various reports that have been or will be issued by various parties. The Audit Committee anticipates working with its legal counsel, Willkie Farr & Gallagher, to complete this phase of the engagement.

The Audit Committee and Willkie Farr & Gallagher have been working on issues relating to document production for both the City and SDCERS, including the waiver of attorney-client privilege by SDCERS. Our legal counsel has been working directly with the United States Attorney, Securities and Exchange Commission, the City Attorney's Office, City staff, V&E, and SDCERS' legal counsel to resolve a number of issues related to outstanding subpoenas, the production process, and procedures necessary to finalizing document production.

As stated in our update to you on May 6, 2005, we understand questions exist about the length of time necessary to complete our investigation. We have been clear from the inception of our retention in this matter that we would need full cooperation from all parties involved in order to complete our investigation. The Securities and Exchange Commission and the external auditor have clearly stated that the Seaboard criteria apply to this investigation. Seaboard requires that entities under investigation fully cooperate and provide complete access to all information as well as thoroughly remediate any issues that are identified during the investigation.

Currently, neither the City nor SDCERS have fully produced all the documents that were subpoenaed by the Securities and Exchange Commission and the United States Attorney. SDCERS must waive the attorney-client privilege asserted for documents that may be

relevant to the ongoing investigations before the investigations of the Audit Committee, V&E, and enforcement agencies can be completed. These investigations must be completed before an audit opinion for the 2005 City financial statements will be issued. To date, SDCERS has not waived the asserted attorney-client privilege and this decision is delaying our ability to complete our investigation. We understand that it is also delaying the completion of the ongoing investigations.

Additionally, a complete and thorough remediation plan has not been developed or executed. Until these issues are resolved, it is difficult, if not impossible, to determine when the investigation will be completed. It is our hope that the investigation will be resolved before the end of the calendar year.

Very truly yours,

Troy Dahlberg

Troy A. Dahlberg
Audit Committee Member

cc: Michael J. Aguirre, Esq.

Exhibit 95

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Exhibit 96

FILED
JAN - 6 2006
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

January 2004 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. ~~RONALD SAATHOFF (1)~~, CATHY LEXIN (2), TERESA WEBSTER (3), LAWRENCE GRISSOM (4), LORAINE CHAPIN (5), Defendants.	Criminal Case No. 06CR0043-BEN I N D I C T M E N T Title 18, U.S.C., Sec. 371 - Conspiracy to Commit Wire and Mail Fraud; Title 18, U.S.C., Secs. 1343 and 1346 - Wire Fraud; Title 18, U.S.C., Secs. 1341 and 1346 - Mail Fraud; Title 18, U.S.C., Sec. 2 - Aiding and Abetting

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

The San Diego City Employees' Retirement System

1. The San Diego City Employees' Retirement System (hereinafter "SDCERS") administered the funds used to provide retirement, health insurance, disability and death benefits to current, former, and retired city employees and their beneficiaries. The City of San Diego (hereinafter "the City") was SDCERS' plan sponsor. As the plan sponsor, the City was responsible for providing SDCERS with sufficient

JBO:nlv(2):San Diego
1/6/06

funds to pay for the retirement, health insurance, disability, and death benefits to current, former, and retired city employees and their beneficiaries.

2. With the assistance of an outside actuary, SDCERS determined how much the City needed to pay each year to ensure that SDCERS had sufficient funds to pay for the retirement, health insurance, disability, and death benefits of the City's current, former, and retired employees. The outside actuary also calculated SDCERS' funding ratio on an annual basis. SDCERS' funding ratio was the ratio between its assets and liabilities. A funding ratio of less than 100% meant that SDCERS did not have sufficient assets to cover its liabilities.

3. Until its reorganization in April 2005, a Board of Administration (hereinafter "SDCERS Board") with 13 trustees governed the administration of SDCERS' funds. The SDCERS Board included four trustees appointed by the City Council, three city officials serving as ex-officio trustees, one trustee elected by city firefighters, one trustee elected by city police officers, three trustees elected by city general employees, and one trustee elected by retired city employees. The SDCERS Board had to approve by majority vote any city proposal that would change the City's contribution requirements to SDCERS.

4. Each trustee of the SDCERS Board had a fiduciary duty to the Board and public. The primary fiduciary duty of the SDCERS Board was to ensure that SDCERS had sufficient funds to pay for the retirement, health insurance, disability, and death benefits of the City's current, former, and retired employees. This fiduciary duty required each SDCERS Board Trustee to disclose all material information to

their fellow SDCERS Board Trustees, including all information about proposals that could affect the funding of SDCERS and all information about whether an SDCERS Board decision could impact the financial interests of an SDCERS Board Trustee.

5. Consistent with this fiduciary duty, the SDCERS Board enacted its "Rules of the Retirement Board of Administration." According to these Rules, each SDCERS Board Trustee had a fiduciary duty to "avoid any activity which may be interpreted as a conflict of interest," to "conduct all SDCERS business responsibilities in a fair manner and be honest in all business negotiations," and to "communicate to an appropriate Board or staff member information on actions that may be violations of the law, [the Rules of the Retirement Board of Administration], or actions which may be conflicts of interest." The Rules of the Retirement Board of Administration also prohibited each SDCERS Board Trustee from "directly or indirectly seek[ing] or accept[ing] gifts, money or property that would influence or appear to influence the conduct of his or her duties" and from "knowingly engag[ing] in any serial, rotating, or seriatim meeting through which a quorum of the Board becomes involved in the acquisition of information or deliberation of any issue, unless the notice and public access provisions of the open meeting laws are satisfied."

6. Defendant RONALD SAATHOFF (hereinafter "defendant SAATHOFF") was an SDCERS Board Trustee from the 1980s until 2005 as the firefighters' representative, and was subject to the fiduciary duties described above. Defendant SAATHOFF also was president of Local 145, the firefighters' labor union, and was the lead negotiator for Local 145 during the 2002 labor negotiations with the City.

7. Defendant CATHY LEXIN (hereinafter "defendant LEXIN") was an ex-officio SDCERS Board Trustee from 2001 until 2004, and was subject to the fiduciary duties described above. Defendant LEXIN also was the City's Human Resources Director, and was the City's lead labor negotiator with Local 145 and defendant SAATHOFF during the 2002 labor negotiations.

8. Defendant TERESA WEBSTER (hereinafter "defendant WEBSTER") was an ex-officio SDCERS Board Trustee from 1995 until 2005, and was subject to the fiduciary duties described above. Defendant WEBSTER also was the City's Assistant Auditor and Comptroller, and later became the City's acting Auditor and Comptroller.

9. The Administration Division of SDCERS managed the daily affairs of SDCERS and directly interacted with the SDCERS Board. Defendant LAWRENCE GRISSOM (hereinafter "defendant GRISSOM") was the Administrator of SDCERS and in charge of its Administration Division from 1987 until 2005. According to the Rules of the Retirement Board of Administration, defendant GRISSOM was to "be solely responsible to the Board." As the Administrator of SDCERS, defendant GRISSOM had the duty to keep the SDCERS Board fully informed of all material information, including information about proposals that could affect the funding of SDCERS and information about whether an SDCERS Board decision could impact the financial interests of an SDCERS Board Trustee.

10. The Legal Services Division of SDCERS had the duty to provide legal advice and assistance to the SDCERS Board. Defendant LORAINE CHAPIN (hereinafter "defendant CHAPIN") was the General Counsel of SDCERS and in charge of its Legal Services Division from 1997 until 2006. As the General Counsel of SDCERS, defendant CHAPIN

had the duty to keep the SDCERS Board fully informed of all material information, including information about (a) proposals that could affect the funding of SDCERS, (b) SDCERS Board decisions that could impact the financial interests of an SDCERS Board Trustee, (c) whether SDCERS Board Trustees and staff were complying with state and federal laws, and (d) whether an SDCERS Board Trustee had a conflict of interest.

Manager's Proposals 1 and 2, and the 2002 Labor Negotiations

11. In 1996, the City and the SDCERS Board entered into an agreement called "Manager's Proposal 1" (hereinafter "MP1"). Under MP1, the SDCERS Board agreed to permit the City to pay less than the actuarially recommended amount of money necessary to ensure a funding ratio of 100%. If the funding ratio fell below 82.3%, then a "trigger" would be hit, and the City would be required to pay to SDCERS an imminent multi-million dollar balloon payment. Under one interpretation of MP1, the City would have been required to restore the funding ratio to 82.3%, requiring the City to pay approximately $25 million for each percentage point that the funding ratio fell below 82.3%. If the funding ratio fell below 78%, the City would have faced a balloon payment of more than $100 million.

12. In 2002, the City was scheduled to negotiate city employee benefits with four labor unions: Local 145 (the firefighters' union), the Police Officers' Association, Local 127 (blue collar city employees), and the Municipal Employees Association (white collar city employees). The blue collar city employees and white collar city employees were commonly called the "general members." These labor negotiations were commonly called "meet and confer." The four labor unions wanted increased retirement benefits. The general members'

labor negotiators wanted the City to increase the general members' retirement multiplier from 2.25% to 2.5%. This increase from 2.25% to 2.5% would have raised the yearly retirement for defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN by thousands of dollars each year.

13. An issue in the Local 145 negotiations was whether the firefighters would receive certain benefits, including whether defendant SAATHOFF would receive the "presidential leave retirement benefit." The presidential leave retirement benefit would permit defendant SAATHOFF to base his retirement calculation on the combination of his fire captain salary and his union president salary. Without the presidential leave retirement benefit, defendant SAATHOFF's retirement benefit would have been based solely on his fire captain's salary. With the presidential leave retirement benefit, defendant SAATHOFF's retirement would have increased by more than $25,000 per year.

14. In 2002, the City and some of the labor unions reached tentative labor agreements to grant numerous retirement benefit increases to some of the labor unions, including increasing the general members' retirement benefit multiplier from 2.25% to 2.5% and giving defendant SAATHOFF the presidential leave retirement benefit. If enacted, these increased benefits would have raised the retirement benefits for defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN. The tentative increased retirement benefits were made "contingent" on the SDCERS Board agreeing to modify MP1 so the City would avoid making the imminent required multi-million dollar balloon payment if SDCERS' funding ratio fell below 82.3%. If the SDCERS Board did not agree to modify MP1, then the City would not be required to implement the increased retirement benefits, including the 2.25% to 2.5% increase

and the presidential leave retirement benefit. If MP1 had remained unchanged, defendant SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN would have lost thousands of dollars each year in increased retirement benefits. The proposal to modify MP1 and to make increased retirement benefits contingent upon that modification became known as "Manager's Proposal 2" (hereinafter "MP2").

15. In 2002, the City presented the SDCERS Board with multiple versions of MP2, each of which would have modified MP1's trigger so the City would only have paid the "full actuarial rate" (estimated at a total of between $25 and $40 million) phased in over a series of years if the funding ratio fell below the trigger, rather than the imminent multi-million dollar balloon payment that could have exceeded $100 million if MP1 remained unmodified. In these versions of MP2, the City also proposed lowering the MP1 trigger from 82.3% to 75%.

16. On or about Friday, June 21, 2002, the SDCERS Board met and reviewed a version of MP2. Defendant GRISSOM told the SDCERS Board that the recently negotiated retirement benefits were contingent upon the SDCERS Board agreeing to adopt MP2. At this meeting, the City Manager's Office proposed reducing the MP1 trigger from 82.3% to 75%. At this meeting, defendant SAATHOFF reviewed the text of MP1 and stated that MP1 "could be very easily interpreted" to require the City to pay SDCERS the funds necessary to restore SDCERS' funding ratio to 82.3% if the funding ratio fell below 82.3%. Under this interpretation of MP1, the City would be required to make an imminent balloon payment, possibly exceeding $100 million, if the trigger were hit. After extensive discussion, the SDCERS Board did not reach a decision on the City's proposal, and agreed to revisit the issue in July 2002.

17. On or about Monday, June 24, 2002, defendant SAATHOFF met with defendant GRISSOM for several hours and discussed the status of his presidential leave retirement benefit. After the meeting, defendant GRISSOM sent an e-mail to defendant LEXIN, and asked about the status of the presidential leave retirement benefit. In response, defendant LEXIN sent an e-mail to defendant GRISSOM: "we agreed to 'presidential leave' subject to attorneys working out the bugs, Ron knows (as recently as discussions today) that the attorneys and auditors are working with Dan on language . . . not yet in place. . . . TELL RON TO COOL HIS JETS."

18. On or about July 1, 2002, defendant LEXIN drafted a memorandum for the SDCERS Board about MP2 which she shared with defendants WEBSTER and GRISSOM, and others. The memorandum, written in the name of a Deputy City Manager, stated that the recently negotiated retirement benefits were "contingent" upon the SDCERS Board's modification of MP1 and its trigger. After receiving edits and suggestions from defendants WEBSTER and GRISSOM, and others, defendant LEXIN caused the memorandum to be sent by e-mail to the SDCERS Board on or about July 8, 2002.

19. On or about July 9, 2002, defendant LEXIN briefed the City Council in a closed session meeting. Defendant LEXIN informed the City Council that the SDCERS Board might not adopt MP2 with a 75% trigger. She also informed the City Council that, according to defendant GRISSOM, an SDCERS Board Trustee would be making a motion on July 11, 2002, to maintain the trigger at 82.3%, but "phase-in" the "full actuarial rates" over a series of years. Under the 82.3% "phase-in" proposal, "the practical impact on the City would be no different than the previously authorized" 75% MP2 proposal. Based on

defendant LEXIN's recommendation, the City Council agreed to accept the 82.3% "phase-in" MP2 proposal, but only as a "backup" if the SDCERS Board refused to adopt the 75% MP2.

20. On or about July 11, 2002, the SDCERS Board met again to consider MP2. Defendant GRISSOM reminded the SDCERS Board that the recently negotiated benefit enhancements were contingent on the SDCERS Board agreeing to modify MP1. At the meeting, the City Manager's Office continued to propose a version of MP2 which would reduce the trigger from 82.3% to 75%. After extensive discussion about the 75% MP2 proposal, defendant SAATHOFF made a motion to "amend" the City's MP2 proposal (hereinafter "SAATHOFF's MP2 proposal"). Under defendant SAATHOFF's MP2 proposal, the 82.3% trigger would remain in place. However, if the funding ratio fell below 82.3%, the City's balloon payment would be phased in over a series of years, and would be limited to the "full actuarial rate," which was far less than the over $100 million payment that could have been required if MP1 remained unchanged. Defendant SAATHOFF's motion to amend MP2 was the motion that defendant LEXIN had described during the July 9, 2002 City Council closed session meeting. After limited discussion, the SDCERS Board voted 8-2, with one abstention and two members absent, to approve defendant SAATHOFF's MP2 proposal, subject to further review by SDCERS' outside fiduciary counsel and actuary.

21. Shortly after the July 11, 2002 vote, defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, took the steps to create the legislation and other documents necessary to implement defendant SAATHOFF's MP2 proposal and the contingent retirement benefits negotiated in 2002, including defendant SAATHOFF's presidential leave retirement benefit, which later became Resolution 297212.

22. On or about October 21, 2002, the City Council adopted Resolution 297212 on its consent agenda without public comment. Resolution 297212 gave defendant SAATHOFF the presidential leave retirement benefit.

23. On or about November 15, 2002, the SDCERS Board formally approved defendant SAATHOFF's MP2 proposal by a 10-2 vote. During the meeting, defendant SAATHOFF stated that his July 11, 2002 MP2 proposal was an "off-the-seat-of-the-pants" motion.

24. On or about November 18, 2002, the City Council heard public comment in favor of and against the ordinances necessary to put into effect defendant SAATHOFF's MP2 proposal, as well as the increased retirement benefits that were contingent on the SDCERS Board adopting MP2. After hearing the arguments of defendants SAATHOFF and LEXIN, and others, the City Council approved the ordinances necessary to implement the retirement benefits contingent on defendant SAATHOFF's MP2 proposal.

Count 1

18 U.S.C. § 371

The Conspiracy

25. The allegations set forth in paragraphs 1 through 24 above are realleged as if fully set forth herein.

26. Beginning in or before January 2001, and continuing up to and including January 6, 2006, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN did knowingly conspire with each other and others known and unknown to the grand jury to commit offenses against the United States, that is, honest services mail and wire fraud, by conspiring and agreeing to devise a material scheme and artifice to

defraud and to deprive the SDCERS Board Trustees, members of SDCERS, and the citizens of the City of San Diego of their intangible right of honest services of their public officials to be performed free from corruption, fraud, undue influence, conflict of interest, and deceit, and, in executing said scheme, deposited and caused to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and caused matters and things to be delivered by the United States Postal Service and private and commercial interstate carriers according to the direction thereon, and caused writings, signs, signals, and sounds to be transmitted by means of wire in interstate commerce; in violation of Title 18, United States Code, Sections 1341, 1343, and 1346.

Manners And Means

27. In furtherance of this conspiracy, and to effect the objects thereof, the defendants utilized the following manners and means, among others:

a. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently devised a plan to modify MP1 and its trigger in sufficient time so the City would avoid making the imminent multi-million dollar balloon payment to SDCERS that MP1 required.

b. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently agreed to obtain the presidential leave retirement benefit for defendant SAATHOFF in exchange for his support of a proposal to modify MP1 so the City would avoid the imminent multi-million dollar balloon payment that it owed SDCERS under MP1.

c. Defendants SAATHOFF, LEXIN, and WEBSTER, and others, negotiated and agreed to accept increased retirement benefits,

including defendant SAATHOFF's requested presidential leave retirement benefit and the increase in the retirement multiplier from 2.25% to 2.5% for general members, in exchange for their support of a proposal to modify MP1 so the City would avoid the multi-million dollar balloon payment that it owed SDCERS under MP1.

d. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently concealed material information about the increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, from SDCERS Board Trustees, so that the other SDCERS Board Trustees would vote to approve the modification of MP1, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

e. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently concealed material information concerning MP2 and other proposals from SDCERS Board Trustees, so that the other SDCERS Board Trustees would vote to approve the modification of MP1, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

f. Defendants SAATHOFF, LEXIN, and GRISSOM, and others, fraudulently concealed from the SDCERS Board a prearranged plan for

defendant SAATHOFF to submit his MP2 proposal, which, if approved, guaranteed defendant SAATHOFF his presidential leave retirement benefit.

g. Defendants SAATHOFF, LEXIN, and WEBSTER, and others, fraudulently voted in favor of defendant SAATHOFF's MP2 proposal, and by concealing material information from the other SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN deceived and fraudulently induced the other SDCERS Board Trustees to vote in favor of defendant SAATHOFF's MP2 proposal, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

h. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, drafted and assisted in the drafting of legislation implementing defendant SAATHOFF's MP2 proposal and the contingent retirement benefits negotiated in 2002, knowing that defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others had concealed material information from the SDCERS Board Trustees, including the nature and existence of the presidential leave retirement benefit.

i. Defendants SAATHOFF, GRISSOM, and CHAPIN, and others, fraudulently concealed from SDCERS Board Trustees material information concerning defendant SAATHOFF's purchase of service credits that enhanced defendant SAATHOFF's retirement benefits.

j. By deceiving the SDCERS Board Trustees and fraudulently concealing material information from SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN caused significant harm to the financial integrity of SDCERS.

OVERT ACTS

28. In furtherance of said conspiracy and to effect and accomplish the objects thereof, the following overt acts, among others, were committed within the Southern District of California, and elsewhere:

a. On or about January 8, 2001, defendant SAATHOFF sent a letter to a city employee requesting that he receive the presidential leave retirement benefit "consistent with the current procedure followed by the P.O.A. and the M.E.A."

b. On or about September 18, 2001, defendant SAATHOFF told a city employee that, as part of the presidential leave retirement benefit, he wished to combine his city salary with his union president salary to increase his high one year retirement calculation from $80,881.16 to $114,964.66.

c. On or about October 11, 2001, defendant WEBSTER sent an e-mail to defendant LEXIN entitled "EEEK," expressing defendant WEBSTER's concerns about SDCERS' funding ratio and decreasing earnings.

d. On or about November 5, 2001, defendant WEBSTER sent an e-mail to a city labor negotiator discussing "Ron's Plan B" and that city labor negotiators should "keep the bargaining chip in your pocket."

e. On or about November 13, 2001, defendant LEXIN wrote a memorandum recommending that the presidential leave retirement benefit be discussed in the context of the 2002 labor negotiations with Local 145 and the other labor unions.

f. On or about January 3, 2002, defendant WEBSTER sent an e-mail to defendant LEXIN, and others, stating that the SDCERS fund earnings from November 2000 until November 2001 had decreased by 85%, and that "these are SERIOUS consequences and needs attention."

g. On or about February 27, 2002, defendant WEBSTER wrote an e-mail to defendant LEXIN, and others, stating: "OH BOY . . . . the CERS earnings for Jan is negative ($1.7) . . . we're moving in the wrong direction!"

h. On or about February 28, 2002, defendants LEXIN and WEBSTER, and others, discussed via e-mail a plan "to use Ron Saathoff to get" the SDCERS Board's "attention."

i. On or about March 7, 2002, defendant GRISSOM sent an e-mail to defendant WEBSTER stating that a reporter had inquired about the City underfunding SDCERS, and asked defendant WEBSTER "is there any 'party line' for me to communicate?"

j. On or about March 13, 2002, defendant WEBSTER sent an e-mail to defendants LEXIN and GRISSOM, and others, about the SDCERS funding ratio, and stated that: "This is a big and serious problem. . . . . especially since the $20m+ trigger is getting closer."

k. On or about April 15, 2002, defendant GRISSOM sent an e-mail to defendant WEBSTER estimating that the funding ratio would fall below the 82.3% MP1 trigger, and asked defendant WEBSTER to "[p]lease treat this as confidential for the moment . . . . . haven't shared with any of the other Board members – yet."

l. On or about April 17, 2002, defendant WEBSTER sent an e-mail to defendant LEXIN, and others, stating that if modifying the MP1 trigger were "tied to benefit increases I think it would pass."

m. On or about May 21, 2002, defendant WEBSTER sent an e-mail to a city employee stating: "The Local 145 write up you sent out did not state that their increased offset was contingent on the Board laxing the trigger. . . . . I thought ALL retirement improvements (including the preside[n]tial leave(?)) were contingent on the trigger. . . . especially need Ron behind releasing the trigger since he runs the show at CERS."

n. On or about June 14, 2002, defendant LEXIN wrote a memorandum stating that the retirement benefits negotiated during the 2002 labor negotiations were contingent upon the SDCERS Board approving a modification of MP1.

o. On or about June 21, 2002, defendant SAATHOFF told the SDCERS Board that MP1 "could be very easily interpreted" to require the City to pay SDCERS the

funds necessary to restore SDCERS' funding ratio to 82.3% if funding ratio fell below 82.3%.

p. On or about June 25, 2002, defendant LEXIN sent an e-mail to an SDCERS Board Trustee who did not attend the June 21, 2002 SDCERS Board meeting, stating that defendant LEXIN and others "REALLY do need you!" at the July 11, 2002 SDCERS Board meeting to vote on MP2.

q. On or about July 1, 2002, defendant LEXIN sent via e-mail a draft memorandum to defendant GRISSOM, which contained proposed answers to the questions of an SDCERS Board Trustee about MP2.

r. On or about July 2, 2002, defendant WEBSTER reviewed defendant LEXIN's July 1, 2002 draft memorandum, and sent an e-mail stating: "FYI Regarding cathy's letter my biggest suggestion to her is to eliminate any reference to fitch and rating agencies in #6. This letter will be seen by press and the city does not need to telegraph its pension problems to the rating agencies who don't research the topic to any great level now."

s. On or about July 8, 2002, defendant LEXIN wrote a memorandum urging the City Council to preapprove a motion to amend MP2 that an SDCERS Board Trustee would be making on July 11, 2002.

t. On or about July 11, 2002, defendant SAATHOFF made a motion before the SDCERS Board to amend the City's version of MP2.

u. On or about July 11, 2002, defendants SAATHOFF, LEXIN, and WEBSTER, and others, voted in favor of defendant SAATHOFF's MP2 proposal, and defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN did not disclose defendant SAATHOFF's presidential leave retirement benefit to the other SDCERS Board Trustees.

v. On or about July 18, 2002, defendants CHAPIN and GRISSOM, and others, met to discuss how to implement benefits conveyed under MP2, including the presidential leave retirement benefit.

w. On or about August 26, 2002, defendants LEXIN, CHAPIN, and GRISSOM, and others, met to discuss how to implement benefits conveyed under MP2, including the presidential leave retirement benefit.

x. On or about September 6, 2002, defendant CHAPIN sent an e-mail to defendants LEXIN, WEBSTER, and GRISSOM, and others, stating: "The Board has not reviewed the Presidential Leave issue and does not have to."

y. On or about November 5, 2002, defendant WEBSTER sent an e-mail to defendant LEXIN suggesting that they try to convince the SDCERS Board to reduce the MP1 82.3% trigger "BEFORE the actuary report comes out with the ratio news."

z. On or about November 15, 2002, defendants SAATHOFF and WEBSTER, and others, voted in favor of defendant SAATHOFF's MP2 proposal, and defendants SAATHOFF, WEBSTER, GRISSOM, CHAPIN, and others, did not disclose

defendant SAATHOFF's presidential leave retirement benefit to the other SDCERS Board Trustees.

aa. On or about November 18, 2002, defendants SAATHOFF and LEXIN, and others defended MP2 before the City Council.

bb. On or about December 6, 2002, defendant LEXIN, and others, drafted a letter that defended MP2 against allegations made publicly that MP2 was "corrupt."

cc. On or about December 20, 2002, defendant SAATHOFF told the SDCERS Board that under MP1, the City would not have been required to pay SDCERS the funds necessary to restore SDCERS' funding ratio to 82.3% if the funding ratio fell below 82.3%.

dd. On or about August 15, 2003, defendant SAATHOFF, during a SDCERS Board meeting, falsely denied that he had received increased benefits as a result of MP2.

All in violation of Title 18, United States Code, Section 371.

Counts 2 - 5

18 U.S.C. §§ 1343, 1346, and 2

Honest Services Wire Fraud

29. The allegations set forth in paragraphs 1 through 24 above are realleged as if fully set forth herein.

30. Beginning in or before January 2001, and continuing up to and including January 6, 2006, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN did knowingly devise and intend to devise a material scheme and artifice to defraud, to wit, to act with the intent to deprive the SDCERS Board Trustees, members of SDCERS, and

the citizens of the City of San Diego of their intangible right of honest services of their public officials to be performed free from corruption, fraud, undue influence, conflict of interest, and deceit.

The Scheme to Defraud

31. It was part of the scheme to defraud that defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, did, among other things, the following:

a. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently devised a plan to modify MP1 and its trigger in sufficient time so the City would avoid making the imminent multi-million dollar balloon payment to SDCERS that MP1 required.

b. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently agreed to obtain the presidential leave retirement benefit for defendant SAATHOFF in exchange for his support of a proposal to modify MP1 so the City would avoid the imminent multi-million dollar balloon payment that it owed SDCERS under MP1.

c. Defendants SAATHOFF, LEXIN, and WEBSTER, and others, negotiated and agreed to accept increased retirement benefits, including defendant SAATHOFF's requested presidential leave retirement benefit and the increase in the retirement multiplier from 2.25% to 2.5% for general members, in exchange for their support of a proposal to modify MP1 so the City would avoid the multi-million dollar balloon payment that it owed SDCERS under MP1.

d. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently concealed material information about the increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, from SDCERS Board Trustees, so

that the other SDCERS Board Trustees would vote to approve the modification of MP1, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

e. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently concealed material information concerning MP2 and other proposals from SDCERS Board Trustees, so that the other SDCERS Board Trustees would vote to approve the modification of MP1, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

f. Defendants SAATHOFF, LEXIN, and GRISSOM, and others, fraudulently concealed from the SDCERS Board a prearranged plan for defendant SAATHOFF to submit his MP2 proposal, which, if approved, guaranteed defendant SAATHOFF his presidential leave retirement benefit.

g. Defendants SAATHOFF, LEXIN, and WEBSTER, and others, fraudulently voted in favor of defendant SAATHOFF's MP2 proposal, and by concealing material information from the other SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN deceived and fraudulently induced the other SDCERS Board Trustees to vote in favor of defendant SAATHOFF's MP2 proposal, which would allow

the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

h. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, drafted and assisted in the drafting of legislation implementing defendant SAATHOFF's MP2 proposal and the contingent retirement benefits negotiated in 2002, knowing that defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others had concealed material information from the SDCERS Board Trustees, including the nature and existence of the presidential leave retirement benefit.

i. Defendants SAATHOFF, GRISSOM, and CHAPIN, and others, fraudulently concealed from SDCERS Board Trustees material information concerning defendant SAATHOFF's purchase of service credits that enhanced defendant SAATHOFF's retirement benefits.

j. By deceiving the SDCERS Board Trustees and fraudulently concealing material information from SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN caused significant harm to the financial integrity of SDCERS.

Execution Of The Scheme

32. On or about the dates set forth below, according to each count, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, for the purpose of executing the aforesaid material scheme to defraud, knowingly transmitted and caused to be transmitted by means of a wire

communication in interstate commerce, certain writings, signs, signals, and sounds, that is, e-mails, as alleged below:

COUNT	DATE	WIRE COMMUNICATION
2	6/19/2002	E-mail entitled "Fwd: Report," sent from an e-mail account located in San Diego, California, to an America Online e-mail account of an SDCERS Board Trustee, located in Dulles, Virginia
3	7/8/2002	E-mail entitled "City's Proposal re SDCERS," sent from an e-mail account located in San Diego, California, to an America Online e-mail account of an SDCERS Board Trustee, located in Dulles, Virginia
4	7/15/2002	E-mail entitled "Re: He's Baaack!," sent by defendant GRISSOM from an e-mail account located in San Diego, California, to an America Online e-mail account of an SDCERS Board Trustee, located in Dulles, Virginia
5	10/4/2002	E-mail entitled "Resolution for Incumbent Presidential Retirement Benefits," sent from an e-mail account located in San Diego, California, to an America Online e-mail account of defendant SAATHOFF, located in Dulles, Virginia

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

Counts 6 - 20

18 U.S.C. §§ 1341, 1346, and 2

Honest Services Mail Fraud

33. The allegations set forth in paragraphs 1 through 24 above are realleged as if fully set forth herein.

34. Beginning in or before January 2001, and continuing up to and including January 6, 2006, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN did knowingly devise and intend to devise a material scheme and artifice to defraud, to wit, to act with the intent to deprive the SDCERS Board Trustees, members of SDCERS, and

the citizens of the City of San Diego of their intangible right of honest services of their public officials to be performed free from corruption, fraud, undue influence, conflict of interest, and deceit.

The Scheme to Defraud

35. It was part of the scheme to defraud that defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, did, among other things, the following:

a. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently devised a plan to modify MP1 and its trigger in sufficient time so the City would avoid making the imminent multi-million dollar balloon payment to SDCERS that MP1 required.

b. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently agreed to obtain the presidential leave retirement benefit for defendant SAATHOFF in exchange for his support of a proposal to modify MP1 so the City would avoid the imminent multi-million dollar balloon payment that it owed SDCERS under MP1.

c. Defendants SAATHOFF, LEXIN, and WEBSTER, and others, negotiated and agreed to accept increased retirement benefits, including defendant SAATHOFF's requested presidential leave retirement benefit and the increase in the retirement multiplier from 2.25% to 2.5% for general members, in exchange for their support of a proposal to modify MP1 so the City would avoid the multi-million dollar balloon payment that it owed SDCERS under MP1.

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d. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently concealed material information about the increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, from SDCERS Board Trustees, so that the other SDCERS Board Trustees would vote to approve the modification of MP1, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

e. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, fraudulently concealed material information concerning MP2 and other proposals from SDCERS Board Trustees, so that the other SDCERS Board Trustees would vote to approve the modification of MP1, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

f. Defendants SAATHOFF, LEXIN, and GRISSOM, and others, fraudulently concealed from the SDCERS Board a prearranged plan for defendant SAATHOFF to submit his MP2 proposal, which, if approved, guaranteed defendant SAATHOFF his presidential leave retirement benefit.

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g. Defendants SAATHOFF, LEXIN, and WEBSTER, and others, fraudulently voted in favor of defendant SAATHOFF's MP2 proposal, and by concealing material information from the other SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN deceived and fraudulently induced the other SDCERS Board Trustees to vote in favor of defendant SAATHOFF's MP2 proposal, which would allow the City to avoid the imminent multi-million dollar balloon payment that it owed SDCERS, would allow the defendants and others to receive increased retirement benefits, including defendant SAATHOFF's presidential leave retirement benefit, and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with the City and SDCERS.

h. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, drafted and assisted in the drafting of legislation implementing defendant SAATHOFF's MP2 proposal and the contingent retirement benefits negotiated in 2002, knowing that defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others had concealed material information from the SDCERS Board Trustees, including the nature and existence of the presidential leave retirement benefit.

i. Defendants SAATHOFF, GRISSOM, and CHAPIN, and others, fraudulently concealed from SDCERS Board Trustees material information concerning defendant SAATHOFF's purchase of service credits that enhanced defendant SAATHOFF's retirement benefits.

j. By deceiving the SDCERS Board Trustees and fraudulently concealing material information from SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN caused significant harm to the financial integrity of SDCERS.

Execution Of The Scheme

36. On or about the dates set forth below, according to each count, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, for the purpose of executing the aforesaid material scheme to defraud, knowingly deposited and caused to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and caused matters and things to be delivered by the United States Postal Service and private and commercial interstate carriers according to the direction thereon as alleged below:

COUNT	DEFENDANTS	DATE	MAIL MATTER
6	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	6/13/2002	SDCERS Board Packet For June 21, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
7	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	6/13/2002	SDCERS Board Packet For June 21, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
8	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	6/13/2002	SDCERS Board Packet For June 21, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
9	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	7/9/2002	SDCERS Board Packet For July 11, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
10	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	7/9/2002	SDCERS Board Packet For July 11, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express

COUNT	DEFENDANTS	DATE	MAIL MATTER
11	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	7/9/2002	SDCERS Board Packet For July 11, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
12	SAATHOFF	8/12/2002	Check No. 013011081 For $3,529.89, payable to San Deigo [sic] City Employees Ret Sys FBO Ronald L Saathoff, Delivered to SDCERS via United States Mail
13	SAATHOFF	8/12/2002	Check No. 013010714 For $8,090.44, payable to San Deigo [sic] City Employees Ret Sys FBO Ronald L Saathoff, Delivered to SDCERS via United States Mail
14	SAATHOFF	8/29/2002	Check No. 78697 For $1,736.71, payable to SDCERS PLAN, Delivered to SDCERS via United States Mail
15	SAATHOFF	9/13/2002	Check No. 2583879 For $51,236.79, payable to City of San Diego For Plan to Plan Transfer FBO Ronald Saathoff, Delivered to SDCERS via United States Mail
16	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet For November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
17	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet For November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
18	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet For November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express
19	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet For November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express

COUNT	DEFENDANTS	DATE	MAIL MATTER
20	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet For November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee via Adcom Express

All in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

DATED: January 6, 2006.

A TRUE BILL:

_____
Foreperson

CAROL C. LAM
United States Attorney

By: _____
G. MICHAEL STILL
Special Assistant U.S. Attorney

By: _____
JOHN B. OWENS
Assistant U.S. Attorney

Exhibit 97

From: Mayor and City Manager

To: All City Employees, City Council, and San Diego City Retirement System

As you know, we have received a number of subpoenas from law enforcement authorities requiring production of a broad range of documents related to matters under investigation. Additional investigative activity is now also being undertaken by the City's Audit Committee.

We recently have discovered that documents called for by these subpoenas were not timely identified and made available to us for production to the authorities. We are therefore circulating the attached lists of documents and advising all personnel that each employee is to study the lists carefully, search their electronic and non-electronic files, and immediately identify and make available all responsive documents.

Should you have any questions concerning what documents must be produced, you may consult the requests contained in the subpoenas, which are also attached to this memorandum. If upon a diligent search of your files you conclude that you have documents responsive to a subpoena, you are to identify and make the documents available as above. A statement that you have diligently searched your files and have made available all responsive documents, as provided in the attached form, should be provided to Jeffrey Klein of Kroll, Inc, for transmittal to the appropriate City officials and the authorities. You should indicate on the statement all categories of documents that are responsive to a subpoena, and whether

they were previously provided to the City Attorney. Please fax the completed form to Mr. Klein at (619) 923-0099 by no later than June 30, 2005. Mr. Klein or one of his colleagues will then contact you with further instructions concerning the documents. Mr. Klein may be reached by phone at (619) 961-7869.

In reviewing the attached list of requested documents, you should interpret the term "documents" broadly. The term "documents" includes, but is not limited to, all memos, letters, reports, emails, drafts, notes, graphic matters, recordings, and spreadsheets in any format, including handwritten, typewritten, printed, photocopied, or otherwise mechanically or electronically produced or reproduced.

You must review the attached list, perform a diligent search, and return the attached statement *even if you have received similar requests and/or completed similar forms previously.*

You are hereby advised that a failure to make available all responsive documents will be viewed as a violation of the legal obligation to comply with the foregoing subpoenas, which can have severe consequences.

DOCUMENTS REQUESTED

1. All documents that relate in any way to the offer and/or sale of any bonds, such as general obligation, revenue, tax anticipation, certificates of participation, and lease revenue bonds, by the City of San Diego from January 1, 1996 to February 18, 2004. Please also include all documents that were created as part of the offering, such as transcripts of closing documents, as well as notes of meetings and correspondence files concerning these offerings.

2. All documents that relate in any way to public disclosure of information made in connection with the offer and/or sale of any bonds, such as general obligation, revenue, tax anticipation, certificates of participation, and lease revenue bonds, by the City of San Diego. Please also include all documents that relate in any manner to the City of San Diego Municipal Securities Secondary Market Disclosure Information Report dated January 27, 2004.

3. All documents concerning San Diego City Council action, discussion, and review of bond offerings and disclosure.

4. All documents that relate in any manner to necessary pension payments by the City of San Diego to the San Diego City Employees' Retirement System ("SDCERS"), the required percentage of the City of San Diego's budget such costs represent, and the under-funded status of SDCERS. Please include all documents that reflect:

a. the cost and projected cost of the pension obligations, Deferred Retirement Option Program and post-retirement health care benefits;

b. documents that benchmark the pension obligations, Deferred Retirement Option Program, and post-retirement health care obligations of the City of San Diego against other government agencies and against private industry norms;

c. actuarial reports, valuations, assumptions, estimates, alternatives and recommendations concerning the SDCERS;

d. documents that analyze and report on the causes of the under-funded status of the SDCERS;

e. documents concerning audits and reviews by outside persons and entities, including independent auditors, of amounts of money that the City of San Diego may have to pay for pension, Deferred Retirement Option Program, and post-retirement health care benefits;

f. documents concerning City of San Diego bond ratings and changes in bond ratings as a result of amounts of money that the City of San Diego may be obligated to pay for pension, Deferred Retirement Option Program, post-retirement health care and other benefits; documents that model on an actuarial basis the necessary annual funding of pension obligations, Deferred Retirement Option Program, post retirement health care and other benefits;

g. documents concerning any Unfunded Actuarially Accrued Liability; and

h. documents concerning advice from the City Attorney or other counsel concerning amounts of money that the City of San Diego may be obligated to pay for pension, Deferred Retirement Option Program, post-retirement health care and other benefits.

5. All documents that relate in any way to public disclosure of information concerning actual and potential pension obligations, Deferred Retirement Option Program, and post-retirement health care obligations of the City of San Diego. Please include documents that reflect

a. review by any counsel, financial advisor, underwriter or actuary of any disclosure made concerning actual and potential pension obligations, Deferred Retirement Option Program, and post-retirement health care obligations;

b. communications concerning and materials presented to rating agencies from January 1, 2000 to February 11, 2005, including the names of persons attending presentations, concerning the amount of money that the City of San Diego may be obliged to pay for pension, Deferred Retirement Option Program, post retirement health care and other benefits;

c. documents concerning disclosure in the City of San Diego's 2001 and 2002 audited financial statements of amounts of money that the City of

concerning the City of San Diego Strategic Planning meetings concerning labor negotiations.

10. All documents concerning the location and value of SDCERS' assets and liabilities.

11. All emails sent or received by the following people regarding the subject matter of the preceding requests: Mike Carrier, Jeanne Cole, Valerie DanDeweghe, Rick Duvernay, P. Lamont Ewell, Patricia T. Frazier, Leslie J. Girard, D. Cruz Gonzalez, Rudy Graciano, Bruce Herring, Elizabeth Kelly, Lakshmi Kommi, Cathy Lexin, Jacqueline Lindsay, Tracy McCraner, Jack McGrory, Darlene Morrow-Truver, Jyothi Panthulu, Cecilia San Pedro, Mike Phillips, Phil Phillips, Tom Rhodes, Ed Ryan, Ron Saathoff, Kelly Salt, Michael Uberuaga, Mary Vattimo, Terri Webster, Jeff Witt, Ed Wochaski, members of the city council, and the mayor.

12. All documents that relate in any way to the removal, destruction, or "cleaning" of documents belonging to the City of San Diego from January 1, 2004 to January 21, 2005.

13. All emails to, from, and otherwise concerning Dennis Gibson from January 1, 2000 to February 11, 2005 and all documents that relate in any way to such emails.

14. All documents that relate in any way to the Government Finance Officers Association Certificate Program for the City of San Diego.

15. All documents that were once in the possession of Gloria Chavez.

16. All documents that relate in any way to the Blue Ribbon Committee on the City of San Diego's Finances.

17. All email communications and attachments thereto sent and received on behalf of Michael Uberuaga by his administrative assistants from January 1, 2001 to his retirement in 2004.

18. All documents distributed during closed sessions of the City Council between October 1, 2001 and February 1, 2004; all video and audio tapes of City Council meetings during the same period, and all video and audio tapes of City Council meetings prior to that period in which Managers' Proposal 1 was discussed; all video and audio tapes of the Rules Committee between October 1, 2001 and February 1, 2004; and all documents provided to City Council members or staff in support of

a. 2002 Fire & Safety Bonds,

b. 2002-03 TANS,

c. 2003 Balboa Park/Mission Bay Bonds,

d. 2003 Light Rail Bonds, and

e. 2003-04 TANS.

CERTIFICATION

Name:_____

Address:

Phone Number:

I have reviewed the attached Memorandum, including the "Documents Requested" section, requesting that I identify and provide access to certain documents and materials to Jeffrey Klein. I have searched my hard copy and electronic files, including email files and folders and hard copy files and folders that were stored off-site, and I confirm that the descriptions in the attached "Document Descriptions" identify the documents of mine that are covered by the "Documents Requested" section and their current storage location.

I confirm that I have/have not [CIRCLE ONE] created or received documents on my own home or portable computer, other than documents that are copied in my City computer and electronic files, that relate to subjects covered by the "Documents Requested" section.

I confirm that I have/have not [CIRCLE ONE] had an administrative assistant or secretary who might have maintained hard copy files or electronic files or documents for me on subjects covered by the "Documents Requested" section that would not be found with my files. The names of these assistants or secretaries, if applicable, are:

I confirm that I have/have not [CIRCLE ONE] had an administrative assistant or secretary who received or sent email on my behalf that might not be included in the email files or folders under my name. The names of these assistants or secretaries, if applicable, are:

[Name of responding person]

_____

Date:_____

Document Descriptions

Description of Documents	Did you previously provide the document to the City Attorney?
1.	
2.	
3.	
4.	
5.	

[continue as necessary]

Exhibit 98

THE CITY OF SAN DIEGO

June 23, 2005

Mr. Lynn Turner
Audit Committee Member

Dear Mr. Turner

As indicated in the City Manager's e-mail of this morning, there is a great deal of confusion surrounding the June 10, 2005 memo. The core issue relates to how to do the searches properly, especially for electronic files and e-mail. We take the June 10th memo request very seriously and share the Audit Committee's goal of conducting a successful effort; however, the lack of a defined, consistent set of instructions has resulted in anxiety throughout the organization. Based on the questions arising from City employees, unless we take the time to provide clear direction to staff, the outcome will not be a consistent, comprehensive response that will meet the needs of the Audit Committee, KPMG and the law enforcement agencies.

Concerns

Despite the recent FAQ memo, we are still receiving questions from the organization. The questions generally surround the specific process to be used to conduct a search of electronic files and e-mail, whether search terms will be provided, why every City employee regardless of how far removed they may be from any of the issues needs to respond, and various questions specific to some departments' unique circumstances. As a result, the employees are concerned with signing a document when they feel they do not have the tools necessary to locate all responsive documents they may have in their possession. Though most of the questions outlined above need to be addressed globally, answers to questions specific to departments' unique circumstance are being captured through the telephone hotline and in targeted meetings with Mr. Jeffrey Klein and Mr. Paul Horan for consideration and response.

A number of hurdles have been identified through discussions with staff and as a result of lessons learned from our recent experience coordinating responses to U.S. Attorney's Office subpoenas in March 2005. The varied range of staff roles, complexity of the subject matter, varying levels of expertise about the subject matter, varying levels of familiarity with the use of technology, number of people expected to respond, and short timeframe combined with the lack of clear, concise, consistent direction are hurdles to completing a successful document search and production process with quality results.

Our recommendations described in the following sections focus on three areas: establishing search procedures, identifying target respondents, and timing.

Recommendations

Establishing Search Procedures

Given the lack of consistent, clear instructions, I am concerned about conducting an effort that results in missed documents of importance, potential criticism after trying to comply, or having to immediately re-conduct the process. The topics covered in the June 10th memo are lengthy and complex; employees are unsure where to begin. In our experience, it is most effective to provide search terms and specific procedures to employees to ensure responsive documents are produced. Hands-on technical assistance is also beneficial for those with limited technical knowledge. Without direction and assistance, individuals may default to procedures used previously, which may not be appropriate to the current request or otherwise fall short of meeting the requirements. Another possible outcome is that respondents may provide an excessive quantity of non-responsive documents in an effort to fully comply.

Issues pointing to the need for consistent procedures with search terms and specific technical direction include the following:

- City employees work on numerous projects and subjects at any given time; individuals cannot remember over the course of multiple years all documents that have been developed and retained. Search terms help locate the documents.
- Search terms assist in keeping an individual on track when reviewing boxes and drawers of hard copy files, a process which in some cases can take many days.
- Some departments rotate assignments frequently and staff persons move into new offices and take over the responsibilities, documents and files of former occupants.
- There are employees who may have documents, but who are unfamiliar with the subject matter and would not necessarily know what to search for without search terms. An example would be a clerical assistant or executive secretary that typed and maintained documents for a supervisor.
- Tapping into those with the subject matter expertise allows for development of search terms that would pick up documents that employees on the fringe of an issue and unfamiliar with all of the terminology may have in their possession.
- Many employees lack the technical expertise to do an effective search of their electronic files – they may only be familiar with basic e-mail and word processing features. As an example, many managers rely on others for technical assistance and would require that assistance for such a large and important effort.
- Search procedures prepared by the technical experts who understand the capabilities of the computer systems provide consistent results.
- Without specific direction, employees may not segregate electronic documents located during a search and therefore may not be able to get back to the exact list of documents identified when document production is required in the future.

Recommendation: Develop consistent procedures, including relevant search terms approved by the requesting authorities, for searching e-mail and electronic files.

Search terms would be proposed by City subject matter experts to provide an optimum list of terms that can be used consistently by respondents. These search terms would be a starting point for employees with direction to them to use their own knowledge and expertise to go beyond the list to conduct a thorough review of all documents.

In addition, it is recommended that specific step-by-step technical procedures for searching, segregating and saving e-mail and electronic documents for future production be developed and distributed to all respondents. Technical assistance is necessary for those lacking the technical skills. It is recommended that those with technical knowledge be available to assist employees needing help. Search terms, procedures and technical assistance will help to ensure a thorough and responsive result to this process and instill confidence regarding the process in requesting authorities.

Identifying Target Respondents

The target group currently includes all City employees. While understanding the need to cast a broad net to ensure all relevant documents are identified, informing every single City employee on the subject, having them conduct a search then sign a certification is a formidable task and unlikely to produce responsive documents beyond a certain point. There are approximately 12,000 total employees within the City. It is estimated that only 10% to 20% of these employees will have responsive documents, due to the nature of their positions and responsibilities with the City.

City staff includes not only financial professionals and managers, but also part time positions such as lifeguards and recreation leaders; blue-collar employees such as mowers, painters, refuse collection drivers, and mechanics; and public safety employees such as police officers and fire fighters. Many of these could be eliminated from the list of potential respondents based upon the nature of their jobs having no involvement whatsoever to the topics of the document requests. Many City employees do not work on, nor are expected to have communications related to the various topics of interest addressed in the June 10th memo. Employees such as line-managerial and blue-collar workers are typically involved in the direct delivery of public services to citizens on a daily basis.

Reaching all employees to have them certify they have no responsive documents is extremely challenging. Gathering those staff who are mobile, such as truck drivers, maintenance workers, and police officers; or who work multi-day shifts and are stationed throughout the City, such as fire fighters takes coordination and time to plan and execute.

Additionally, there are issues associated with conveying the information to the blue-collar employees. Many of these employees are not only unfamiliar with the issues addressed in the June 10th memo, but are so far removed from complex topics, an office environment, and legal language that they are afraid to sign their name to something they do not understand. Even when the document is explained in detail by an administrator more familiar with the subject matter, some employees do not have the background to comprehend the issues and do not want to sign a

document they view as intimidating, as the language on page 2 of the June 10th memo regarding "severe consequences" is perceived.

Recommendation: Use a three-tier approach to identify employees required to conduct searches and respond to the June 10th memo: (1) all employees in specific "core" departments, (2) all unclassified employees and specific position classifications throughout the City, and (3) any employee not otherwise included who may have had involvement in any of the subject matter.

1. Core departments recommended for response include Treasurer (including Financing Services), Financial Management, Human Resources (including Labor Relations), Personnel, Auditor and Comptroller, City Manager, City Attorney, and the Offices of the Mayor and City Council. These were selected because of the nature of their assignments and responsibilities in the context of the June 10th memo.

2. In order to be conservative, a number of general classifications throughout the City with the potential for having involvement with any of the subject matter will be required to conduct a search. Attached is a proposed list of all City employee classifications with those recommended for inclusion marked by an "x".

3. Finally, all department directors would be directed to identify those exceptions where City employees not employed in the core departments or identified classifications but who have or had special assignments, roles or positions related to the topics addressed in the June 10th memo; these identified employees will be directed to respond. Examples include a field engineer providing project status information for continuing disclosure requirements, or an employee who had served on the City's Retirement Board or on the board of a labor union.

Timing

If you concur with the proposed recommendations outlined above, additional time will be required for us to propose procedures and search terms, and refine the target employee population for your consideration and approval. We should continue searching for paper documents but suspend searching for e-mail and electronic documents until the procedures can be distributed.

In any case, an extension of the June 30, 2005 deadline is needed based on the significant logistical hurdles in getting all employees to execute the search and certification as identified earlier.

Recommendation: Extend the due date for the certification forms to a date to be determined based upon approval of procedures described above, and consideration of the time required to execute the searches.

Summary

Our recent experience has shown that a consistent and documented process is necessary for the best results. The recommendations offered are designed to provide consistent, timely, thorough, responsive, and documented results that will meet the requirements of the Audit Committee, KPMG, and law enforcement agencies.

Your consideration of these recommendations is greatly appreciated.

Respectfully,

Rey Arellano
Deputy City Manager & Chief Information Officer

Enclosure

Cc: Benito Romano, Audit Committee Counsel
P. Lamont Ewell, City Manager
Anita Noone, Deputy City Attorney
Jeffrey Klein
Paul Horan

Proposed List of Target Employee Classifications

Number of employees in each class as of payperiod ending 6/3/2005

755 = Employees included
12129 = Total employees

Class Title	No. in Class	Classifications to include
ACCOUNT AUDIT CLERK	10	x
ACCOUNTANT I	6	x
ACCOUNTANT II	21	x
ACCOUNTANT III	22	x
ACCOUNTANT IV	10	x
ASSISTANT CITY ATTORNEY	7	x
ASSISTANT CITY AUDITOR & COMPT	1	x
ASSISTANT CITY CLERK	1	x
ASSISTANT CITY LIBRARIAN	1	x
ASSISTANT DEPARTMENT DIRECTOR	2	x
ASSISTANT DEPUTY DIRECTOR	17	x
ASSISTANT ENVIRONMENTAL SVCS DIR	2	x
ASSISTANT EXECUTIVE SERVICES DIR	1	x
ASSISTANT FIRE CHIEF	3	x
ASSISTANT GOVERNMENTAL REL DIRECTOR	2	x
ASSISTANT INVESTMENT OFFICER	3	x
ASSISTANT METRO WASTEWATER DIRECTOR	1	x
ASSISTANT PERSONNEL DIRECTOR	1	x
ASSISTANT POLICE CHIEF	4	x
ASSISTANT RETIREMENT ADMINISTRATOR	1	x
ASSISTANT RETIREMENT GENERL COUNSEL	1	x
ASSISTANT TO FIRE CHIEF	2	x
ASSISTANT TO PARK & RECREATION DIR	1	x
ASSISTANT TO POLICE CHIEF/CIVILIAN	1	x
ASSISTANT TO THE DIRECTOR	3	x
ASSOCIATE COUNSEL	1	x
ASSOCIATE ECONOMIST	4	x
ASSOCIATE PERSONNEL ANALYST	14	x
ASST TO THE ENGNRNG & CAP PRJ DIR	1	x
BENEFITS REPRESENTATIVE I	2	x
BENEFITS REPRESENTATIVE II	6	x
BUILDING INSPECTION SUPV	2	x
CITY ATTORNEY	1	x
CITY AUDITOR & COMPTROLLER	1	x
CITY CLERK	1	x
CITY LIBRARIAN	1	x
CITY MANAGER	1	x
CLAIMS AND INSURANCE MANAGER	4	x
COMMITTEE CONSULTANTS SECRETARY	1	x
CONF SECRETARY TO CITY ATTY	1	x
CONF SECRETARY TO CITY MANAGER	1	x
CONF SECRETARY TO MAYOR	1	x
CONF SECRETARY TO POLICE CHIEF	1	x
COUNCIL ASSISTANT	7	x
COUNCIL COMMITTEE CONSULTANT	3	x
COUNCIL MEMBER	8	x
COUNCIL REP IIA	8	x
COUNCIL REPRESENTATIVE I	53	x
COUNCIL REPRESENTATIVE II B	22	x
CRIME LABORATORY MANAGER	1	x
DEPARTMENT DIRECTOR	4	x
DEPUTY CITY ATTORNEY	139	x
DEPUTY CITY MANAGER	5	x
DEPUTY DIRECTOR	45	x

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
DEPUTY DIRECTOR, ELECTNS & REC MGMT	1	x
DEPUTY DIRECTOR, LEGISLATIVE SERV	1	x
DEPUTY FIRE CHIEF	6	x
DEPUTY LIBRARY DIRECTOR	3	x
DEPUTY PERSONNEL DIRECTOR	2	x
DEVELOPMENT SERVICES DIRECTOR	1	x
DISABILITY SERVICES COORDINATOR	1	x
EMPLOYEE BENEFITS SPECIALIST I	2	x
EMPLOYEE BENEFITS SPECIALIST II	1	x
ENDOWMENT OFFICER	1	x
ENGINEERING AND CAPITAL PROJ DIR	1	x
ENVIRONMENTAL SERVICES DIRECTOR	1	x
EQUAL EMPLOYMENT INVESTIGATIONS MGR	1	x
EXECUTIVE ASSISTANT POLICE CHIEF	1	x
EXECUTIVE DIRECTOR	4	x
EXECUTIVE SECRETARY	37	x
EXECUTIVE SERVICES DIRECTOR	1	x
FACILITY MANAGER	1	x
FINANCIAL MANAGEMENT DIRECTOR	2	x
FINANCIAL OPERATIONS MANAGER	4	x
FIRE CHIEF	1	x
FIRE SHIFT COMMANDER	3	x
GOLF COURSE OPERATIONS MANAGER	1	x
GOVERNMENTAL RELATIONS DIRECTOR	1	x
GRANTS COORDINATOR	1	x
HOMELESS SERVICES COORDINATOR	1	x
INFORMATION SYSTEMS ADMINISTRATOR	6	x
INFORMATION SYSTEMS ANALYST IV	19	x
INFORMATION SYSTEMS MANAGER	1	x
INVESTMENT OFFICER	2	x
LABOR RELATIONS MANAGER	1	x
LIFEGUARD CHIEF	1	x
MANAGEMENT ASSISTANT TO CITY MGR	3	x
MAYOR	1	x
MEDICAL REVIEW OFFICER	1	x
METROPOLITAN WASTEWATER DIRECTOR	1	x
NEIGHBORHOOD CODE COMPLIANCE DIR	1	x
NEIGHBORHOOD SERVICES COORDINATOR	8	x
PARAMEDIC COORDINATOR	1	x
PARK AND RECREATION DIRECTOR	2	x
PAYROLL AUDIT SPECIALIST I	9	x
PAYROLL AUDIT SPECIALIST II	5	x
PAYROLL AUDIT SUPERVISOR-AUDITOR	1	x
PAYROLL AUDIT SUPERVISOR-PERSONNEL	2	x
PAYROLL SUPERVISOR	3	x
PERSONNEL DIRECTOR	1	x
PLANNING DIRECTOR	1	x
POLICE ADMINISTRATIVE SERVICES DIR	1	x
POLICE CHIEF	1	x
PRINCIPAL ACCOUNTANT	11	x
PRINCIPAL ASSISTANT TO CITY ATTY	1	x
PROGRAM COORDINATOR	3	x
PROGRAM MANAGER	47	x
QUALITY MANAGEMENT COORDINATOR	3	x
REAL ESTATE ASSETS DIRECTOR	1	x
REGIONAL URBAN INFO SYSTEM ADMIN	1	x
RESOURCE DEVELOPMENT OFFICER	3	x

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
RETIREMENT ADMINISTRATOR	1	x
RETIREMENT GENERAL COUNSEL	1	x
RISK MANAGEMENT DIRECTOR	1	x
SENIOR PERSONNEL ANALYST	7	x
SUPERVISING CLAIMS REPRESENTATIVE	5	x
SUPERVISING ECONOMIST	4	x
SUPERVISING MANAGEMENT ANALYST	41	x
SUPERVISING PERSONNEL ANALYST	6	x
TRANSPORTATION DIRECTOR	1	x
TREASURER	2	x
WATER DEPARTMENT DIRECTOR	1	x
ACCOUNT CLERK	62	
ACCOUNTANT TRAINEE	8	
ADMINISTRATIVE AIDE I	24	
ADMINISTRATIVE AIDE II	83	
AIRPORT MANAGER	2	
AIRPORT NOISE ABATEMENT OFFICER	1	
AIRPORT OPERATIONS ASSISTANT	3	
APPLICATIONS PROGRAMMER II	2	
APPRENTICE I-COMMS TECHNICIAN	3	
APPRENTICE II-COMMS TECHNICIAN	2	
APPRENTICE I-WELDER	1	
AQUATICS TECHNICIAN I	3	
AQUATICS TECHNICIAN II	3	
AQUATICS TECHNICIAN SUPERVISOR	1	
AREA MANAGER II	25	
AREA REFUSE COLLECTION SUPERVISOR	14	
ASBESTOS PROGRAM MANAGER	1	
ASSISTANT CHEMIST	56	
ASSISTANT ENGINEER-CIVIL	228	
ASSISTANT ENGINEER-ELECTRICAL	8	
ASSISTANT ENGINEER-MECHANICAL	1	
ASSISTANT ENGINEER-TRAFFIC	29	
ASSISTANT FIRE MARSHAL	1	
ASSISTANT LABORATORY TECHNICIAN	3	
ASSISTANT PLANNER	10	
ASSISTANT RECREATION CENTER DIR	25	
ASSISTANT RESERVOIR KEEPER	8	
ASSOCIATE CHEMIST	16	
ASSOCIATE COMMUNICATIONS ENGINEER	3	
ASSOCIATE ENGINEER-CIVIL	161	
ASSOCIATE ENGINEER-CORROSION	3	
ASSOCIATE ENGINEER-ELECTRICAL	8	
ASSOCIATE ENGINEER-MECHANICAL	9	
ASSOCIATE ENGINEER-TRAFFIC	33	
ASSOCIATE MANAGEMENT ANALYST	162	
ASSOCIATE PLANNER	44	
ASSOCIATE PROPERTY AGENT	14	
AUTO MESSENGER I	11	
AUTO MESSENGER II	10	
BINDERY WORKER II	4	
BINDERY WORKER III	2	
BIOLOGIST I	1	
BIOLOGIST II	17	
BIOLOGIST III	11	
BODY AND FENDER MECHANIC	6	
BUILDING MAINTENANCE SUPERVISOR	11	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
BUILDING SERVICE TECHNICIAN	32	
BUILDING SERVICES SUPERVISOR	4	
BUILDING SUPERVISOR	6	
BUYER'S AIDE II	1	
CAL-ID TECHNICIAN	13	
CARPENTER	22	
CARPENTER SUPERVISOR	1	
CASHIER	7	
CEMENT FINISHER	16	
CEMETERY MANAGER	1	
CITY ATTORNEY INVESTIGATOR	19	
CLAIMS AIDE	11	
CLAIMS CLERK	12	
CLAIMS REPRESENTATIVE II	18	
CLERICAL ASSISTANT I	25	
CLERICAL ASSISTANT II	297	
CODE COMPLIANCE OFFICER	40	
CODE COMPLIANCE SUPERVISOR	4	
COLLECTIONS INVESTIGATOR I	24	
COLLECTIONS INVESTIGATOR II	4	
COLLECTIONS INVESTIGATOR III	4	
COLLECTIONS INVESTIGATOR TRAINEE	2	
COLLECTIONS MANAGER	1	
COMBINATION INSPECTOR I	14	
COMBINATION INSPECTOR II	37	
COMMUNICATIONS TECHNICIAN	21	
COMMUNICATIONS TECHNICIAN SUPV	6	
COMMUNITY DEVELOPMENT COORDINATOR	6	
COMMUNITY DEVELOPMENT SPEC II	13	
COMMUNITY DEVELOPMENT SPEC III	1	
COMMUNITY DEVELOPMENT SPEC IV	19	
COMMUNITY SERVICE OFFICER I	6	
COMMUNITY SERVICE OFFICER II	42	
CONSTRUCTION ESTIMATOR	7	
COURT SUPPORT CLERK I	11	
COURT SUPPORT CLERK II	10	
CRIMINALIST II	24	
CUSTODIAN I	6	
CUSTODIAN II	70	
CUSTODIAN III	9	
CUSTOMER SERVICES REPRESENTATIVE	34	
CUSTOMER SERVICES SUPERVISOR	5	
DATA ENTRY OPERATOR	11	
DATA ENTRY SUPERVISOR	1	
DEPUTY CITY CLERK I	12	
DEPUTY CITY CLERK II	3	
DEVELOPMENT PROJECT MANAGER I	12	
DEVELOPMENT PROJECT MANAGER II	15	
DEVELOPMENT PROJECT MANAGER III	9	
DISPATCHER I	8	
DISPATCHER II	91	
DISPOSAL SITE REPRESENTATIVE	14	
DISPOSAL SITE SUPERVISOR	4	
DISPUTE RESOLUTION OFFICER	1	
DISTRICT MANAGER	17	
DISTRICT REFUSE COLLECTION SUPV	2	
DOCUMENTS EXAMINER III	2	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
DOCUMENTS INPUT CLERK (TERMINAL)	3	
ELECTRICAL INSPECTOR II	8	
ELECTRICIAN	31	
ELECTRICIAN SUPERVISOR	3	
ELECTRONIC PUBLISHING SPECIALIST	2	
ELECTRONICS TECHNICIAN	2	
EMERGENCY MEDICAL TECHNICIAN	50	
EMPLOYEE ASSISTANCE COUNSELOR	2	
EMPLOYEE ASSISTANCE PROGRAM MANAGER	1	
ENGINEERING TRAINEE	1	
EQUIPMENT MECHANIC	125	
EQUIPMENT OPERATOR I	64	
EQUIPMENT OPERATOR II	57	
EQUIPMENT OPERATOR III	5	
EQUIPMENT PAINTER	1	
EQUIPMENT REPAIR SUPERVISOR	20	
EQUIPMENT SERVICE WRITER	8	
EQUIPMENT TECHNICIAN I	48	
EQUIPMENT TECHNICIAN II	23	
EQUIPMENT TECHNICIAN III	2	
EQUIPMENT TRAINER	1	
FIELD REPRESENTATIVE	20	
FIRE BATTALION CHIEF	26	
FIRE CAPTAIN	209	
FIRE CAPTAIN - MAST	4	
FIRE DISPATCH SUPERVISOR	5	
FIRE DISPATCHER	30	
FIRE ENGINEER	192	
FIRE ENGINEER - MAST	3	
FIRE FIGHTER I	43	
FIRE FIGHTER II	380	
FIRE PREVENTION INSPECTOR I	1	
FIRE PREVENTION INSPECTOR II	25	
FIRE PREVENTION INSPECTOR II/CIV	7	
FIRE PREVENTION SUPERVISOR	6	
FIRE PREVENTION SUPERVISOR/CIVILIAN	1	
FIRE RECRUIT	2	
FLEET MAINTENANCE SUPERVISOR	2	
FLEET MANAGER	1	
FLEET PARTS BUYER	5	
FORENSIC SPECIALIST	8	
GENERAL UTILITY SUPERVISOR	1	
GENERAL WATER UTILITY SUPERVISOR	5	
GOLF COURSE MANAGER	3	
GOLF COURSE SUPERINTENDENT	2	
GOLF STARTER	21	
GRAPHIC DESIGN SUPERVISOR	2	
GRAPHIC DESIGNER	6	
GREENSKEEPER	10	
GREENSKEEPER SUPERVISOR	4	
GROUNDS MAINTENANCE MANAGER	24	
GROUNDS MAINTENANCE SUPERVISOR	11	
GROUNDS MAINTENANCE WORKER I	48	
GROUNDS MAINTENANCE WORKER II	255	
HAZARDOUS MATERIAL/PRTRTMNT TRAINEE	2	
HAZARDOUS MATERIALS INSPECTOR I	2	
HAZARDOUS MATERIALS INSPECTOR II	8	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
HAZARDOUS MATERIALS INSPECTOR III	5	
HAZARDOUS MATERIALS PROGRAM MANAGER	1	
HEAT,VENT,& AIR CONDITIONING SUPV	1	
HEATING TECHNICIAN	4	
HEAVY TRUCK DRIVER I	19	
HEAVY TRUCK DRIVER II	31	
HORTICULTURIST	5	
HYDROGRAPHY AIDE	1	
INFORMATION SYSTEMS ANALYST II	50	
INFORMATION SYSTEMS ANALYST III	24	
INFORMATION SYSTEMS TECHNICIAN	31	
INSTRUMENTATION & CONTROL SUPV	2	
INSTRUMENTATION AND CONTROL TECH	17	
INTERMEDIATE STENOGRAPHER	4	
INTERVIEW & INTERROGATION SPEC III	3	
IRRIGATION SPECIALIST	5	
JUNIOR ENGINEER-CIVIL	24	
JUNIOR ENGINEERING AIDE	6	
JUNIOR PLANNER	12	
LABORATORY TECHNICIAN	36	
LABORER	35	
LAKE AIDE I	15	
LAKE AIDE II	13	
LAKES PROGRAM MANAGER	2	
LAND SURVEYING ASSISTANT	23	
LAND SURVEYING ASSOCIATE	10	
LANDFILL EQUIPMENT OPERATOR	20	
LATENT PRINT & FORENSIC SPEC SUP	1	
LATENT PRINT EXAMINER II	11	
LEGAL ASSISTANT	21	
LEGAL INTERN	2	
LEGAL SECRETARY	32	
LEGISLATIVE RECORDER I	1	
LEGISLATIVE RECORDER II	5	
LIBRARIAN I	14	
LIBRARIAN II	66	
LIBRARIAN III	28	
LIBRARIAN IV	27	
LIBRARY AIDE	251	
LIBRARY ASSISTANT	89	
LIBRARY CLERK	129	
LIBRARY TECHNICIAN	13	
LIFEGUARD I	222	
LIFEGUARD II	63	
LIFEGUARD III	10	
LIFEGUARD SERGEANT	13	
LIGHT EQUIPMENT OPERATOR	12	
LITERACY PROGRAM ADMINISTRATOR	1	
LITHOGRAPHIC TECHNICIAN	1	
LOCKSMITH	2	
MACHINIST	7	
MANAGEMENT INTERN	58	
MANAGEMENT INTERN-MAYOR/COUNCIL	3	
MARINE BIOLOGIST II	17	
MARINE BIOLOGIST III	3	
MARINE SAFETY LIEUTENANT	4	
MECHANICAL INSPECTOR II	9	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
METAL FABRICATION SUPERVISOR	3	
METER READER	26	
MOTIVE SERVICE TECHNICIAN	29	
MOTOR SWEEPER OPERATOR	23	
MOTOR SWEEPER SUPERVISOR	1	
MULTIMEDIA PRODUCTION COORDINATOR	3	
MULTIMEDIA PRODUCTION SPECIALIST	3	
NURSERY GARDENER	4	
NURSERY SUPERVISOR	1	
OFFSET PRESS OPERATOR	1	
OFFSET PRESS SUPERVISOR	1	
ORGANIZATION EFFECTIVENESS SPEC II	15	
ORGANIZATION EFFECTIVENESS SPEC III	5	
ORGANIZATION EFFECTIVENESS SUPV	5	
PAINTER	18	
PAINTER SUPERVISOR	1	
PARAMEDIC II	13	
PARK DESIGNER	10	
PARK RANGER	21	
PARKING ENFORCEMENT OFFICER I	43	
PARKING ENFORCEMENT OFFICER II	19	
PARKING ENFORCEMENT SUPERVISOR	7	
PARKING METER SUPERVISOR	1	
PARKING METER TECHNICIAN	6	
PAYROLL SPECIALIST I	7	
PAYROLL SPECIALIST II	54	
PESTICIDE APPLICATOR	5	
PESTICIDE SUPERVISOR	1	
PLAN REVIEW SPECIALIST I	12	
PLAN REVIEW SPECIALIST II	5	
PLAN REVIEW SPECIALIST III	31	
PLAN REVIEW SPECIALIST IV	8	
PLANNING INTERN	11	
PLANT PROCESS CONTROL ELECTRICIAN	31	
PLANT PROCESS CONTROL SUPERVISOR	21	
PLANT TECHNICIAN I	15	
PLANT TECHNICIAN II	25	
PLANT TECHNICIAN III	13	
PLANT TECHNICIAN SUPERVISOR	11	
PLASTERER	1	
PLUMBER	12	
PLUMBER SUPERVISOR	1	
POLICE AGENT	13	
POLICE CAPTAIN	14	
POLICE CODE COMPLIANCE OFFICER	16	
POLICE CODE COMPLIANCE SUPERVISOR	1	
POLICE DISPATCH ADMINISTRATOR	2	
POLICE DISPATCH SUPERVISOR	12	
POLICE DISPATCHER	49	
POLICE INVESTIGATIVE AIDE II	11	
POLICE LEAD DISPATCHER	12	
POLICE LIEUTENANT	44	
POLICE OFFICER I	102	
POLICE OFFICER II	1555	
POLICE PROPERTY & EVIDENCE CLERK	14	
POLICE RECORDS CLERK	27	
POLICE RECRUIT	47	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
POLICE SERGEANT	282	
POOL GUARD I	48	
POOL GUARD II	104	
POWER PLANT OPERATOR	4	
POWER PLANT SUPERVISOR	3	
PRINCIPAL CITY ATTNY INVESTIGATOR	1	
PRINCIPAL CLERK	5	
PRINCIPAL DRAFTING AIDE	7	
PRINCIPAL ENGINEERING AIDE	81	
PRINCIPAL LEGAL ASSISTANT	1	
PRINCIPAL PLAN REVIEW SPECIALIST	1	
PRINCIPAL PLANT TECHNICIAN SUPV	3	
PRINCIPAL POLICE RECORDS CLERK	2	
PRINCIPAL PROCUREMENT SPECIALIST	3	
PRINCIPAL SURVEY AIDE	11	
PRINCIPAL TRAFFIC ENGINEERING AIDE	6	
PRINCIPAL UTILITY SUPERVISOR	2	
PRINCIPAL WATER UTILITY SUPERVISOR	3	
PRINT SHOP SUPERVISOR	1	
PROCUREMENT SPECIALIST	8	
PROGRAMMER ANALYST III	1	
PROJECT ASSISTANT	8	
PROJECT OFFICER I	15	
PROJECT OFFICER II	18	
PROPERTY AGENT	8	
PROPERTY AND EVIDENCE SUPERVISOR	3	
PUBLIC ART PROGRAM ADMINISTRATOR	1	
PUBLIC INFORMATION CLERK	73	
PUBLIC INFORMATION OFFICER	8	
PUBLIC INFORMATION SPECIALIST	16	
PUBLIC WORKS DISPATCH SUPERVISOR	1	
PUBLIC WORKS DISPATCHER	12	
PUBLIC WORKS SUPERINTENDENT	6	
PUBLIC WORKS SUPERVISOR	22	
PUMP STATION OPERATIONS SUPERVISOR	3	
PUMP STATION OPERATOR	15	
RANGER/DIVER I	3	
RANGER/DIVER II	2	
RECREATION AIDE	22	
RECREATION CENTER DIRECTOR I	14	
RECREATION CENTER DIRECTOR II	24	
RECREATION CENTER DIRECTOR III	28	
RECREATION LEADER I	244	
RECREATION LEADER II	51	
RECREATION SPECIALIST	11	
RECYCLING PROGRAM MANAGER	2	
RECYCLING SPEC I	2	
RECYCLING SPEC II	8	
RECYCLING SPECIALIST III	1	
REFRIGERATION MECHANIC	7	
REHABILITATION COORDINATOR	1	
RESERVOIR KEEPER	9	
RETIREMENT ASSISTANT	6	
ROOFER	5	
SAFETY AND TRAINING MANAGER	6	
SAFETY OFFICER	10	
SAFETY REPRESENTATIVE I	1	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
SAFETY REPRESENTATIVE II	18	
SANITATION DRIVER I	39	
SANITATION DRIVER II	135	
SANITATION DRIVER III	20	
SANITATION DRIVER TRAINEE	2	
SENIOR ACCOUNT AUDIT CLERK	4	
SENIOR ACCOUNT CLERK	12	
SENIOR AIRPORT OPERATIONS ASSISTANT	1	
SENIOR BIOLOGIST	2	
SENIOR BOAT OPERATOR	2	
SENIOR BUILDING MAINTENANCE SUPV	1	
SENIOR CASHIER	2	
SENIOR CHEMIST	4	
SENIOR CITY ATTORNEY INVESTIGATOR	6	
SENIOR CIVIL ENGINEER	55	
SENIOR CLAIMS REPRESENTATIVE	3	
SENIOR CLERK/TYPIST	76	
SENIOR CODE COMPLIANCE SUPERVISOR	1	
SENIOR COMBINATION INSPECTOR	6	
SENIOR COMMUNICATIONS ENGINEER	1	
SENIOR COMMUNICATIONS TECH	6	
SENIOR COMMUNICATIONS TECH SUPV	1	
SENIOR CUSTOMER SERVICES REP	6	
SENIOR DISPOSAL SITE REPRESENTATIVE	2	
SENIOR DRAFTING AIDE	15	
SENIOR ELECTRICAL ENGINEER	2	
SENIOR ELECTRICAL INSPECTOR	1	
SENIOR ENGINEER-FIRE PROTECTION	1	
SENIOR ENGINEERING AIDE	36	
SENIOR ENGINEERING GEOLOGIST	2	
SENIOR LAND SURVEYOR	3	
SENIOR LEGAL ASSISTANT	6	
SENIOR LEGAL SECRETARY	9	
SENIOR LEGISLATIVE RECORDER	2	
SENIOR LIBRARY TECHNICIAN	3	
SENIOR LOCKSMITH	1	
SENIOR MANAGEMENT ANALYST	77	
SENIOR MARINE BIOLOGIST	2	
SENIOR MECHANICAL ENGINEER	4	
SENIOR MECHANICAL INSPECTOR	1	
SENIOR MOTIVE SERVICE TECHNICIAN	29	
SENIOR OFFSET PRESS OPERATOR	5	
SENIOR PARK RANGER	9	
SENIOR PARKING METER TECHNICIAN	1	
SENIOR PLANNER	49	
SENIOR PLANT TECHNICIAN SUPERVISOR	10	
SENIOR POLICE RECORDS CLERK	4	
SENIOR POWER PLANT SUPERVISOR	2	
SENIOR PROCUREMENT SPECIALIST	1	
SENIOR PROPERTY AND EVIDENCE SUPV	1	
SENIOR PUBLIC INFORMATION OFFICER	9	
SENIOR REFRIGERATION MECHANIC	4	
SENIOR STABLE ATTENDANT	1	
SENIOR STADIUM GROUNDSKEEPER	1	
SENIOR STRUCTURAL INSPECTOR	2	
SENIOR SURVEY AIDE	5	
SENIOR TRAFFIC ENGINEER	11	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
SENIOR UTILITY SUPERVISOR	1	
SENIOR WASTEWATER OPERATIONS SUPV	12	
SENIOR WASTEWATER PLANT OPERATOR	4	
SENIOR WATER OPERATIONS SUPV	3	
SENIOR WATER UTILITY SUPERVISOR	14	
SENIOR ZONING INVESTIGATOR	5	
SEVEN-GANG MOWER OPERATOR	12	
SIGN PAINTER	2	
SIGN SHOP SUPERVISOR	1	
SPECIAL EVENT TRAFFIC CONTROL SUPV	2	
SPECIAL EVENT TRAFFIC CONTROLLER I	129	
SPECIAL EVENT TRAFFIC CONTROLLER II	2	
STADIUM GROUNDSKEEPER	2	
STADIUM MAINTENANCE TECHNICIAN	3	
STADIUM TURF MANAGER	1	
STOCK CLERK	28	
STOREKEEPER I	14	
STOREKEEPER II	3	
STOREKEEPER III	2	
STORES OPERATIONS SUPERVISOR	1	
STRUCTURAL ENGINEERING ASSOCIATE	25	
STRUCTURAL ENGINEERING SENIOR	10	
STRUCTURAL INSPECTOR I	3	
STRUCTURAL INSPECTOR II	11	
STUDENT ENGINEER	40	
STUDENT INTERN	28	
SUPERVISING ACADEMY INSTRUCTOR	1	
SUPERVISING CAL-ID TECHNICIAN	4	
SUPERVISING CRIMINALIST	4	
SUPERVISING CUSTODIAN	2	
SUPERVISING FIELD REPRESENTATIVE	3	
SUPERVISING HAZARDOUS MATERIAL INSP	2	
SUPERVISING LIBRARIAN	7	
SUPERVISING METER READER	2	
SUPERVISING PLAN REVIEW SPECIALIST	8	
SUPERVISING PROPERTY AGENT	5	
SUPERVISING PUBLIC INFO OFFICER	9	
SUPERVISING RECREATION SPECIALIST	7	
SUPERVISING RECYCLING SPEC	1	
SUPERVISING WSTWTER PREREATMNT INSP	2	
SWIMMING POOL MANAGER I	23	
SWIMMING POOL MANAGER II	5	
SWIMMING POOL MANAGER III	8	
TANK SERVICE TECHNICIAN I	1	
TEST ADMINISTRATION SPEC	6	
TRAFFIC SIGNAL SUPERVISOR	2	
TRAFFIC SIGNAL TECHNICIAN II	16	
TRAINING SUPERVISOR	2	
TREE MAINTENANCE CREWLEADER	4	
TREE TRIMMER	3	
UTILITY SUPERVISOR	15	
UTILITY WORKER I	182	
UTILITY WORKER II	59	
VEHICLE AND FUEL CLERK	4	
VICTIM SERVICES COORDINATOR	4	
WASTEWATER OPERATIONS SUPERVISOR	30	
WASTEWATER PLANT OPERATOR	42	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
WASTEWATER PRETREATMENT INSP I	2	
WASTEWATER PRETREATMENT INSP II	5	
WASTEWATER PRETREATMENT INSP III	6	
WASTEWATER PRETREATMENT PGM MANAGER	1	
WASTEWATER TREATMENT SUPERINTENDENT	4	
WATER DISTRIBUTION OPERATIONS SUPV	1	
WATER DISTRIBUTION OPERATOR	5	
WATER OPERATIONS SUPERVISOR	3	
WATER PLANT OPERATOR	18	
WATER PRODUCTION SUPERINTENDENT	2	
WATER SYSTEMS DISTRICT MANAGER	6	
WATER SYSTEMS TECHNICIAN I	2	
WATER SYSTEMS TECHNICIAN II	95	
WATER SYSTEMS TECHNICIAN III	58	
WATER SYSTEMS TECHNICIAN IV	64	
WATER SYSTEMS TECHNICIAN SUPERVISOR	23	
WATER UTILITY SUPERVISOR	17	
WATER UTILITY WORKER	40	
WELDER	20	
WORD PROCESSING OPERATOR	177	
WORK SERVICE AIDE	5	
ZONING INVESTIGATOR II	15	

Exhibit 99

Audit Committee
of the
City of San Diego

September 23, 2005

Honorable Mayor Toni Atkins
Members of the City Council
City of San Diego
202 C Street
San Diego, CA 92101

Re: Audit Committee – Investigation Status Update

Honorable Mayor and Council Members:

We continue to follow an investigative work plan, the time schedule for which is outlined in the attachment, that envisions the completion of various critical tasks in the next several months and the conclusion of the Audit Committee's investigation and preparation of a report by year end. Since our last update report, dated September 7, 2005, we have encountered a number of unanticipated developments which have required and may continue to require additional investigative procedures, and which will ultimately impact our final timetable. We remain, nonetheless, committed to the timetable we have established for ourselves to complete our work by year end. Since our last Report, the following has occurred:

Document Production:

We continue to work with City officials to complete the document production in response to the original Securities and Exchange Commission ("SEC") and U.S Attorney subpoenas, pursuant to the procedures contained in the June 10, 2005 memorandum sent to all City employees ("June 10th Memo"). As the Council knows, the June 10th Memo contains descriptions of the documents requested by the following subpoenas, as well as excerpts of the operative language from the subpoenas themselves:

- SEC subpoenas dated April 24, 2004 and April 5, 2005

- The following ten United States Attorney's Office subpoenas issued between December 22, 2004 and May 18, 2005: 04-051-SDP-JAF, 05-057-SDP-JAF, 05-062-SDP-JAF, 05-067-SDP-JAF, 05-070-SDP-JAF, 05-071-SDP-JAF, 05-073-SDP-JAF, 05-074-SDP-JAF, 05-085-SDP-JAF, 05-086-SDP-JAF.

The procedures described in the June 10th Memo was employed because questions had been raised about the adequacy of the City's response to an earlier request for voluntary production and to earlier subpoenas. The objective of the Audit Committee was threefold: first, to apply procedures that would ensure to the maximum extent practicabl all responsive documents are identified and produced to the government and the Audit Committee, second, to ensure that each active employee take individual responsibility fo his share of that production; and, third, to institute an orderly procedure to bring document production to conclusion reasonably promptly. These procedures required the development of a protocol that was disseminated to the City's workforce, as well as several follow-up instructions. Obtaining written confirmation of compliance with our requests from individual employees involved literally hundreds of daily contacts, as well as close coordination with an ad hoc group of City employees assisting in this endeavor, including representatives of the City Attorney's and City Manager's offices. To ensure that all certifications were received or accounted for, it became necessary to place hundreds of follow-up telephone calls to the employees or their supervisors. Together with closely monitoring the delivery of responsive documents to the City's document repository, these daily telephone contacts consumed hundreds of hours of unanticipated Audit Committee staff time. The process has been completed since our last report:

- With the exceptions noted below, by September 14, 2005, the Audit Committee received written confirmation from each of the nearly 12,000 active employees in the form of a written certification that the employee has searched his records and identified all documents responsive to the requests contained in the June 10th Memo, in accordance with the instructions in that memorandum and subsequent communications.

- Saathoff is the only active employee likely to have responsive documents who refused to provide the Audit Committee with a certification.

- Two additional categories of employees did not provide certifications, but in each case we do not regard the absence of certifications as affecting the City's compliance with the requests of the above subpoenas; the respondents in these cases are part-time or temporary employees who do not have routine access to City computers, or employees who were on long-term leave or left the City's employment prior to June 10, 2005, and their files would have been captured by the certifications provided by others.

- Regarding documents that have been collected for production to the government as of September 14, 2005, with the exception noted below, all responsive hard copy documents have been produced or have been scheduled to be delivered to the City's document repository, in accordance with the June 10th Memo and subsequent instructions, comprising approximately 400 boxes of documents. This is in addition to approximately 100 gigabytes of emails and electronic documents. Given that the June 10th procedures were intended to capture documents not already produced to the government, the volume of the production greatly exceeded our expectations. This will require more time than we had anticipated for document and e-mail review.

- The City Attorney's office has fallen behind in its review of certain common files that are not the working files of any individual employee and will require additional time to review these files for responsiveness and have them delivered to the repository. As a result, their review by the Audit Committee will be delayed as will their production to the SEC and U.S. Attorney. We have been meeting regularly with the staff of the City Attorney's office to expedite the process.

Document Review:

Consistent with our work plan, about three weeks ago the Audit Committee began reviewing hard copy documents received from individuals who have been identified as having been involved in areas within the scope of our investigation. Most of the documents reviewed were items that have been or were being produced to governmental agencies. We have reviewed over 200 boxes of documents from the initial SEC production. Additionally, we have reviewed over 125 boxes from various U.S Attorney productions prior to June 10, 2005. We also reviewed about 30 binders provided to us by the City Attorney, which were collected during his various investigations. We are currently in the process of completing our review of the hard copy documents that have been produced under our June 10th Memo. The review of these documents has been far more time intensive than we first estimated due to the unanticipated large volume of documents that were produced. We have brought on additional Audit Committee staff to review these records. We anticipate completing this review (except for the City Attorney documents) by the end of next week.

Wastewater:

As the Council may recall from our last update, the staff of the SEC has requested the Audit Committee conduct an investigation of wastewater matters and make a presentation to the staff before resuming production of documents pursuant to outstanding SEC subpoenas. We have reviewed approximately 40 boxes of documents produced by several hundred custodians in response to the SEC subpoenas. In the course of our review, to date, we have identified several dozen individuals who appear to be central to

the relevant issues. We have also developed and refined database search terms. These search terms will be run against the available e-mail boxes of the key individuals, and we will then conduct a thorough review of any such responsive emails. We anticipate conducting a number of interviews of key individuals over the course of the next month. Upon concluding the interviews, we will summarize our findings for inclusion in the report by the Audit Committee.

Electronic Data Analysis:

As we noted in our previous update, a critical component of our investigative procedures is the creation of a searchable database of all documents produced to the government. Another critical component is the searching and analyzing of certain email mailboxes. Our work plan, which has been reviewed by KPMG and the SEC staff, does include an analysis of the information in the database and the email mailboxes. This analysis will involve, among other things, the use of certain "keywords" to identify the most highly relevant documents. We have conferred with the SEC staff and KPMG on the "keywords" best suited for our investigation. Depending on whether the "keywords" used in a search are specific or general, the number of documents identified for further review can vary widely, and, thus, the time needed for this review can be difficult to predict. We are in the process of finalizing these search terms.

The City continues to work diligently with Electronic Evidence Discovery ("EED") and American Legal Corporation ("ALC") to develop the electronic production database and complete the uploading of all produced documents whether in hard copy, electronic or email format. Approximately one-half of the over 600,000 previously scanned (and produced) pages of hard copy documents have been formatted for Optical Character Recognition ("OCR"). This continues in parallel with the scanning of approximately 400 boxes of recently produced hard copy documents, including formatting for OCR. Finally, as an initial step to establish the database, the City has delivered most of the electronic and email files for the February 2005 U.S. Attorney's Office's subpoenas for upload by EED.

San Diego City Employees' Retirement System ("SDCERS"):

- Privileged SDCERS Documents:

  Between September 2, 2005 and September 14, 2005, we received from counsel for SDCERS 6 disks which purported to be a complete set of privileged SDCERS records. Upon review of these disks, it was impossible to determine whether the documents on the disks were the same as the documents identified on the privilege logs previously provided by SDCERS counsel to the City. This was caused by the use of an entirely different numbering system and the documents on the disks appeared in a different order than on the privilege logs. Audit Committee staff has met with SDCERS' counsel in an attempt to clarify the

matter. The privilege logs identify approximately 8,000 documents, containing 60,000 pages. We have determined SDCERS provided all but approximately 400 of the documents listed on the privilege logs. Of these documents, counsel for SDCERS is working with the Audit Committee to provide access to all but eight of these 400 documents. Counsel for SDCERS stated that these eight documents "remain privileged" and is refusing to provide the documents to the Audit Committee. Based on the descriptions in the privilege log, these documents include an opinion letter prepared by Seltzer Caplan, Seltzer Caplan engagement letters, and other correspondence.

- Navigant:

We have met with Navigant to discuss their retention by the SDCERS Board to conduct an investigation. We offered to work with them and we specifically requested access to SDCERS documents and emails. They appear to be in the preliminary stages of beginning their investigation. The timing of the completion of Navigant's investigation may impede the Audit Committee's investigation and KPMG issuance of an audit report. We agreed to follow-up with them next week.

- Actuary:

At our request, the City has retained actuaries with PricewaterhouseCoopers, LLP to provide the Audit Committee with advice and assistance in evaluating the accuracy of the SDCERs pension valuations including the underlying SDCER Board assumptions and actuarial calculations matters under investigation.

In addition to the aforementioned areas, it is important for us to continue to receive the support and cooperation of various City staff so that the Audit Committee can complete its investigative procedures in an efficient and timely manner. We will continue to update you as our investigation proceeds.

Very truly yours,

Lynn E. Turner

Troy Dahlberg

Lynn E. Turner
Audit Committee Member

Troy Dahlberg
Audit Committee Member

Work Plan Time Table

	Completed	September	October	November	December
Ongoing record production					
June 10th memorandum					
Employees deliver to repository	X				
City Attorney review and produce to government agencies		X	X		
Hard copy records produced before June 10 Memorandum					
Review SEC production	X				
Review US Attorney production	X				
Review other production	X				
Hard copy records produced after June 10 Memorandum					
Review records		X			
City Attorney			X		
Wastewater					
Employees deliver to repository- *Hold at SEC Request*					
City produce to SEC					
Review hard copy records	X				
Review electronic records		X	X		
Interviews		X	X		
Analysis / prepare draft report			X	X	
SDCERS records					
Non-privileged records					
Understand production procedures	X				
Test Vinson & Elkins' analysis		X			
Review records		X	X		
Privileged records					
Obtain access	X				
Review records		X			
SDCERS email records					
Obtain access	X	X			
Review records		X			
Electronic data - gathered by Vinson & Elkins - email, server files, hard drives					
Test electronic data, define populations and procedures					
Email	X				
Server files		X			
Hard drives		X			
Analyze Vinson & Elkins' assessments					
Server files		X			
Hard drives		X			
Review files - results of above may extend this period					
Server files			X		
Hard drives			X		
Email boxes analyzed by Vinson & Elkins					
Prepare for review		X			
Review			X		
Records for elected officials, staff, and others identified by Audit Committee					
Email boxes (>50)					
Prepare for review		X	X		
Review			X	X	
Server files (h-drive)					
Prepare for review		X	X		
Review			X	X	
Hard drives					
Prepare for review		X	X		
Review			X	X	
Implement electronic database for record review					
Select system	X				
Obtain City approval for system	X				
Implement functional system		X	X		
Electronically review electronic records			X	X	
Electronically review hard copy records					
Interviews					
Assess interviews completed by Vinson & Elkins		X	X		
Complete Audit Committee interviews			X	X	
Analyze accounting and pension issues					
Disclosure		X			
Pension accounting		X	X		
Actuarial assumptions		X	X	X	
Analyze supporting information, prepare work product & documentation			X	X	
Prepare remediation plan			X	X	X
Prepare draft report		X	X		
Prepare final report			X	X	X

Exhibit 100

Audit Committee
of the
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October 25, 2005

Honorable Mayor Toni Atkins
Members of the City Council
City of San Diego
202 C Street, Suite 900
San Diego, CA 92101

Re: Audit Committee – Investigation Status Update

Honorable Mayor and Council Members:

In connection with our ongoing investigation, we are writing to bring you up to date on our progress and a number of issues that are impacting the Audit Committee's work plan. Our work continues to be focused on the objective of issuing a thorough and complete report that will be necessary for the independent auditors to issue an opinion on the City's financial statements, in accordance with the required auditing standards. As both of the City's auditors have appropriately pointed out, a complete and thorough investigation is necessary in order for an audit to be completed. And we note that regardless of the financial status of the city, and whether it would or would not ultimately engage in a bankruptcy filing, to be able to reaccess the U.S. capital markets the city will be required to complete and file financial statements that are in accordance with the applicable accounting principles and that have been the subject of an independent audit done in accordance with required auditing standards.

While we have made significant progress to date, we have also identified a number of what we believe are shortcomings and issues with prior investigations, some of which we have previously discussed with you. Some of those shortcomings have resulted in relevant documents not being examined as part of previous examinations. Also additional evidence has come to our attention, which has caused us to expand the scope of our investigation through additional interviews and examination of additional evidence.

Progress to Date

A summary of the progress made to date in our investigation includes:

- We have completed review of approximately 350 boxes of documents from the City's productions to law enforcement agencies for approximately 35 key

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individuals of interest and approximately 30 binders provided by the City Attorney.

- Since late September we have reviewed approximately 250 boxes of documents collected according to procedures described in a June 10, 2005 memorandum to all City employees ("June 10, Memo") for approximately 35 key individuals of interest.

- We have completed a review of more than 8,000 attorney-client privileged documents (consisting of 60,000 pages) produced by SDCERS in response to requests from the Audit Committee, US law enforcement agencies, the City Council and City Attorney. Unfortunately due to technical problems approximately 2,000 e-mail communications and approximately 600 e-mail attachments were not included in the information provided to the Audit Committee. This will require additional follow-up as is further discussed below.

- In reviewing the work of V&E and Applied Discovery, we discovered that about one-third of the data needed for V&E's review was not loaded in the Applied Discovery database. This error required the Audit Committee to completely repeat the e-mail review performed by V&E.

- We also reviewed approximately 65,000 non-privileged SD CER's documents, and 17,500 electronic documents of key employees that were previously reviewed by V&E.

- We have reviewed the reports, memoranda, exhibits and related work product of Vinson & Elkins ("V&E") prepared in connection with its investigation of pension related matters on behalf of the City.

- We have reviewed each of the seven reports and related exhibits issued by the City Attorney in connection with his investigation of pension and Wastewater related matters.

- We are in the process of considering the evidence obtained to date as well as that to be obtained, in order to reconcile the differing views expressed by V&E and the City Attorney in their separate reports.

- We have met regularly with KPMG LLP ("KPMG"), the independent auditors of the City's 2003 Comprehensive Annual Financial Report ("CAFR") and have provided updates on our progress. They are reviewing our work on an

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ongoing basis. We have undertaken procedures they have requested we perform as well.

- We have met with Macias Gini & Company, the independent auditors of the City's 2004 CAFR.

- We have met regularly with the staff of both the United States Attorney's Office ("US Attorney") and the Securities Exchange Commission ("SEC") and have provided reports on our progress.

- As part of our communication with the external auditors and law enforcement agencies, we have agreed on what search terms we should use when performing the required electronic searches of documents such as email. These searches are performed to identify relevant documents while avoiding having to manually examine all the relevant hard copy documents, a time consuming and costly process.

- We have made substantial progress in reviewing the City's previous CAFR's for compliance with Generally Accepted Accounting Principles.

- We brought to successful conclusion document collection in response to a dozen outstanding government subpoenas. With minor exceptions, every active employee has provided a written confirmation that all responsive documents have been identified, and delivered to the City's document repository for production to the government.

- In addition to document review, we have contacted approximately 50 individuals to arrange for interviews and have commenced interviews related to the Wastewater matter.

- Steven M. Metz of Pricewaterhou seCoopers, LLP ("PWC") has been retained to provide the Audit Committee with actuarial advice. We have conferred with Mr. Metz to make sure that he understands the Audit Committee's needs and the time-frame required. PWC has begun reviewing the actuarial valuations used to prepare the 2003 CAFR by the City. This will aid the Audit Committee in reaching a conclusion regarding the accuracy of the calculations of the City's unfunded liability and its expected impact, including timing of future payments. This will be important information in formulating an appropriate remediation plan. The above procedures have also resulted in a number of issues being identified in connection with the work of the Audit Committee.

Audit Committee of the City of San Diego

Summary of Issues

A key objective of the investigation is to provide evidence necessary for the external auditors so that they can perform the necessary and required auditing steps, including those steps required when there are allegations of fraud, prior to issuing their opinion on the financial statements of the city. As previously mentioned, we have identified shortcomings in prior investigations that have resulted in relevant documents not being examined as part of prior investigations. As a result, we have now been put in the position of having to go back and get the documents that were not produced, and reviewed, and perform the necessary procedures. Short of doing that, we would be unable to certify to the auditors and law enforcement agencies that we had done a thorough and complete investigation.

The issues we have identified during the course of our investigation include:

- Investigative procedures have determined that e-mail for the relevant period of time, previously gathered by San Diego Data Processing Center ("SDDPC") from the City's back-up tapes for analysis is incomplete. As a result, documents that should have been searched for their relevancy to the investigation were not. It appears that most, if not all, of the e-mail extracted from the City's back-up tapes was affected

- As the City Attorney has pointed out, not all the relevant email boxes and storage drives were searched in earlier investigations. Based on information obtained to date, it has been determined that review of approximately 90 e-mail mailboxes and records for additional individuals is necessary. We will also perform a review on most of their directories on the City server. Additionally, we will need to review approximately 40 hard drives of elected officials.

- Facilitating the City's production of records to the SEC and US Attorney, which had been requested as early as 2004, required more staff time and effort than was initially anticipated.

- City Employees provided approximately 400 boxes of documents in response the June 10, Memo. This volume of records is far greater than what was initially expected. Review of this information will require more time than was previously anticipated.

- Information uncovered during our investigation has created the need to conduct additional interviews.

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Electronic Mail

As previously noted, the database created by Applied Discovery and analyzed by V&E failed to capture approximately 57,000 relevant e-mail files and related attachments. As a result, it is necessary to recreate and search that database. We cannot just search for files not examined in the initial investigation as Applied Discovery cannot assure us as to which documents were or were not captured.

In addition to re-searching the 35 e-mail mailboxes reviewed by V&E, our review will encompass approximately 60 additional e-mail mailboxes, of which 40 e-mail mailboxes are for elected officials and senior staff, 10 e-mail mailboxes relate to Wastewater and 10 are SDCERS e-mail mailboxes. It is appropriate to consider these individuals based on evidence we are aware of to date and to ensure a thorough investigation. Our original work plan contemplated reviewing only a small portion of these additional e-mail mailboxes. However, based on documents examined to date and what we now know, reviewing the communications of these additional individuals is required. 1 y

Due to technical obstacles encountered by SDDPC when attempting to previously retrieve e-mail from the City's back-up tapes, it became clear that the methods previously used by SDDPC to retrieve records were not reliable. Once again, we now understand that documents for the relevant period of time were not captured and properly reviewed for their relevancy to the investigation. As a result, we have spent a significant amount of time working to identify and obtain missing data.

The City's e-mail is maintained on the "GroupWise" system. E-mail communication is extracted from City back-up tapes using "Nexic Publisher" software before the information can be searched. According to SDDPC and our technical experts, Nexic Publisher does not properly capture some data. This issue appears to have inconsistently affected many different e-mail mailboxes. Because the problem appears to be somewhat random and unpredictable from mailbox to mailbox, we, along with SDDPC, have not identified a simple, standardized solution. We considered having SDDPC personnel manually correct this extraction problem. However, we believe this manual process would be unreliable and therefore unacceptable. As of result, we are unable to accurately estimate the total number of e-mails that will be captured by our search of all relevant e-mail mailboxes using search terms and keywords. Based on analysis of the 35 e-mail mailboxes that were previously incompletely reviewed, our revised and agreed upon set of search terms will yield approximately 185,000 e-mails. As responsive e-mail was likely missed during prior Nexic Publisher extractions from the GroupWise system, we will likely identify additional e-mail from these 35 e-mail mailboxes that will also require review.

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Several options are available to address this problem. We and SDDPC believe the most promising option involves retaining Novell, the software company that developed GroupWise, to assist with extracting data from GroupWise. Novell has confirmed that it has a software utility that searches and extracts data from the restored back-up tape and eliminates the above identified issue. Currently, based on what we have been told by Novell, we understand it will take up to a month to obtain the data we need using this alternative.

Document Production

The procedure authorized on the June 10, 2005 Memo was necessary to ensure to the law enforcement agencies and other recipients of our reports, that all City employees complied, without exception, with the subpoenas. This procedure also was done to ensure that all relevant documents were produced and appropriately made available for the Audit Committee investigation. Significant Audit Committee support of this process was not anticipated in our original work plan because it was expected the City Attorney's Office and other City departments would be able complete the task in an expeditious and timely manner. However, our involvement increased in order to complete a comprehensive production to the SEC and US Attorney within a time frame that would also allow us to complete our efforts as soon as possible. Our efforts required significant staff time dedicated to making hundreds of follow-up calls to employees or their supervisors to obtain written certifications of compliance with our requests. The process also entailed hundreds of daily contacts with City employees to monitor and ensure delivery of documents to the City's document repository. We also met regularly with representatives of the City Attorney and City Manager's Offices to follow-up and move the production toward a timely completion. This process resulted in a substantially greater volume of production than was expected, which will require a significant amount of time to review. For example, approximately 400 boxes of documents have been produced to date.

All of these records will be included in a database representing the documents identified by City employees as being responsive to the various subpoenas served upon the City. Largely as a result of the unexpectedly high volume of production by City employees, creating this database will take longer and cost more than was originally anticipated.

Wastewater

The initial work plan for investigating the Wastewater matter has been expanded. Procedures completed to date have identified information that increased the scope of investigation. More than 40 boxes of hard copy documents have already been reviewed.

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As a result of reviewing those materials, conducting interviews, and gathering other information, we have determined we will need to expand the scope of our investigation beyond that contemplated in our original work plan. These procedures include: interviewing additional witnesses; identifying and extracting data from e-mail mailboxes belonging to employees and elected officials; and reviewing the files so identified. The SEC staff, consistent with the SEC's policy in Seaboard, has accepted the Audit Committee's offer to complete an investigation of this matter and report back to the SEC staff with the findings and determinations resulting from the investigation.

San Diego City Employees' Retirement System Records

Based on the results of our procedures, additional time will be required to finish investigating the records provided by SDCERS. Through our ongoing review of the privileged SDCERS records, we identified additional individuals relevant to our investigation. As a result, it will require more time than anticipated to finish investigating the records provided by SDCERS including reviewing the records and communications of these individuals.

We have discovered technical problems through our review of these privileged records that appear related to those described above. It appears that due to these technical issues approximately 2,000 e-mail communications and approximately 600 e-mail attachments were not included in the information provided to the Audit Committee. To the best of our knowledge, these technical issues also may have affected the documents provided to the law enforcement agencies. Seltzer Caplan McMahon Vitek, on behalf of SDCERS, is currently working to identify, locate, and produce the missing records and is cooperating with us to resolve these technical issues. However, correcting these data integrity issues and reviewing the additional files will be a time consuming process.

The Navigant investigation of SDCERS is underway. We have been informed the investigation will be performed on a privileged and confidential basis. We believe this decision is in error. It is important that any documentary evidence that is identified that has relevance to the investigations being performed by the law enforcement agencies or Audit Committee be made available to all the appropriate parties in a timely fashion. The recent document production by SDCERS has illustrated the importance of obtaining, on an unfettered basis, all relevant documents. The production of those documents was necessary and welcomed by the Audit Committee. However, any difficulties with respect to future access to information could impact our ability to complete our task in a timely fashion.

We continue devoting unanticipated time and resources to handling a number of public records requests.

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Impact of Document Production Issues

As a result of the issues we have identified as set forth above, the Audit Committee has been required to expand the scope of its investigation. However, until the necessary documents can be obtained through the Novell solution, we will be slowing down the process so as to avoid unnecessary costs.

Until recently we have had approximately 25 junior attorneys, legal assistants and Kroll employees reviewing documents on an expedited basis. At the same time, we have done initial interviews with respect to the Wastewater matter, and several dozen additional pension-related interviews are being scheduled. Senior attorneys and Kroll personnel are devoting hundreds of hours to detailed analysis of factual, legal and accounting issues, as well as to supervision and coordination. In addition, we have had a number of Kroll personnel performing forensic electronic data analysis. Some of this analysis identified the previously mentioned issues with the investigations. In total we have approximately 50 people working on the investigation.

Once the necessary documents are obtained, which we currently understand will be around the end of November, we will ramp our efforts back up and expedite our work so as to complete our project. By ramping back up at that time to the staffing levels previously mentioned, we believe we can review approximately 30,000 documents per week. Once we have resolved the technical problem with extracting the e-mails from the "GroupWise" system and have a better understanding of the number of documents we will have to review, we will adjust our staffing levels to complete our work on a revised, more definite schedule. For example, assuming we obtain 200,000 e-mail from GroupWise to review, our review should be completed within 6-8 weeks. Thereafter, interviews should be completed within 4-6 weeks and our final report should be completed one month thereafter. We expect our staffing levels and expenses to decrease following document review as we focus on the final drafting of our report.

In the next month, as the City's data processing staff, vendors and we address the technical problems with retrieving electronic e-mails and are able to determine the volume of data for our review, we will provide a more precise estimate of costs and completion date. We are working closely with the City Manager as additional information is obtained and we will be better able to estimate the costs necessary to complete the investigation. However, without knowing if we must search and review 20,000 or 200,000 documents, we are not able to tell you with precision what our costs will likely run.

It should be noted a number of the document production issues raised above should have previously been identified and resolved earlier on in the investigation by SDDPC, Applied Discovery, V&E and/or the City Attorney's office. We have

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informed KPMG and the investigative agencies about these issues and they have expressed an interest in seeing them resolved. Additional time will be required to ensure that all the relevant evidence is obtained, considered, and provided to the law enforcement agencies and the external auditors. This additional time will make it difficult to complete the process by the end of the year and will impact costs. As issues are identified, we are attempting to find the most cost effective and timely solutions to resolve them, without compromising the integrity and thoroughness of the investigation.

Very truly yours,

A r t Levitt
Audit Committee Member

Lynn E. Turner
Audit Committee Member

T D
Audit Committee Member

r a

cc: Securities and Exchange Commission Staff
U.S. Attorney
KPMG LLP

Exhibit 101

Council Meeting of November 1st, 2005: Item S500

Three Actions related to Fifth Amendment to Agreement with Kroll Inc. for services related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); Fourth Amendment Agreement with Willkie Farr Gallagher to provide Independent Legal Counsel to Kroll and the Audit Committee on these matters; And acceptance of KPMG/Audit Committee Status Report.

ATKINS:
WERE GOING TO GO TO ITEM S500, AND THAT IS THE ACTION ACCEPTING KPMG AUDIT COMMITTEE STATUS REPORT.
THANK YOU, MR. CITY ATTORNEY. WE NEEDED TO HAVE THE CITY ATTORNEY REPORT OUT ON ONE ITEM FROM CLOSED SESSION THIS MORNING. MR. AGUIRRE.

AGUIRRE:
YES. THANK YOU MADAM MAYOR. THIS MORNING IN CLOSED SESSION BY UNANIMOUS VOTE THE SAN DIEGO CITY COUNCIL 4:11:43 ADOPTED A MOTION APPOINTING PAUL JACOBS AS SPECIAL COUNSEL TO THE CITY AUTHORIZING NO MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR HIS RETENTION HE HAD ALSO ESTABLISHED A CHARGERS NEGOTIATING COMMITTEE. ON THAT COMMITTEE THEY AUTHORIZED THE SERVICE OF MR. JACOBS. TWO MEMBERS FROM THE CITY COUNCIL, COUNCIL MEMBERS FRYE AND PETERS. IDENTIFIED COUNCIL MEMBER TONY YOUNG AS AN ALTERNATE MEMBER OF THE COMMITTEE, ALSO APPOINTED THE CITY AUDITOR OR A REPRESENTATIVE FROM THE CITY AUDITOR'S OFFICE ALSO IDENTIFIED THE CITY ATTORNEY AS A MEMBER OF THE COMMITTEE OR THE MAYOR OR A REPRESENTATIVE OF THE MAYOR UPON SWEARING IN OF OUR NEW MAYOR. THANK YOU MAYOR ATKINS.

ATKINS:
THANK YOU MR. AGUIRRE. WITH THAT I WANTED TO START OUT. HERE IS THE ORDER IN WHICH WE ARE GOING TO DO THIS; WE HAVE SOME PUBLIC SPEAKERS ON THIS. WE ARE GOING TO START WITH OUR CITY AUDITOR AND I WILL EXPLAIN THAT IN A MOMENT. MR. TORELL IS HERE AND THEN HAVE A PRESENTATION BY OUR CITY ATTORNEY MIKE AGUIRRE AND THEN GO TO KROLL OUR AUDIT COMMITTEE FOR THEIR REPORT AND THEN WE WILL

THE AUDIT COMMITTEE WILL BE REQUIRED TO CERTIFY IN WRITING TO THE AUDITORS THAT WE HAVE PERFORMED A THOROUGH AND COMPLETE INVESTIGATION HAVE LOOKED AT ALL THE RELEVANT EVIDENCE, SET FORTH OUR FINDINGS, AND ADDRESSED A REMEDIATION PLAN. WE TAKE THAT OBLIGATION VERY SERIOUSLY. THIS APPROACH HAS BEEN ENDORSED BY THE CITY'S INDEPENDENT AUDITORS AND THE STAFF AT THE SEC AS A REALISTIC OPTION FOR DEMONSTRATING THE CITY'S COOPERATION WITH LAW ENFORCEMENT IN GETTING THE AUDIT COMPLETED. NOW LET ME TURN TO THE UPDATE. LAST WEEK THE AUDIT COMMITTEE SUBMITTED A LETTER TO THE CITY COUNCIL IN WHICH WE DESCRIBED BOTH OUR SUBSTANTIAL PROGRESS TO DATE AND ISSUES IDENTIFIED IN THE COURSE OF OUR INVESTIGATION THAT UNFORTUNATELY WILL DELAY COMPLETION OF OUR WORK AND INCREASE ITS COST. LET ME BEGIN WITH THE PROGRESS THAT WE HAVE MADE, WE HAVE REVIEWED IN EXCESS OF APPROXIMATELY FIVE-HUNDRED BOXES OF DOCUMENTS OF INDIVIDUALS THAT WE HAVE IDENTIFIED AS IMPORTANT TO OUR INVESTIGATION, AS WELL AS APPROXIMATELY NINETY-THOUSAND DOCUMENTS WE OBTAINED FROM CERS. THIS DOCUMENT REVIEW IS MADE POSSIBLE BECAUSE WE HAVE SUCCESSFULLY COMPLETED DOCUMENT COLLECTION IN RESPONSE TO A DOZEN OUTSTANDING GOVERNMENT SUBPOENAS. I SHOULD POINT OUT THAT THIS HAD NOT BEEN NECESSARY IF THE CITY HAD DONE AN ADEQUATE JOB OF DOCUMENT COLLECTION THE FIRST TIME. AT THE SAME TIME WE KEPT REGULAR CONTACT WITH THE CITY'S INDEPENDENT AUDITORS, KPMG, MACIAS GINI, AND WITH THE STAFF AT THE U.S. ATTORNEY'S OFFICE, AND THE SECURITIES AND EXCHANGE COMMISSION. BECAUSE THE CARE WE TOOK IN OUR REVIEW OF THESE MATERIALS, WE DID DISCOVER OTHER SHORTCOMINGS AND ERRORS IN THE WORK PREVIOUSLY PERFORMED AND WE HAVE IDENTIFIED NEW AND IMPORTANT LEADS. THIS HAS INCREASED THE SCOPE OF OUR WORK AS PREVIOUSLY REPORTED IN REVIEWING THE WORK OF V&E AND APPLIED DISCOVERY WE DISCOVERED THAT NEARLY ONE-THIRD OF THE DATA HAD NOT BEEN REVIEWED. THIS REQUIRED US TO REPEAT A PORTION OF THE WORK PERFORMED BY V&E. MORE RECENTLY IN REVIEWING PREVIOUSLY EXTRACTED EMAILS FROM THE CITY'S BACK-UP

TAPES FOR ITS GROUPWISE SYSTEM BY SDDPC WE DISCOVERED THE METHOD USED TO RETRIEVE SUCH RECORDS IS NOT RELIABLE AND THE DATA WAS BEING LOST. AFTER CONFERRING WITH OUR OWN TECHNICAL EXPERTS WITH SDDPC AND THE CITY, WE CONCLUDED THE BEST APPROACH TO THIS PROBLEM WAS TO RETAIN NOVELL, A SOFTWARE COMPANY THAT DEVELOPED THE CITY'S EMAIL SYSTEM TO DEVISE A METHOD TO RELIABLY EXTRACTING EMAILS. WE HAVE BEEN TOLD THAT IT WOULD TAKE FOUR TO SIX WEEKS FOR NOVELL TO COMPLETE ITS WORK AND IT WOULD BE NECESSARY TO TEST THE EXTRACTION PROCESS TO ENSURE THE PROBLEM HAS BEEN RESOLVED. A RELIABLE PROCESS FOR EXTRACTING EMAIL FROM THE CITY'S GROUPWISE SYSTEM IS CRITICAL TO THE AUDIT COMMITTEE'S MISSION AND UNTIL THAT IS DONE OUR WORK CANNOT BE COMPLETED. I SHOULD NOTE THE PROBLEM WE ENCOUNTERED WHEN WE ATTEMPTED TO EXTRACT THE EMAILS FROM THE CITY'S GROUPWISE SYSTEM EXISTED BEFORE THE CREATION OF THE AUDIT COMMITTEE. THIS PROBLEM MAY HAVE AFFECTED PREVIOUS PRODUCTIONS TO THE GOVERNMENT. IN FACT, IN DISCUSSIONS WITH LAW ENFORCEMENT AGENCIES TO DATE, THEY TOO HAVE NOW NOTIFIED TO US THAT THEY ARE MISSING DOCUMENTS FROM PRODUCTION, WHICH WE HAVE IDENTIFIED. THIS IS A PROBLEM THAT IS FUNDAMENTAL TO THE COMPLETION OF A THOROUGH INVESTIGATION AND THE AUDIT COMMITTEE'S ABILITY TO PROVIDE THE NECESSARY REPRESENTATION TO THE AUDITORS. IN TURN IT IS FUNDAMENTAL TO THE COMPLETION OF AN AUDIT DONE PURSUANT TO PROFESSIONAL STANDARDS AND IT IS FUNDAMENTAL TO A GOOD FAITH EFFORT BY THE CITY WHEN COMPLYING WITH SUBPOENAS ISSUE BY LAW ENFORCEMENT AGENCIES. IT IS A PROBLEM WE INHERITED BUT WE FEEL COMFORTABLE THAT NOW THAT IT HAS BEEN EXPOSED AND THAT IT IS UNDERSTOOD IT CAN FINALLY BE SOLVED BEFORE PROCEEDING FURTHER. WHILE WE HAVE BEEN (5:05)BY THIS EMAIL PROBLEM, OUR WORK HAS EXPANDED ON OTHER FRONTS. IN ADDITION TO REPEATING THE REVIEW OF THIRTY-FIVE EMAIL BOXES REVIEWED BY V&E, THE AUDIT COMMITTEE'S REVIEW WILL ENCOMPASS AN ADDITIONAL SIXTY EMAIL BOXES, INCLUDING THOSE OF ELECTED OFFICIALS AND SENIOR STAFF. I MIGHT NOTE THAT WE EVEN HAVE HAD REQUESTS FROM CITY

COUNCIL MEMBERS ASKING US TO REVIEW THEIR EMAILS AND THEIR HARD DRIVES TO YOUR CREDIT AS WELL AS THOSE INDIVIDUALS INVOLVED IN WASTEWATER INVESTIGATIONS AND THOSE USED BY CERS. IN RESPONSE TO OUR JUNE 10TH, 2005 MEMO, CITY EMPLOYEES PRODUCED A VOLUME OF DOCUMENTS FAR GREATER THAN THAT WE HAD IDENTIFIED WHICH REQUIRED MORE TIME TO REVIEW. WE ALSO DETERMINED THAT BASED ON INFORMATION DEVELOPED IN OUR INVESTIGATION TO REVIEW HARD DRIVES OF ELECTED OFFICIALS AND INCREASE THE NUMBER OF INTERVIEWS. FINALLY, THE SCOPE OF OUR INVESTIGATION OF WASTEWATER MATTERS HAS EXPANDED. IN ADDITION TO OUR PLANS FOR REVIEWING ADDITIONAL EMAIL BOXES, WE HAVE REVIEWED FORTY BOXES OF DOCUMENTS. HAVE BEEN CONDUCTING INTERVIEWS AND REVIEWING OTHER INFORMATION. WHILE THE SCOPE OF OUR INVESTIGATION HAS SIGNIFICANTLY EXPANDED WE CANNOT PROCEED UNTIL WE CAN OBTAIN DOCUMENTS NECESSARY FOR OUR INVESTIGATION, WHICH IN TURN REQUIRES THAT THE PROBLEM WITH THE EMAIL SYSTEM BE RESOLVED, HOWEVER, LET ME ALSO CLARIFY HOW SEARCHES AND REVIEWS OF DOCUMENTS ARE PERFORMED IN MOST INVESTIGATIONS, INCLUDING OURS. IN TODAY'S DIGITAL AGE OF HARD DRIVES AND MAIL BOXES MANY OF NOT MOST DOCUMENTS ARE IN FACT ELECTRONIC. TO DOWNLOAD AND READ EACH DOCUMENT IN THE CITY'S COMPUTER SYSTEM MANUALLY WOULD BE BOTH VERY TIME CONSUMING AND EXPENSIVE. INSTEAD DOCUMENTS THAT RESIDE IN RELEVANT LOCATIONS ARE DOWNLOADED INTO A DATABASE TO BE SEARCHED ELECTRONICALLY. KEY SEARCH TERMS WHICH INCLUDE TERMS BOTH AUDITORS AND THE LAW ENFORCEMENT AGENCIES HAVE PROVIDED TO US AND AGREED UPON WILL THEN BE USED TO SEARCH FOR RELEVANT DOCUMENTS IN THE DATABASE. WE WILL NOT BE LOOKING AT 100% OF THE DOCUMENTS, WE WILL GO IN AND DO THE SEARCH USING TERMS THAT THE SEC AND KPMG HAVE ALREADY PROVIDED TO US. TERMS THAT THEY WANT TO HAVE USED IN THAT SEARCH. WE WILL IDENTIFY AND PULL THOSE ARE THE ONES THAT WILL BE KEY TO THE REVIEWS IN ADDITION TO MANY HARD COPIES OF DOCUMENTS THAT HAVE BEEN REVIEWED TO DATE. AS A RESULT WHEN WE REVIEW EMAILS WE WILL NOT BE LOOKING AT ALL

Exhibit 102

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
Tel: 213-443-5090
fax: 213-443-5050

www.kroll-worldwide.com

November 16, 2005

Matter No. 0005948-0002
Invoice No. 1311253

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From October 1, 2005 through October 14, 2005

(Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	6.50 hrs @ $ 750.00 per hour	4,875.00
Troy Dahlberg	93.50 hrs @ $ 450.00 per hour	42,075.00
Ivette Morales	99.50 hrs @ $ 300.00 per hour	29,850.00
David Shapiro	77.50 hrs @ $ 300.00 per hour	23,250.00
David Cogan	2.50 hrs @ $ 350.00 per hour	875.00
Lisa Jordan	53.50 hrs @ $ 300.00 per hour	16,050.00
Glenn Lewis	16.00 hrs @ $ 350.00 per hour	5,600.00
Paul Donato	99.75 hrs @ $ 250.00 per hour	24,937.50
Mary Kreidell	51.50 hrs @ $ 350.00 per hour	18,025.00
Phil Mennona	104.00 hrs @ $ 350.00 per hour	36,400.00
Peter Kyviakidis	68.50 hrs @ $ 400.00 per hour	27,400.00
Ryan Tomme	102.00 hrs @ $ 250.00 per hour	25,500.00
Michael Archibald	52.50 hrs @ $ 300.00 per hour	15,750.00
Jennifer Arnini	146.50 hrs @ $ 300.00 per hour	43,950.00
Mike Belov	105.50 hrs @ $ 250.00 per hour	26,375.00
Jeffrey Klein	93.20 hrs @ $ 300.00 per hour	27,960.00
Rachel Laybourn	119.50 hrs @ $ 250.00 per hour	29,875.00
Javier Alvarez	97.50 hrs @ $ 300.00 per hour	29,250.00
Noah Blum	17.00 hrs @ $ 300.00 per hour	5,100.00
Jamal Ahmad	80.00 hrs @ $ 350.00 per hour	28,000.00
Jenny Dominguez	119.00 hrs @ $ 350.00 per hour	41,650.00
Rex Homme	33.00 hrs @ $ 350.00 per hour	11,550.00
Jessie Ting	101.50 hrs @ $ 250.00 per hour	25,375.00
Lisa Han	91.00 hrs @ $ 300.00 per hour	27,300.00
Richard Cheng	15.00 hrs @ $ 250.00 per hour	3,750.00
Bruce Pixley	6.00 hrs @ $ 350.00 per hour	2,100.00
David Callaghan	97.00 hrs @ $ 400.00 per hour	38,800.00
Arthur Levitt	32.25 hrs @ $ 900.00 per hour	29,025.00
		$ 640,647.50
		(See Schedule A)
Out-of-Pocket Disbursements		44,761.18
		(See Schedule B)
Total Due:		$ 685,408.68

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 806124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-5453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	30,660.00
8)	Accounting and other research related to investigation.	875.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation.	75,975.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	62,750.00
13)	Perform accounting analysis related to investigative workplan.	89,475.00
14)	Perform electronic forensic procedures and analyses.	32,300.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	81,225.00
16)	Review electronic documents.	267,387.50
	Total Professional Fees	$640,647.50

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

November 18, 2005

Matter No. 0005948-0002
Invoice No. 1311256

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From October 15, 2005 through October 28, 2005

(Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	20.00 hrs @ $ 750.00 per hour	15,000.00	
Troy Dahlberg	64.95 hrs @ $ 450.00 per hour	29,227.50	
Ivette Morales	35.00 hrs @ $ 300.00 per hour	10,500.00	
David Shapiro	37.00 hrs @ $ 300.00 per hour	11,100.00	
David Cogan	2.00 hrs @ $ 350.00 per hour	700.00	
Glenn Lewis	108.50 hrs @ $ 350.00 per hour	37,975.00	
Paul Donato	34.75 hrs @ $ 250.00 per hour	8,687.50	
Mary Kreidell	45.50 hrs @ $ 350.00 per hour	15,925.00	
Phil Mennona	48.00 hrs @ $ 350.00 per hour	16,800.00	
Peter Kyviakidis	23.00 hrs @ $ 400.00 per hour	9,200.00	
Ryan Tomme	40.90 hrs @ $ 250.00 per hour	10,225.00	
Michael Archibald	50.30 hrs @ $ 300.00 per hour	15,090.00	
Andrew D'Amico	33.50 hrs @ $ 300.00 per hour	10,050.00	
Jennifer Amini	89.50 hrs @ $ 300.00 per hour	26,850.00	
Mike Belov	35.00 hrs @ $ 250.00 per hour	8,750.00	
Jeffrey Klein	84.30 hrs @ $ 300.00 per hour	25,290.00	
Rachel Laybourn	86.00 hrs @ $ 250.00 per hour	21,500.00	
Javier Alvarez	22.00 hrs @ $ 300.00 per hour	6,600.00	
Noah Blum	32.00 hrs @ $ 300.00 per hour	9,600.00	
Jamal Ahmad	40.00 hrs @ $ 350.00 per hour	14,000.00	
Jenny Dominguez	67.50 hrs @ $ 350.00 per hour	23,625.00	
Rex Homme	59.00 hrs @ $ 350.00 per hour	20,650.00	
Jessie Ting	35.00 hrs @ $ 250.00 per hour	8,750.00	
Lisa Han	57.00 hrs @ $ 300.00 per hour	17,100.00	
Richard Cheng	66.75 hrs @ $ 250.00 per hour	16,687.50	
Peter Smith	43.50 hrs @ $ 300.00 per hour	13,050.00	
Sara Halligan	19.00 hrs @ $ 250.00 per hour	4,750.00	
Thomas Avery	7.00 hrs @ $ 350.00 per hour	2,450.00	
David Callaghan	72.00 hrs @ $ 400.00 per hour	28,800.00	
Regina Israel	1.00 hrs @ $ 85.00 per hour	85.00	
Arthur Levitt	9.00 hrs @ $ 900.00 per hour	8,100.00	
			$ 447,117.50
			(See Schedule A)
Out-of-Pocket Disbursements			37,709.51
			(See Schedule B)
Total Due:			$ 484,827.01

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	19,740.00
8)	Accounting and other research related to investigation.	700.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	30,500.00
11)	Audit Committee oversight and management of investigation	52,327.50
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	33,735.00
13)	Perform accounting analysis related to investigative workplan.	84,915.00
14)	Perform electronic forensic procedures and analyses.	84,512.50
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	36,200.00
16)	Review electronic documents.	104,487.50
	Total Professional Fees	$447,117.50

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 4,440.79
T&E - Ground Transportation[2]	3,510.82
T&E - Hotel Charges[3]	18,960.64
T&E - Meals[4]	5,550.00
T&E – Mileage Reimbursement[5]	1,904.16
Miscellaneous & Telephone	2,095.69
Electronic Research	-
Postage & Courier	801.91
Reproduction Expense[6]	445.50
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 37,709.51

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Los Angeles, CA and Washington, DC
- 1 roundtrip ticket between Chicago, IL and San Diego, CA
- 1 roundtrip ticket between New York, NY and San Diego, CA
- 1 roundtrip ticket between Oakland, CA and Los Angeles, CA
- 1 roundtrip ticket between Oakland, CA and San Diego, CA
- 1 one-way ticket between New York, NY and Los Angeles, CA
- 1 one-way ticket between San Diego, CA and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[3] Hotel Charges include costs for 73 nights of hotel accommodations in San Diego, CA (49 nights), New York, NY (22 nights), and Washington, DC (2 nights) for 15 professionals. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. The rate in New York averaged approximately $399.53 per night, including applicable taxes. Before taxes, the New York rate ranged between $349.00 and $369.00 per night. In Washington DC, the rate was $357.00 per night including applicable taxes.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to San Diego, New York, or Washington DC. Traveling professionals spent a total of approximately 93 days out of town during this billing period. This equates to an average meal cost per day of $59.68 ($5,550 ÷ 93).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this engagement. A majority of the costs incurred for this period were for 7 professionals that drove from the greater Los Angeles area to San Diego at least once during this billing period. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

[6] Reproduction Expense includes reproduction costs directly related to this engagement.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Dance

October 24, 2005

Matter No. 0005948-0002
Invoice No. 1311201-4

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From September 17, 2005 through September 30, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	5.00 hrs @ $ 750.00 per hour	3,750.00
Troy Dahlberg	87.50 hrs @ $ 450.00 per hour	39,375.00
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50
Lisa Jordan	69.50 hrs @ $ 300.00 per hour	20,850.00
Paul Donato	73.50 hrs @ $ 250.00 per hour	18,375.00
Mary Kreidell	44.00 hrs @ $ 350.00 per hour	15,400.00
Phil Mennona	96.00 hrs @ $ 350.00 per hour	33,600.00
Peter Kyviakidis	58.50 hrs @ $ 400.00 per hour	23,400.00
Michael Archibald	70.00 hrs @ $ 300.00 per hour	21,000.00
Jennifer Amini	110.50 hrs @ $ 300.00 per hour	33,150.00
Mike Belov	77.00 hrs @ $ 250.00 per hour	19,250.00
Jeffrey Klein	105.50 hrs @ $ 300.00 per hour	31,650.00
Rachel Laybourn	58.30 hrs @ $ 250.00 per hour	14,575.00
Javier Alvarez	89.00 hrs @ $ 300.00 per hour	26,700.00
Noah Blum	11.00 hrs @ $ 300.00 per hour	3,300.00
Jamal Ahmad	64.00 hrs @ $ 350.00 per hour	22,400.00
Jenny Dominguez	112.50 hrs @ $ 350.00 per hour	39,375.00
Jessie Ting	89.50 hrs @ $ 250.00 per hour	22,375.00
Lisa Han	94.00 hrs @ $ 300.00 per hour	28,200.00
Bruce Pixley	9.00 hrs @ $ 350.00 per hour	3,150.00
David Callaghan	88.00 hrs @ $ 400.00 per hour	35,200.00
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00
		$ 465,862.50
		(137,173.19) previously paid
		$ 379,645.48

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

See OK to pay from

Out-of-Pocket Disbursements		
T&E - Air Transportation	13,205.49	
T&E - Ground Transportation	2,787.10	
T&E - Hotel Charges	18,142.00	
T&E - Meals	5,768.66	
T&E - Mileage Reimbursement	1,293.42	
Miscellaneous & Telephone	952.69	
Postage & Courier	233.72	
Reproduction Expense	8,143.86	
Office Supplies	429.23	
		50,956.17
Total Due:		$ 516,818.67

Exhibit 103

CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 2
FOR THE REGULAR MEETING OF
MONDAY, SEPTEMBER 12, 2005 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTIONS:

ITEM-S401: Agreement with Electronic Evidence Discovery (EED) for Electronic Repository to Support City Audit Committee.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-189)

Authorizing the City Manager to execute an Agreement between the City of San Diego and Electronic Evidence Discovery, Inc., for creation of an electronic repository that the City Audit Committee will use to conduct its independent investigation, for an amount not to exceed $727,500, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase the scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the funds necessary for such expenditure are on deposit in the City Treasury.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)
RESOLUTIONS: (Continued)

ITEM-S401: (Continued)

CITY MANAGER SUPPORTING INFORMATION:

As part of its independent investigation, the Audit Committee must review all materials produced in response to the subpoenas and other requests for information from the U.S. Securities and Exchange Commission (SEC) and the U.S. Attorney's Office (USAO) that have been issued since 2004. The materials include paper documents, scanned paper image files, video and audio tapes and CDs, electronic mail and electronic files in a variety of formats. There are over one million pages of paper documents and more than sixty thousand electronic files. In order to review these documents in a timely manner, as well as continue to produce them for the SEC and USAO, an electronic repository is required. The establishment of this repository is critical and must be implemented as soon as possible in order for the Audit Committee to complete its investigation by December 2005.

The key criteria for development and support of the electronic repository include software functionality (such as the ability to easily and rapidly search across all information in the repository and highlight where the search terms occur), flexibility of systems and processes to support the needs of the City and Audit Committee, and the ability to implement rapidly.

After researching firms that provide electronic repository services, staff identified several companies with the potential to provide the needed functionality and requested that they submit service and pricing information. Four firms provided this information. Working with the Audit Committee and City Attorney's Office, staff asked these firms to demonstrate the capabilities of their products and evaluated the results against core functional requirements. Electronic Evidence Discovery, Inc. (EED) was identified as providing the best value to the City based on acceptable pricing, software functionality and flexibility of services. Their final cost estimate was the lowest of the four provided. The City Manager has determined that EED should be a sole source provider in accordance with Section 22.3036 of the San Diego Municipal Code. Due to the timeframe, a competitive bid process would be impractical and would not produce any additional advantage to the City.

Ewell/Arellano/HS

Aud. Cert. 2600197.

Staff: Howard Stapleton – (619) 533-4766
Anita Noone – Assistant City Attorney

Exhibit 104

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, SEPTEMBER 12, 2005
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING 4

ATTENDANCE DURING THE MEETING 4

ITEM-1: ROLL CALL 5

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ITEM 31: San Diego Heat Day 6

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* ITEM-101: Memorandum of Understanding (MOU) with San Diego Metropolitan Transit System (MTS) for MTS Station Improvement Project 15

* ITEM-102: Shirley Ann Place Sidewalk Reconstruction Project 17

* ITEM-103: Ratifying the Contract Award to BRH - Garver West Inc., for Pump Station No. 2 Emergency Leak Detection and Pipe Rehab Nichols Street 19

* ITEM-104: Grant Application to the State of California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002 for Miscellaneous Pool Improvements 21

* ITEM-105: Grant Application to State Department of Transportation (DOT) for the Hillcrest Corridor Mobility Study 23

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NON-DOCKET ITEMS 53

ADJOURNMENT 53

The City Manager is now ready to complete the loan transaction, but additional authorizations, as indicated in the present action, are necessary.

Oppenheim/Fischle-Faulk/BC

Staff: Bonnie Contreras – (619) 236-6846
Michael D. Neumeyer – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:34 p.m.)

CONSENT MOTION BY FRYE TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S401: Agreement with Electronic Evidence Discovery (EED) for Electronic Repository to Support City Audit Committee.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-189) ADOPTED AS RESOLUTION R-300822

Authorizing the City Manager to execute an Agreement between the City of San Diego and Electronic Evidence Discovery, Inc., for creation of an electronic repository that the City Audit Committee will use to conduct its independent investigation, for an amount not to exceed $727,500, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase the scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the funds necessary for such expenditure are on deposit in the City Treasury.

CITY MANAGER SUPPORTING INFORMATION:

As part of its independent investigation, the Audit Committee must review all materials produced in response to the subpoenas and other requests for information from the U.S. Securities and Exchange Commission (SEC) and the U.S. Attorney's Office (USAO) that have been issued since 2004. The materials include paper documents, scanned paper image files, video and audio tapes and CDs, electronic mail and electronic files in a variety of formats. There are over one million pages of paper documents and more than sixty thousand electronic files. In order to review these documents in a timely manner, as well as continue to produce them for the SEC and USAO, an electronic repository is required. The establishment of this repository is critical and must be implemented as soon as possible in order for the Audit Committee to complete its investigation by December 2005.

The key criteria for development and support of the electronic repository include software functionality (such as the ability to easily and rapidly search across all information in the repository and highlight where the search terms occur), flexibility of systems and processes to support the needs of the City and Audit Committee, and the ability to implement rapidly.

After researching firms that provide electronic repository services, staff identified several companies with the potential to provide the needed functionality and requested that they submit service and pricing information. Four firms provided this information. Working with the Audit Committee and City Attorney's Office, staff asked these firms to demonstrate the capabilities of their products and evaluated the results against core functional requirements. Electronic Evidence Discovery, Inc. (EED) was identified as providing the best value to the City based on acceptable pricing, software functionality and flexibility of services. Their final cost estimate was the lowest of the four provided. The City Manager has determined that EED should be a sole source provider in accordance with Section 22.3036 of the San Diego Municipal Code. Due to the timeframe, a competitive bid process would be impractical and would not produce any additional advantage to the City.

Ewell/Arellano/HS
Aud. Cert. 2600197.

Staff: Howard Stapleton – (619) 533-4766
Anita Noone – Assistant City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:24 p.m. – 5:38 p.m.)

MOTION BY PETERS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S402: Appointment of Mr. James Waring to the San Diego City Employees' Retirement System Board of Administration.
(See memorandum from Deputy Mayor Atkins dated 9/6/2005, with resume attached.)

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-221) ADOPTED AS RESOLUTION R-300823

Council confirmation of the following appointment by the Deputy Mayor of the City of San Diego, to serve as a member of the San Diego City Employees' Retirement System Board of Administration:

NAME	TERM ENDING
James T. Waring (La Jolla, District 1) (Replacing Thomas E. King, who resigned)	March 31, 2009

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:50 p.m. – 3:01 p.m.)

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, District 8-vacant, Mayor-vacant.

Exhibit 105

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Exhibit 106

SAN DIEGO CITY COUNCIL
AGENDA FOR THE
SPECIAL COUNCIL MEETING OF
TUESDAY, DECEMBER 20, 2005 AT 10:00 A.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101

ITEM-600: ROLL CALL

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTIONS:

ITEM-601: First Amendment to Agreement with Electronic Evidence Discovery Inc. for Electronic Repository to Support City Audit Committee Document Productions.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-395)

Authorizing the City Manager to execute the First Amendment to the Agreement between the City of San Diego and Electronic Evidence Discovery, Inc., for additional electronic files to be included in the electronic repository that the U. S. Securities and Exchange Commission (SEC), U. S. Attorney's Office (USAO) and City Audit Committee (CAC) will use to conduct their independent investigations, for an amount not to exceed $272,300, under the terms and conditions set forth in the First Amendment to the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase the scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of the First Amendment to the Agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the funds necessary for such expenditure are on deposit in the City Treasury.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)
RESOLUTIONS: (Continued)

ITEM-601: (Continued)

CITY MANAGER SUPPORTING INFORMATION:

On September 12, 2005, the City Council approved Resolution Number R-300822 authorizing the City Manager to enter into an agreement with Electronic Evidence Discovery, Inc. (EED) to create an electronic document repository to support the City Audit Committee's independent investigation. Using the best information available at the time, City staff estimated that up to 2,175,000 paper documents and 160 gigabytes (GB) of electronic files would be produced and stored in this repository. Included within the electronic files are GroupWise Email archives, Microsoft and Corel Office documents and Adobe Acrobat (pdf) documents.

Extensive efforts on the part of the Audit Committee and City staff to obtain all relevant documents have resulted in an additional 80 GB of electronic files being compiled that were not included in the original cost estimate. City staff are also anticipating that the U. S. Attorney and U. S. Securities and Exchange Commission (SEC) will need online access to all or portions of the repository, resulting in an additional online production. The additional cost for EED to process, store and produce these documents online is $272,300, bringing the total contract cost to $999,800. With these additional documents, the electronic document repository being provided to the City Audit Committee will contain approximately one-half million electronic files totaling 237 GB in size, and another 1.9 million pages of scanned paper documents.

Ewell/Arellano/HS

Aud. Cert. 2600315.

Staff: Howard Stapleton – (619) 533-4766
Anita Noone – Assistant City Attorney

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR SPECIAL COUNCIL MEETING
OF
TUESDAY, DECEMBER 20, 2005
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Sanders at 10:06 a.m. The meeting was adjourned by Mayor Sanders at 11:43 a.m.

ATTENDANCE DURING THE MEETING:

(M) Mayor-present

(1) Council Member Peters-present

(2) Council District 2-vacant

(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 District 8-vacant

Clerk-Maland (er)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Maland called the roll:

(M) Mayor-present
(1) Council Member Peters-present
(2) Council District 2-vacant
(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 District 8-vacant

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell requested that an invocation and flag salute be conducted for Tuesday's meetings.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:07 a.m. – 10:09 a.m.)

PUBLIC COMMENT-2:

Jarvis Ross commented on the new Mayoral staff's retirement benefits.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:09 a.m. – 10:12 a.m.)

PUBLIC COMMENT-3:

Phil Hart commented on the Audit Committee's activities.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-4:

Andy Berg commented on the Audit Committee.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:18 a.m.)

COUNCIL COMMENT:

None.

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

ITEM-601: First Amendment to Agreement with Electronic Evidence Discovery Inc. for Electronic Repository to Support City Audit Committee Document Productions.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-395) ADOPTED AS RESOLUTION R-301147

Authorizing the City Manager to execute the First Amendment to the Agreement between the City of San Diego and Electronic Evidence Discovery, Inc., for additional electronic files to be included in the electronic repository that the U. S. Securities and Exchange Commission (SEC), U. S. Attorney's Office (USAO) and City Audit Committee (CAC) will use to conduct their independent investigations, for an amount not to exceed $272,300, under the terms and conditions set forth in the First Amendment to the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase the scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of the First Amendment to the Agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the funds necessary for such expenditure are on deposit in the City Treasury.

CITY MANAGER SUPPORTING INFORMATION:

On September 12, 2005, the City Council approved Resolution Number R-300822 authorizing the City Manager to enter into an agreement with Electronic Evidence Discovery, Inc. (EED) to create an electronic document repository to support the City Audit Committee's independent investigation. Using the best information available at the time, City staff estimated that up to 2,175,000 paper documents and 160 gigabytes (GB) of electronic files would be produced and stored in this repository. Included within the electronic files are GroupWise Email archives, Microsoft and Corel Office documents and Adobe Acrobat (pdf) documents.

Extensive efforts on the part of the Audit Committee and City staff to obtain all relevant documents have resulted in an additional 80 GB of electronic files being compiled that were not included in the original cost estimate. City staff are also anticipating that the U. S. Attorney and U. S. Securities and Exchange Commission (SEC) will need online access to all or portions of the repository, resulting in an additional online production. The additional cost for EED to process, store and produce these documents online is $272,300, bringing the total contract cost to $999,800. With these additional documents, the electronic document repository being provided to the City Audit Committee will contain approximately one-half million electronic files totaling 237 GB in size, and another 1.9 million pages of scanned paper documents.

Ewell/Arellano/HS

Aud. Cert. 2600315.

Staff: Howard Stapleton – (619) 533-4766
Anita Noone – Assistant City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:18 a.m. – 11:32 a.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION TO AUTHORIZE THE EXPENDITURE OF AN AMOUNT NOT TO EXCEED $272,300 FOR ELECTRONIC EVIDENCE DISCOVERY WITH DIRECTION BY MS ATKINS THAT ALL EXPENDITURES SHALL BE SUBJECT TO A REVIEW BY THE CITY MANAGER; AND REQUEST THAT THE CITY ATTORNEY REVISE THE CONTRACT LANGUAGE IF NECESSARY TO REFLECT THE CONDITION. Second by Atkins. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, District 8-vacant, Mayor-yea.

ITEM-602: Amending the 2006 Legislative Calendar to Adjourn the Scheduled City Council Meeting of January 9 and 10, 2006.

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-579) ADOPTED AS RESOLUTION R-301148

Amending the schedule of meetings for the City Council and Standing Committees of the City Council for the period of January 1, 2006 through December 31, 2006, to adjourn the regularly scheduled City Council meeting of January 9 and 10, 2006.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:33 a.m. – 11:36 a.m.)

MOTION BY MAIENSCHEIN TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-ineligible.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Sanders at 11:43 a.m. in honor of the memory of:

Marchanae Johnson as requested by Council Member Young,
Gloria Lira s requested by Council Member Young,
Donald Knoell as requested by Council Member Frye, and
Henry A. Boney as requested by Council Member Madaffer.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:36 a.m. – 11:43 a.m.)

Exhibit 107

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

February 9, 2006

Matter No. 0005948-0002
Invoice No. 1311482

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From January 14, 2006 through January 27, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	8.50 hrs @ $ 750.00 per hour	6,375.00	
Troy Dahlberg	47.00 hrs @ $ 450.00 per hour	21,150.00	
David Cogan	1.00 hrs @ $ 350.00 per hour	350.00	
Glenn Lewis	18.00 hrs @ $ 350.00 per hour	6,300.00	
Paul Donato	34.50 hrs @ $ 300.00 per hour	10,350.00	
Jennifer Arnini	86.00 hrs @ $ 350.00 per hour	30,100.00	
Jeffrey Klein	66.50 hrs @ $ 350.00 per hour	23,275.00	
Rachel Laybourn	81.00 hrs @ $ 250.00 per hour	20,250.00	
Jenny Dominguez	55.50 hrs @ $ 350.00 per hour	19,425.00	
Peter Smith	50.00 hrs @ $ 300.00 per hour	15,000.00	
Sarah Halligan	11.50 hrs @ $ 250.00 per hour	2,875.00	
David Callaghan	52.00 hrs @ $ 400.00 per hour	20,800.00	
Arthur Levitt	0.50 hrs @ $ 900.00 per hour	450.00	
			$ 176,700.00
			(See Schedule A)

Out-of-Pocket Disbursements 11,485.45
(See Schedule B)

Total Due: $ 188,185.45

okay to pay
LM
2/21/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	350.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	27,975.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	40,925.00
13)	Perform accounting analysis related to investigative workplan.	13,200.00
14)	Perform electronic forensic procedures and analyses.	61,325.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	32,925.00
	Total Professional Fees	$176,700.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 6,615.30
T&E - Ground Transportation[2]	434.86
T&E - Hotel Charges[3]	3,147.84
T&E – Meals[4]	687.70
T&E – Mileage Reimbursement[5]	381.77
Miscellaneous & Telephone	143.16
Electronic Research	-
Postage & Courier	74.82
Reproduction Expense	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 11,485.45

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 4 roundtrip tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Los Angeles, CA and Newark, NJ

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 8 nights of hotel accommodation in New York, NY for 4 professionals at an average rate of $369.36 per night, including applicable taxes, and costs for 1 night of hotel accommodations in San Diego, CA for 1 professional at a rate of $193.00 per night, including a 10.5% Occupancy Tax.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY and San Diego, CA. Traveling professionals spent approximately 14 days out of town during this billing period. This equates to an average meal cost per day of approximately $49.07 ($687.70 ÷ 14).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. A majority of the costs incurred for this period were for 2 professionals that drove from the greater Los Angeles area to San Diego, CA during this billing cycle. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

February 21, 2006

Matter No. 0005948-0002
Invoice No. 1311506

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From January 28, 2006 through February 10, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	7.00 hrs @ $ 750.00 per hour	5,250.00	
Troy Dahlberg	43.00 hrs @ $ 450.00 per hour	19,350.00	
David Cogan	16.50 hrs @ $ 350.00 per hour	5,775.00	
La Tanya Squires	65.50 hrs @ $ 250.00 per hour	16,375.00	
Glenn Lewis	53.00 hrs @ $ 350.00 per hour	18,550.00	
Paul Donato	75.75 hrs @ $ 300.00 per hour	22,725.00	
David Fielder	36.00 hrs @ $ 450.00 per hour	16,200.00	
Pavel Pribylovskiy	25.50 hrs @ $ 300.00 per hour	7,650.00	
Jennifer Arnini	95.50 hrs @ $ 350.00 per hour	33,425.00	
Jeffrey Klein	110.90 hrs @ $ 350.00 per hour	38,815.00	
Rachel Laybourn	128.00 hrs @ $ 250.00 per hour	32,000.00	
Jenny Dominguez	93.50 hrs @ $ 350.00 per hour	32,725.00	
Lisa Han	55.00 hrs @ $ 300.00 per hour	16,500.00	
William Knoedelseder	48.00 hrs @ $ 350.00 per hour	16,800.00	
Harold Cord Nuoffer	96.00 hrs @ $ 300.00 per hour	28,800.00	
Jason Thomas Wright	62.40 hrs @ $ 250.00 per hour	15,600.00	
Candice Hirsch	65.50 hrs @ $ 300.00 per hour	19,650.00	
Morgan Brazil	37.50 hrs @ $ 250.00 per hour	9,375.00	
David Callaghan	72.00 hrs @ $ 400.00 per hour	28,800.00	
Arthur Levitt	4.00 hrs @ $ 900.00 per hour	3,600.00	
			$ 387,965.00
			(See Schedule A)

Out-of-Pocket Disbursements 27,803.64
(See Schedule B)

Total Due: $ 415,768.64

okay to pay — 3/2/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
~~8)~~	~~Accounting and other research related to investigation.~~	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	28,200.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	33,035.00
13)	Perform accounting analysis related to investigative workplan.	18,400.00
14)	Perform electronic forensic procedures and analyses.	59,350.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	248,980.00
	Total Professional Fees	$387,965.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 4,791.89
T&E - Ground Transportation[2]	1,778.77
T&E - Hotel Charges[3]	7,733.02
T&E – Meals[4]	1,704.60
T&E – Mileage Reimbursement[5]	48.51
Miscellaneous & Telephone	574.74
Electronic Research	-
Postage & Courier	2,530.07
Reproduction Expense[6]	8,642.04
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 27,803.64

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Nashville, TN and Los Angeles, CA
- 3 roundtrip tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Washington, D.C. and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 28 nights of hotel accommodations in San Diego, CA (4 nights), New York, NY (16 nights), and Los Angeles, CA (8 nights) for 9 professionals. The rate in San Diego was $170.00 per night, not including a 10.5% Occupancy Tax (to be included in a subsequent invoice). The rate in New York averaged $342.09 per night, including applicable taxes. Before taxes, the New York rate ranged between $299.00 and $345.00 per night. In Los Angeles, CA, the rate was $193.08 per night including applicable taxes. Hotel Charges also includes telephone and parking charges totaling $34.95 that were not separated from the hotel costs.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 36 days out of town during this billing period. This equates to an average meal cost per day of approximately $47.35 ($1,704.60 ÷ 36).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Reproduction Expense includes reproduction costs directly related to this project.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

March 8, 2006

Matter No. 0005948-0002
Invoice No. 1311529

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From February 11, 2006 through February 24, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	8.50 hrs @ $ 750.00 per hour	6,375.00	
Troy Dahlberg	41.00 hrs @ $ 450.00 per hour	18,450.00	
David Cogan	83.25 hrs @ $ 350.00 per hour	29,137.50	
La Tanya Squires	88.00 hrs @ $ 250.00 per hour	22,000.00	
Glenn Lewis	5.00 hrs @ $ 350.00 per hour	1,750.00	
Paul Donato	90.25 hrs @ $ 300.00 per hour	27,075.00	
~~David Fielder~~	~~57.00 hrs @ $ 350.00 per hour~~	~~19,950.00~~	
Pavel Pribylovskiy	88.50 hrs @ $ 300.00 per hour	26,550.00	
Cory Martin	8.00 hrs @ $ 300.00 per hour	2,400.00	
Jennifer Arnini	104.50 hrs @ $ 350.00 per hour	36,575.00	
Jeffrey Klein	106.10 hrs @ $ 350.00 per hour	37,135.00	
Rachel Laybourn	99.30 hrs @ $ 250.00 per hour	24,825.00	
Jenny Dominguez	106.00 hrs @ $ 350.00 per hour	37,100.00	
Lisa Han	75.25 hrs @ $ 300.00 per hour	22,575.00	
Bill Knoedelseder	110.00 hrs @ $ 350.00 per hour	38,500.00	
Harold C. Nuoffer	105.30 hrs @ $ 300.00 per hour	31,590.00	
Jason Thomas Wright	102.00 hrs @ $ 250.00 per hour	25,500.00	
Candice Hirsch	88.35 hrs @ $ 300.00 per hour	26,505.00	
Morgan Brazil	94.50 hrs @ $ 250.00 per hour	23,625.00	
David Callaghan	58.00 hrs @ $ 400.00 per hour	23,200.00	
			$ 480,817.50
Less Fee Adjustment			(3,600.00)
			(See Schedule A)
Out-of-Pocket Disbursements			45,331.68
			(See Schedule B)
Total Due:			$ 522,549.18

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	~~Accounting and other research related to~~ investigation.	-
9)	Complete background checks for ~~Pension Board~~ nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	24,825.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	21,795.00
13)	Perform accounting analysis related to investigative workplan.	13,200.00
14)	Perform electronic forensic procedures and analyses.[1]	42,945.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	374,452.50
	Total Professional Fees	$477,217.50

[1] A credit of $3,600 is included in this invoice and has been applied to Task 14. This credit is a result of applying an incorrect billing rate for David Fielder on Invoice #1311506. The incorrect rate billed was $450.00 per hour. The correct rate, as it appears on this invoice, is $350.00 per hour.

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[2]	$ 14,486.35
T&E - Ground Transportation[3]	3,204.58
T&E - Hotel Charges[4]	21,368.85
T&E – Meals[5]	4,102.37
T&E – Mileage Reimbursement[6]	136.32
Miscellaneous & Telephone	728.03
Electronic Research	583.64
Postage & Courier	304.58
Temporary Personnel[7]	416.96
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 45,331.68

[2] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 5 roundtrip tickets between Los Angeles, CA and New York, NY
- 6 roundtrip tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Chicago, IL and New York, NY
- 1 one-way ticket between Cape Girardeau, MO and Los Angeles, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and San Diego, CA
- 2 roundtrip tickets between Denver, CO and Los Angeles, CA

[3] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[4] Hotel Charges include costs for 63 nights of hotel accommodations in San Diego, CA (1 night), New York, NY (52 nights), and Los Angeles, CA (10 nights) for 7 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $376.26 per night, including applicable taxes. Before taxes, the New York rate ranged between $149.00 and $345.00 per night. In Los Angeles, CA, the average rate was $154.42 per night including applicable taxes. Before taxes the rate ranged between $127.00 and $163.00. Hotel Charges also includes San Diego Occupancy Tax not included on the previous invoice of $71.40.

[5] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 69 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.45 ($4,102.37 ÷ 69).

[6] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[7] Temporary Personnel include costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel. 213-443-6090
fax 213-443-6050

www.krollworldwide.com

March 16, 2006

Matter No. 0005948-0002
Invoice No. 1311546

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From February 25, 2006 through March 10, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	2.00 hrs @ $ 750.00 per hour	1,500.00	
Troy Dahlberg	46.00 hrs @ $ 450.00 per hour	20,700.00	
Ivette Morales	13.50 hrs @ $ 300.00 per hour	4,050.00	
David Shapiro	18.00 hrs @ $ 300.00 per hour	5,400.00	
David Cogan	95.00 hrs @ $ 350.00 per hour	33,250.00	
La Tanya Squires	104.75 hrs @ $ 250.00 per hour	26,187.50	
Lorraine Ciechanowicz	8.00 hrs @ $ 300.00 per hour	2,400.00	
Glenn Lewis	2.00 hrs @ $ 350.00 per hour	700.00	
Paul Donato	72.75 hrs @ $ 300.00 per hour	21,825.00	
David Fielder	107.00 hrs @ $ 350.00 per hour	37,450.00	
Pavel Pribylovskiy	92.50 hrs @ $ 300.00 per hour	27,750.00	
Michael Shanahan	18.50 hrs @ $ 300.00 per hour	5,550.00	
Richard Vincent	8.00 hrs @ $ 250.00 per hour	2,000.00	
Jennifer Arnini	109.50 hrs @ $ 350.00 per hour	38,325.00	
Jeffrey Klein	80.10 hrs @ $ 350.00 per hour	28,035.00	
Rachel Laybourn	91.90 hrs @ $ 250.00 per hour	22,975.00	
Jenny Dominguez	83.50 hrs @ $ 350.00 per hour	29,225.00	
Rex Homme	4.00 hrs @ $ 350.00 per hour	1,400.00	
Lisa Han	72.50 hrs @ $ 300.00 per hour	21,750.00	
Bill Knoedelseder	90.95 hrs @ $ 350.00 per hour	31,832.50	
Harold C. Nuoffer	86.30 hrs @ $ 300.00 per hour	25,890.00	
Jason Thomas Wright	89.50 hrs @ $ 250.00 per hour	22,375.00	
Candice Hirsch	10.00 hrs @ $ 300.00 per hour	3,000.00	
Morgan Brazil	96.00 hrs @ $ 250.00 per hour	24,000.00	
David Callaghan	71.00 hrs @ $ 400.00 per hour	28,400.00	
Arthur Levitt	1.00 hrs @ $ 900.00 per hour	900.00	
			$ 466,870.00
			(See Schedule A)
Out-of-Pocket Disbursements			29,635.42
			(See Schedule B)
Total Due:			$ 496,505.42

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
~~8)~~	~~Accounting and other research related to investigation.~~	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	23,100.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	23,840.00
13)	Perform accounting analysis related to investigative workplan.	19,350.00
14)	Perform electronic forensic procedures and analyses.	52,745.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	347,835.00
	Total Professional Fees	$466,870.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 6,391.40
T&E - Ground Transportation[2]	1,103.52
T&E - Hotel Charges[3]	17,442.93
T&E – Meals[4]	3,330.00
T&E – Mileage Reimbursement[5]	21.36
Miscellaneous & Telephone	1,221.76
Electronic Research	-
Postage & Courier	-
Temporary Personnel	-
Office Supplies	124.45
Total Out-of-Pocket Disbursements	$ 29,635.42

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 3 roundtrip tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Philadelphia, PA and Los Angeles, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between San Jose, CA and Los Angeles, CA
- 1 one-way ticket between St. Louis, CA and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 51 nights of hotel accommodations in New York, NY (41 nights), and Los Angeles, CA (10 nights) for 7 professionals. The rate in New York averaged $386.45 per night, including applicable taxes. Before taxes, the New York rate ranged between $315.00 and $345.00 per night. In Los Angeles, CA, the average rate was $159.83 per night including applicable taxes. Before taxes the rate ranged between $127.00 and $149.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 56 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.46 ($3,330.00 ÷ 56).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

Kroll
The Risk Consulting Company

900 Third Avenue
New York, NY 10022
Phone: (212)593-1000
(888)209-9526
Fax: (212)593-2631
www.krollworldwide.com

Statement of Account

April 11, 2006

Mr. John Torell

Matter # 0005948-0002

San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

Re: Audit Committee Invoice
Case Manager: Troy Dahlberg

Date	Invoice No.	Invoice Amount	Payments	Invoice(s) Balance
3/8/2006	1311529	$526,149.18	$522,549.18	$3,600.00
4/4/2006	1311585	$680,213.22	$0.00	$680,213.22
Invoice(s) Subtotal				$683,813.22
Interest				~~$4.73~~
Total Balance Due				~~$683,817.95~~

JUST APPROVE

According to your schedule - we paid 522

and the invoice was for 522 -

I do not see the invoice in the file

Interest is Calculated @ 12% per Annum on balances over 30 Days.

Please contact Michael Gardner at (201) 284-4571 regarding any questions.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

April 4, 2006

Matter No. 0005948-0002
Invoice No. 1311585

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From March 11, 2006 through March 24, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	2.00 hrs @ $ 750.00 per hour	1,500.00	
Troy Dahlberg	65.00 hrs @ $ 450.00 per hour	29,250.00	
Ivette Morales	92.25 hrs @ $ 300.00 per hour	27,675.00	
David Shapiro	35.00 hrs @ $ 300.00 per hour	10,500.00	
David Cogan	74.85 hrs @ $ 350.00 per hour	26,197.50	
La Tanya Squires	101.25 hrs @ $ 250.00 per hour	25,312.50	
Glenn Lewis	6.00 hrs @ $ 350.00 per hour	2,100.00	
Paul Donato	106.00 hrs @ $ 300.00 per hour	31,800.00	
David Fielder	47.00 hrs @ $ 350.00 per hour	16,450.00	
Pavel Pribylovskiy	99.50 hrs @ $ 300.00 per hour	29,850.00	
Michael Shanahan	96.50 hrs @ $ 300.00 per hour	28,950.00	
Richard Vincent	8.00 hrs @ $ 250.00 per hour	2,000.00	
Jennifer Arnini	94.50 hrs @ $ 350.00 per hour	33,075.00	
Jeffrey Klein	100.10 hrs @ $ 350.00 per hour	35,035.00	
Rachel Laybourn	109.30 hrs @ $ 250.00 per hour	27,325.00	
Mark Lubin	111.00 hrs @ $ 350.00 per hour	38,850.00	
Jenny Dominguez	107.50 hrs @ $ 350.00 per hour	37,625.00	
Rex Homme	83.00 hrs @ $ 350.00 per hour	29,050.00	
Lisa Han	64.00 hrs @ $ 300.00 per hour	19,200.00	
Bill Knoedelseder	101.00 hrs @ $ 350.00 per hour	35,350.00	
Harold C. Nuoffer	117.00 hrs @ $ 300.00 per hour	35,100.00	
Jason Thomas Wright	113.50 hrs @ $ 250.00 per hour	28,375.00	
Morgan Brazil	108.25 hrs @ $ 250.00 per hour	27,062.50	
David Callaghan	98.00 hrs @ $ 400.00 per hour	39,200.00	
Regina Israel	14.50 hrs @ $ 85.00 per hour	1,232.50	
Arthur Levitt	2.00 hrs @ $ 900.00 per hour	1,800.00	
Greg Cauette	35.00 hrs @ $ 350.00 per hour	12,250.00	
			$ 632,115.00
			(See Schedule A)

Out-of-Pocket Disbursements 48,098.22
(See Schedule B)

Total Due: $ 680,213.22

okay to pay
4/24/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	32,550.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	46,195.00
13)	Perform accounting analysis related to investigative workplan.	64,800.00
14)	Perform electronic forensic procedures and analyses.	45,290.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	443,280.00
	Total Professional Fees	$632,115.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 11,785.51
T&E - Ground Transportation[2]	2,628.92
T&E - Hotel Charges[3]	25,451.01
T&E – Meals[4]	5,238.08
T&E – Mileage Reimbursement[5]	21.36
Miscellaneous & Telephone	993.62
Electronic Research	-
Postage & Courier	485.42
Temporary Personnel[6]	1,029.37
Office Supplies	491.93
Total Out-of-Pocket Disbursements	$ 48,098.22

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 2 roundtrip tickets between Los Angeles, CA and New York, NY
- 2 one-way tickets between St. Louis, MO and Los Angeles, CA
- 2 one-way tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Philadelphia, PA and Los Angeles, CA
- 1 roundtrip ticket between Chicago, IL and Los Angeles, CA
- 1 roundtrip ticket between Chicago, IL and San Diego, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between Oakland, CA and Los Angeles, CA
- 1 one-way ticket between Philadelphia, PA and Los Angeles, CA
- 1 one-way ticket between Philadelphia, PA and San Diego, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 79 nights of hotel accommodations in New York, NY (54 nights), San Diego, CA (15 nights) and Los Angeles, CA (10 nights) for 9 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $386.25 per night, including applicable taxes. Before taxes, the New York rate ranged between $309.00 and $345.00 per night. In Los Angeles, CA, the average rate was $169.86 per night including applicable taxes. Before taxes the rate ranged between $149.00 and $169.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 88 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.52 ($5,238.08 ÷ 88).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel include costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents for the weeks ending February 21, and March 3, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

April 19, 2006

Matter No. 0005948-0002
Invoice No. 1311628

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From March 25, 2006 through April 7, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	2.00 hrs @ $ 750.00 per hour	1,500.00	
Troy Dahlberg	59.50 hrs @ $ 450.00 per hour	26,775.00	
David Cogan	57.25 hrs @ $ 350.00 per hour	20,037.50	
La Tanya Squires	7.00 hrs @ $ 250.00 per hour	1,750.00	
Paul Donato	103.75 hrs @ $ 300.00 per hour	31,125.00	
David Fielder	25.00 hrs @ $ 350.00 per hour	8,750.00	
Cory Martin	2.00 hrs @ $ 300.00 per hour	600.00	
Michael Shanahan	99.00 hrs @ $ 300.00 per hour	29,700.00	
Jennifer Arnini	145.50 hrs @ $ 350.00 per hour	50,925.00	
Jeffrey Klein	131.90 hrs @ $ 350.00 per hour	46,165.00	
Rachel Laybourn	136.80 hrs @ $ 250.00 per hour	34,200.00	
Mark Lubin	56.00 hrs @ $ 350.00 per hour	19,600.00	
Jenny Dominguez	129.50 hrs @ $ 350.00 per hour	45,325.00	
Rex Homme	48.00 hrs @ $ 350.00 per hour	16,800.00	
Lisa Han	66.00 hrs @ $ 300.00 per hour	19,800.00	
Bill Knoedelseder	4.00 hrs @ $ 350.00 per hour	1,400.00	
Harold C. Nuoffer	93.50 hrs @ $ 300.00 per hour	28,050.00	
Jason Thomas Wright	113.00 hrs @ $ 250.00 per hour	28,250.00	
Morgan Brazil	101.25 hrs @ $ 250.00 per hour	25,312.50	
David Callaghan	100.00 hrs @ $ 400.00 per hour	40,000.00	
Katherine Fulson-Woytek	10.00 hrs @ $ 250.00 per hour	2,500.00	
William Martin	11.50 hrs @ $ 250.00 per hour	2,875.00	
Arthur Levitt	12.50 hrs @ $ 900.00 per hour	11,250.00	
			$ 492,690.00
			(See Schedule A)
Out-of-Pocket Disbursements			64,486.78
			(See Schedule B)
Total Due:			$ 557,176.78

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	39,525.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	8,190.00
13)	Perform accounting analysis related to investigative workplan.	85,475.00
14)	Perform electronic forensic procedures and analyses.	13,725.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	345,775.00
	Total Professional Fees	$492,690.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 14,453.43
T&E - Ground Transportation[2]	3,209.69
T&E - Hotel Charges[3]	31,078.15
T&E – Meals[4]	6,120.00
T&E – Mileage Reimbursement[5]	184.69
Miscellaneous & Telephone	951.88
Electronic Research	-
Postage & Courier	173.04
Temporary Personnel[6]	3,863.59
Reproduction Expense	4,452.31
Total Out-of-Pocket Disbursements	$ 64,486.78

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 5 roundtrip tickets between Los Angeles, CA and New York, NY
- 5 roundtrip tickets between Chicago, IL and New York, NY
- 5 one-way tickets between Los Angeles, CA and New York, NY
- 2 one-way tickets between Newark, NJ and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between Chicago, IL and New York, NY

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 90 nights of hotel accommodations in New York, NY (73 nights), San Diego, CA (4 nights) and Los Angeles, CA (13 nights) for 12 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $382.34 per night, including applicable taxes. Before taxes, the New York rate ranged between $308.10 and $369.00 per night. In Los Angeles, CA, the average rate was $185.82 per night including applicable taxes. Before taxes the rate ranged between $149.00 and $169.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 102 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($6,120.00 ÷ 102).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel include costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist in the review of City email and electronic documents for the weeks ending February 24, March 10, and March 24, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

April 27, 2006

Matter No. 0005948-0002
Invoice No. 1311649

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From April 8, 2006 through April 21, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	29.25 hrs @ $ 750.00 per hour	21,937.50	
Troy Dahlberg	53.00 hrs @ $ 450.00 per hour	23,850.00	
David Shapiro	38.00 hrs @ $ 300.00 per hour	11,400.00	
David Cogan	28.25 hrs @ $ 350.00 per hour	9,887.50	
Laura Singer	7.00 hrs @ $ 350.00 per hour	2,450.00	
Paul Donato	54.50 hrs @ $ 300.00 per hour	16,350.00	
David Fielder	26.00 hrs @ $ 350.00 per hour	9,100.00	
Michael Shanahan	94.00 hrs @ $ 300.00 per hour	28,200.00	
Jennifer Arnini	134.00 hrs @ $ 350.00 per hour	46,900.00	
Jeffrey Klein	116.70 hrs @ $ 350.00 per hour	40,845.00	
Rachel Laybourn	130.50 hrs @ $ 250.00 per hour	32,625.00	
Mark Lubin	22.50 hrs @ $ 350.00 per hour	7,875.00	
Jenny Dominguez	112.75 hrs @ $ 350.00 per hour	39,462.50	
Rex Homme	5.00 hrs @ $ 350.00 per hour	1,750.00	
Lisa Han	92.50 hrs @ $ 300.00 per hour	27,750.00	
Harold C. Nuoffer	56.00 hrs @ $ 300.00 per hour	16,800.00	
Jason Thomas Wright	88.00 hrs @ $ 250.00 per hour	22,000.00	
T. Kellner	9.25 hrs @ $ 350.00 per hour	3,237.50	
David Callaghan	110.00 hrs @ $ 400.00 per hour	44,000.00	
Katherine Fulson-Woytek	3.50 hrs @ $ 250.00 per hour	875.00	
William Martin	2.00 hrs @ $ 250.00 per hour	500.00	
Arthur Levitt	5.50 hrs @ $ 900.00 per hour	4,950.00	
			$ 412,745.00
			(See Schedule A)
Out-of-Pocket Disbursements			43,161.85
			(See Schedule B)
Total Due:			$ 455,906.85

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa St.
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	48,037.50
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	9,125.00
13)	Perform accounting analysis related to investigative workplan.	48,162.50
14)	Perform electronic forensic procedures and analyses.	18,685.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	256,897.50
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	31,837.50
	Total Professional Fees	$ 412,745.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 13,529.11
T&E - Ground Transportation[2]	2,377.84
T&E - Hotel Charges[3]	19,675.75
T&E – Meals[4]	3,960.00
T&E – Mileage Reimbursement[5]	128.36
Miscellaneous & Telephone	935.88
Electronic Research	74.35
Postage & Courier	888.82
Temporary Personnel	-
Office Supplies	1,591.74
Total Out-of-Pocket Disbursements	$ 43,161.85

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 4 roundtrip tickets between Los Angeles, CA and New York, NY
- 3 roundtrip tickets between Philadelphia, PA and Los Angeles, CA
- 6 one-way tickets between Los Angeles, CA and New York, NY
- 3 one-way tickets between Nashville, TN and Burbank, CA
- 1 one-way tickets between Cape Girardeau, MO and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 58 nights of hotel accommodations in New York, NY (45 nights) and Los Angeles, CA (13 nights) for 8 professionals. The rate in New York averaged $388.38 per night, including applicable taxes. Before taxes, the New York rate ranged between $299.00 and $369.00 per night. In Los Angeles, CA, the average rate was $169.13 per night including applicable taxes. Before taxes the rate ranged between $139.00 and $169.30.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 66 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($3,960.00 ÷ 66).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

May 18, 2006

Matter No. 0005948-0002
Invoice No. 1311679

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From April 22, 2006 through May 5, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	16.00 hrs @ $ 750.00 per hour	12,000.00	
Troy Dahlberg	81.50 hrs @ $ 450.00 per hour	36,675.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
David Fielder	52.00 hrs @ $ 350.00 per hour	18,200.00	
Pavel Pribylovskiy	45.00 hrs @ $ 300.00 per hour	13,500.00	
Michael Shanahan	103.00 hrs @ $ 300.00 per hour	30,900.00	
Jennifer Arnini	95.50 hrs @ $ 350.00 per hour	33,425.00	
Jeffrey Klein	102.30 hrs @ $ 350.00 per hour	35,805.00	
Rachel Laybourn	108.50 hrs @ $ 250.00 per hour	27,125.00	
Jenny Dominguez	91.75 hrs @ $ 350.00 per hour	32,112.50	
Lisa Han	64.00 hrs @ $ 300.00 per hour	19,200.00	
Harold C. Nuoffer	101.00 hrs @ $ 300.00 per hour	30,300.00	
Thomas Kellner	5.25 hrs @ $ 350.00 per hour	1,837.50	
David Callaghan	104.00 hrs @ $ 400.00 per hour	41,600.00	
Arthur Levitt	2.00 hrs @ $ 900.00 per hour	1,800.00	
			$ 335,267.50
			(See Schedule A)
Out-of-Pocket Disbursements			33,604.71
			(See Schedule B)
Total Due:			$ 368,872.21

okay to pay
JVT
6/6/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g.,,Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	37,875.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	21,555.00
13)	Perform accounting analysis related to investigative workplan.	76,600.00
14)	Perform electronic forensic procedures and analyses.	30,870.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	32,262.50
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	53,907.50
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	82,197.50
	Total Professional Fees	$ 335,267.50

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 3,819.61
T&E - Ground Transportation[2]	4,524.84
T&E - Hotel Charges[3]	6,537.48
T&E – Meals[4]	1,980.00
T&E – Mileage Reimbursement[5]	325.65
Miscellaneous & Telephone	247.29
Reproduction	4,479.11
Postage & Courier	99.48
Temporary Personnel[6]	11,591.25
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 33,604.71

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Philadelphia, PA and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between Cape Girardeau, MO and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 28 nights of hotel accommodations in New York, NY (7 nights), San Diego, CA (4 nights) and Los Angeles, CA (17 nights) for 5 professionals. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $402.36 per night, including applicable taxes. Before taxes, the New York rate ranged between $329.00 and $369.00 per night. In Los Angeles, CA, the average rate was $173.47 per night including applicable taxes. Before taxes the rate ranged between $129.00 and $178.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 33 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($1,980.00 ÷ 33).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel include costs for temporary employees engaged through Core Staffing Services, Inc. to assist in the review of City email and electronic documents for the weeks ending March 24 & 31, and April 7 & 14.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

May 26, 2006

Matter No. 0005948-0002
Invoice No. 1311698

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From May 6, 2006 through May 19, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	21.00 hrs @ $ 750.00 per hour	15,750.00
Troy Dahlberg	77.00 hrs @ $ 450.00 per hour	34,650.00
David Cogan	1.00 hrs @ $ 350.00 per hour	350.00
David Fielder	31.00 hrs @ $ 350.00 per hour	10,850.00
Michael Shanahan	56.00 hrs @ $ 300.00 per hour	16,800.00
Jennifer Arnini	132.00 hrs @ $ 350.00 per hour	46,200.00
Jeffrey Klein	96.40 hrs @ $ 350.00 per hour	33,740.00
Rachel Laybourn	142.50 hrs @ $ 250.00 per hour	35,625.00
Jenny Dominguez	123.50 hrs @ $ 350.00 per hour	43,225.00
Lisa Han	116.50 hrs @ $ 300.00 per hour	34,950.00
Harold C. Nuoffer	122.60 hrs @ $ 300.00 per hour	36,780.00
Thomas Kellner	2.25 hrs @ $ 350.00 per hour	787.50
David Callaghan	109.00 hrs @ $ 400.00 per hour	43,600.00
Arthur Levitt	10.50 hrs @ $ 900.00 per hour	9,450.00
		$ 362,757.50
		(See Schedule A)

Out-of-Pocket Disbursements 22,431.17
(See Schedule B)

Total Due: $ 385,188.67

okay to pay
LW
6/7/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	59,850.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	14,710.00
13)	Perform accounting analysis related to investigative workplan.	52,437.50
14)	Perform electronic forensic procedures and analyses.	22,225.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	67,225.00
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	1,600.00
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	144,710.00
	Total Professional Fees	$ 362,757.50

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 11,478.30
T&E - Ground Transportation[2]	1,145.80
T&E - Hotel Charges[3]	5,767.91
T&E – Meals[4]	1,740.00
T&E – Mileage Reimbursement[5]	489.16
Miscellaneous & Telephone	234.80
Reproduction	-
Postage & Courier	1,575.20
Temporary Personnel	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 22,431.17

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 6 roundtrip tickets between Los Angeles, CA and New York, NY

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 21 nights of hotel accommodations in New York, NY (9 nights), San Diego, CA (3 nights) and Los Angeles, CA (9 nights) for 5 professionals. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $394.28 per night, including applicable taxes. Before taxes, the New York rate ranged between $297.00 and $369.00 per night. In Los Angeles, CA, the average rate was $182.26 per night including applicable taxes. Before taxes the rate ranged between $127.00 and $169.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 29 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($1,740.00 ÷ 29).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krolliworldwide.com

June 20, 2006

Matter No. 0005948-0002
Invoice No. 1311750

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From May 20, 2006 through June 2, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	10.00 hrs @ $ 750.00 per hour	7,500.00	
Troy Dahlberg	46.50 hrs @ $ 450.00 per hour	20,925.00	
Doug Farrow	9.00 hrs @ $ 450.00 per hour	4,050.00	
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50	
David Fielder	15.00 hrs @ $ 350.00 per hour	5,250.00	
Jennifer Arnini	96.50 hrs @ $ 350.00 per hour	33,775.00	
Jeffrey Klein	84.30 hrs @ $ 350.00 per hour	29,505.00	
Rachel Laybourn	96.00 hrs @ $ 250.00 per hour	24,000.00	
Jenny Dominguez	92.50 hrs @ $ 350.00 per hour	32,375.00	
Lisa Han	81.00 hrs @ $ 300.00 per hour	24,300.00	
Harold C. Nuoffer	61.50 hrs @ $ 300.00 per hour	18,450.00	
David Callaghan	114.00 hrs @ $ 400.00 per hour	45,600.00	
Arthur Levitt	3.00 hrs @ $ 900.00 per hour	2,700.00	
			$ 248,867.50
			(See Schedule A)
Out-of-Pocket Disbursements			6,613.46
			(See Schedule B)
Total Due:			$ 255,480.96

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	31,125.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	31,650.00
14)	Perform electronic forensic procedures and analyses.	7,875.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	27,065.00
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	3,605.00
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	111,122.50
19)	Prepare investigative report.	36,425.00
	Total Professional Fees	$ 248,867.50

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 813.60
T&E - Ground Transportation[2]	86.00
T&E - Hotel Charges[3]	2,033.54
T&E – Meals[4]	125.00
T&E – Mileage Reimbursement[5]	395.23
Miscellaneous & Telephone	50.00
Electronic Research	-
Postage & Courier	1,537.54
Temporary Personnel[6]	338.14
Reproduction Expense	1,234.41
Total Out-of-Pocket Disbursements	$ 6,613.46

[1] Air Transportation includes the following economy class ticket (which might be a full-fare rate):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[3] Hotel Charges include costs for 6 nights of hotel accommodations in New York, NY (2 nights) and Los Angeles, CA (4 nights) for 2 professionals. The rate in New York averaged $354.76 per night, including applicable taxes. Before taxes, the New York rate was approximately $300.00 per night. In Los Angeles, CA, the average rate was $293.84 per night, including applicable taxes. Before taxes the rate ranged between $219.00 and $269.00 per night. Additionally, meal costs of $148.67 are included in Hotel Charges.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY and Los Angeles, CA. Traveling professionals spent approximately 8 days out of town during this billing period. This equates to an average meal cost per day of approximately $34.21 ($273.67 ÷ 8), including meal costs of $148.67 that were included in Hotel Charges.

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Temporary Personnel includes costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents for the week ending Saturday, May 13, 2006.

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213-443-6090
fax: 213-443-6050

www.krollworldwide.com

July 6, 2006

Matter No. 0005948-0002
Invoice No. 1311771

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From June 3, 2006 through June 16, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	29.00 hrs @ $ 750.00 per hour	21,750.00	
Troy Dahlberg	65.00 hrs @ $ 450.00 per hour	29,250.00	
Doug Farrow	6.00 hrs @ $ 450.00 per hour	2,700.00	
Jennifer Arnini	135.00 hrs @ $ 350.00 per hour	47,250.00	
Jeffrey Klein	114.90 hrs @ $ 350.00 per hour	40,215.00	
Rachel Laybourn	135.05 hrs @ $ 250.00 per hour	33,762.50	
Jenny Dominguez	126.00 hrs @ $ 350.00 per hour	44,100.00	
Lisa Han	50.00 hrs @ $ 300.00 per hour	15,000.00	
Harold C. Nuoffer	10.00 hrs @ $ 300.00 per hour	3,000.00	
Tomas Kellner	5.75 hrs @ $ 350.00 per hour	2,012.50	
David Callaghan	127.00 hrs @ $ 400.00 per hour	50,800.00	
Arthur Levitt	20.00 hrs @ $ 900.00 per hour	18,000.00	
			$ 307,840.00
			(See Schedule A)
Out-of-Pocket Disbursements			11,033.19
			(See Schedule B)
Total Due:			$ 318,873.19

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa St.
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	69,000.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	-
13)	Perform accounting analysis related to investigative workplan.	7,700.00
14)	Perform electronic forensic procedures and analyses.	4,900.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	5,580.00
17)	Prepare for and conduct interviews of key City employees, City Council members, other elected officials, and other key individuals.	-
18)	Analyze facts contained in emails, documents, and other records pursuant to ongoing investigation.	77,832.50
19)	Prepare investigative report.	142,827.50
	Total Professional Fees	$ 307,840.00

Schedule B

Out-of-Pocket Disbursements

T&E - Ground Transportation[1]	$ 20.00
T&E - Hotel Charges[2]	843.70
T&E – Meals[3]	180.00
Miscellaneous & Telephone	5.00
Postage & Courier	708.93
Temporary Personnel[4]	4,199.62
Reproduction Expense[5]	5,075.94
Total Out-of-Pocket Disbursements	$ 11,033.19

[1] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service, and toll roads.

[2] Hotel Charges include costs for 2 nights of hotel accommodations in New York, NY for 1 professional. The rate in New York averaged $421.85 per night, including applicable taxes. Before taxes, the New York rate was $369.00 per night.

[3] Meal costs include direct out-of-pocket expenses on meals for a professional traveling to New York, NY. The traveling professional spent approximately 3 days out of town during this billing period. This equates to an average meal cost per day of approximately $60.00 ($180.00 ÷ 3).

[4] Temporary Personnel includes costs for temporary employees engaged through AppleOne Employment Services and Core Staffing Services, Inc. to assist with administrative tasks directly related to this project for the weeks ending May 13, 2006.

[5] Reproduction Expense includes reproduction costs directly related to this project.

Exhibit 108

From: "Geoff Bogie" <GBogie@eedinc.com>
To: "Karen DeCrescenzo" <KDeCrescenzo@sandiego.gov>
Date: 5/24/2006 12:26:08 PM
Subject: RE: San Diego (894-01) Signed Contracts

Karen,

EED does capture reviewer annotations that a reviewer makes. However, EED does not run a tool that monitors when a reviewer logs in or out. So all we can provide is when a reviewer makes an annotation and can provide that as first annotation date/time, last annotation date/time for any time period.

In this case, the only reviewer that is assigned to the sandiego1-review Discovery Partner site is Jeff Klein and he has saved any annotations to the site (meaning that he may have searched the data set, but since he did not make any annotative calls and save them there is no record of such activity).

Regards,

Geoff Bogie | Manager - Client Services | Electronic Evidence Discovery, Inc.
www.eedinc.com | phone: 646.227.9506 | cell: 206.972.8908 | fax: 646.227.9512

-----Original Message-----
From: Karen DeCrescenzo [mailto:KDeCrescenzo@sandiego.gov]
Sent: Wednesday, May 24, 2006 2:44 PM
To: Geoff Bogie
Cc: Jayne Cantwell
Subject: RE: San Diego (894-01) Signed Contracts

Thanks Geoff. I need to get this information as quickly as possible.
Thanks for your help.
karen

Karen DeCrescenzo
Principal Paralegal/Legal Intern Coordinator
Office of the San Diego City Attorney
Civil Division
1200 Third Avenue, Suite 1620
San Diego, CA 92101
(619) 533-5887
(619) 236-7215 FAX
KDeCrescenzo@sandiego.gov

>>> "Geoff Bogie" <GBogie@eedinc.com> 5/23/2006 6:14 PM >>>
Karen,

I will see what information we have in the database.

Regards,

--Geoff

From: Karen DeCrescenzo [mailto:KDeCrescenzo@sandiego.gov]
Sent: Tue 5/23/2006 2:51 PM
To: Geoff Bogie
Subject: Re: San Diego (894-01) Signed Contracts

Geoff:

I wanted to follow up on a matter that came up during our conversation today. When I asked you about Kroll's usage of the database, you mentioned that there was one user, Jeffrey Klein. Can you tell me if Mr. Klein has logged into the database, and anything about his usage in terms of amount of time spent in the database? I believe you told me that there was only one criteria that Kroll requested, and that was "reviewed". Thanks for your assistance.

Karen DeCrescenzo
Principal Paralegal/Legal Intern Coordinator
Office of the San Diego City Attorney
Civil Division
1200 Third Avenue, Suite 1620
San Diego, CA 92101
(619) 533-5887
(619) 236-7215 FAX
KDeCrescenzo@sandiego.gov

CC: "Jayne Cantwell" <jcantwell@eedinc.com>

Exhibit 109

From: P. Lamont Ewell
To: LynnETurne@aol.com
Date: 3/3/2005 8:01:29 AM
Subject: Re: Resolution/Letter for Council

Lynn,
How do you feel about my arranging a meeting with you and the Editor of the Tribune for Monday since you are here? It may help with the next days editorial, which will surely follow given the request of Council to sign the agreement.
Your thoughts please.
Lamont

>>> <LynnETurne@aol.com> 03/03/05 07:43AM >>>

Attached is a draft of a letter to council for your comments. I think this letter encompasses all perspectives I heard from everyone at the meeting and will achieve all our goals and objectives, including sending the appropriate message to the SEC.

I want to thank everyone for all your help the last couple of days.

Lynn

Exhibit 110

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, MARCH 8, 2005
AT 9:00 A.M.
SAN DIEGO CONCOURSE
AT GOLDEN HALL

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ITEM-S404: Audit Committee of the City of San Diego

(Citywide)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-933) ADOPTED AS RESOLUTION R-300203

In order for the City to achieve the full benefit of the work of Kroll Associates, Inc. under an agreement with the City dated February 10, 2005, the City Council affirms to the City's outside Auditor, KPMG, and all interested parties that, for the purposes described in such agreement, Mr. Lynn Turner, Mr. Troy Dahlberg, and Mr. Arthur Levitt are serving as the Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745).

Subitem-B: (R-2005-933) ADOPTED AND INCORPORATED IN RESOLUTION R-300203 (SUBITEM-A)

In order for the City to expedite the work of the Audit Committee and facilitate the release of the audit letter by the City's independent auditor as well as to demonstrate the continued cooperation by the City of San Diego with the inquiries of the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City Council approves of the execution of a letter of cooperation.

FILE LOCATION: Subitems A & B: MEET

COUNCIL ACTION: (Time duration: 10:38 a.m. – 11:30 a.m.)

MOTION BY PETERS TO ADOPT THE RESOLUTION TO CREATE THE AUDIT COMMITTEE, AND AS PART OF THAT ACTION TO AGREE TO THE EXECUTION OF THE LETTER OF COOPERATION. Second by Madaffer.

Vote taken to appoint the Audit Committee: Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

Vote taken to sign the Letter of Cooperation proposed by Mr. Turner: Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 7:13 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 7:13 p.m.)

(R-2005-933)

RESOLUTION NUMBER R- 300203

ADOPTED ON MAR 0 8 2005

WHEREAS, in February of 2004, the Securities and Exchange Commission [SEC] and the U. S. Attorney's Office, informed the City that they were undertaking investigations into certain financial disclosure practices by the City, which investigations are on-going; and

WHEREAS, early in 2004 the City retained the services of the law firm Vinson & Elkins LLP [V&E] to conduct an investigation and provide a report on disclosure practices of the City from 1996 to the present, and V&E completed its investigation and issued its report in September of 2004; and

WHEREAS, in the spring of 2004 the City retained the services of the accounting firm KPMG to perform the outside audit of the City's FY 2003 financial statements; and

WHEREAS, in furtherance of the FY 2003 audit, the City has undertaken two separate further investigations; one by V&E and one by the City Attorney; and

WHEREAS, the City Attorney issued a First Interim Report on January 14, 2005, and a Second Interim Report on February 9, 2005, and V&E is expected to issue a report on its further investigation; and

WHEREAS, KPMG has not yet issued its audit opinion for the City's FY 2003 financial statements; and

WHEREAS, the SEC is continuing its investigation; and

WHEREAS, on February 14, 2005, the City retained the services of Mr. Lynn Turner and Kroll Associates, Inc. to perform certain services in connection with these matters; and

WHEREAS, it is now necessary and appropriate for the City to take additional steps in furtherance of obtaining the audit opinion for the FY 2003 financial statements and in furtherance or resolving the SEC's investigation; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that in order for the City to achieve the full benefit of the work of Kroll Associates, Inc. under an agreement with the City dated February 10, 2005, the City Council affirms to the City's outside auditor, KPMG, and all interested parties that, for the purposes described in such agreement, Mr. Lynn Turner, Mr. Troy Dahlberg, and Mr. Arthur Levitt are serving as the Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745).

BE IT FURTHER RESOLVED, that in order for the City to expedite the work of the Audit Committee and facilitate the release of the audit letter by KPMG, the City's independent auditor, as well as to demonstrate the continued cooperation by the City of San Diego with the inquiries of the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City Council approves of the execution of the letter attached hereto.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Leslie J. Girard
Assistant City Attorney

LJG:km
3/04/05
Or.Dept:City Manager
R-2005-933

[Letterhead of the City of San Diego]

March 7, 2005

An Open Letter to the Citizens of San Diego:

We, the undersigned Mayor, City Attorney, City Manager and Members of the City Council recognize the importance to the welfare of the City of the issuance of opinions on the City's Combined Audited Financial Statements for 2003 and 2004 by the City's independent auditors.

In order to expedite the satisfactory conclusion of independent investigations intended to address concerns of the City's independent auditor and to demonstrate the City's intention to fully cooperate with ongoing investigations by the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City has entered into an agreement with Kroll Associates, Inc. Pursuant to that agreement, Mr. Arthur Levitt, former Chairman of the Securities and Exchange Commission, Mr. Lynn Turner, former Chief Accountant of the Securities and Exchange Commission, and Mr. Troy Dahlberg are serving as the independent *de facto* Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002. The Audit Committee will conduct a process through which it will receive and review all investigative work relating to the issuance of opinions for the City's Combined Audited Financial Statements for 2003 and 2004 and present conclusions thereon to the City's independent auditors, the City Council, and the City Attorney.

Accordingly, we agree with each other and pledge to you, our full cooperation and non-interference with the investigation and work of the Audit Committee until its final completion.

We understand that this means that the appropriate means of making any accusation of illegal conduct relating to the City's disclosure obligations, conduct of pension matters, or the City's financial condition is through the Audit Committee, which will appropriately evaluate and promptly report such matters to the regulators.

We recognize this process as one that is well understood by financial markets, the auditing profession, the SEC and the Department of Justice. We also understand that, in order for this process to be effective, we must assure its complete independence and our non-interference, allowing it to run its course.

We understand that our commitment and pledge requires us to refrain from the personal criticism and accusation that prompted the San Diego Union Tribune Editorial "City Hall Conflict," published on February 24, 2005, whether it be in this Chamber, the press conferences referred to in the editorial, or elsewhere.

And we understand the importance that our honoring of our commitment and pledge made to you in this letter has to the restoration of the City of San Diego's well being, financial reputation, and position of "best in the class."

We agree to support a 120-day stay of the litigation involving SDCERS v. AGUIRRE ET AL and SAN DIEGO COUNTY TAXPAYERS ASSOCIATION v. CITY of SAN DIEGO, ET AL., subject to satisfactory language being agreed to by the Parties no later than 12:00 noon, March 14, 2005.

Sincerely,

_____	_____
Dick Murphy, Mayor	**Michael Aguirre, City Attorney**
_____	_____
Scott Peters, District 1	**Brian Maienschein, District 5**
_____	_____
Michael Zucchet, District 2	**Donna Frye, District 6**
_____	_____
Toni Atkins, District 3	**Jim Madaffer, District 7**
_____	_____
Tony Young, District 4	**Ralph Inzunza, District 8**
_____	
P. Lamont Ewell, City Manager	

Passed and adopted by the Council of The City of San Diego on MAR 0 8 2005, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	☑	☐	☐	☐
Michael Zucchet	☑	☐	☐	☐
Toni Atkins	☑	☐	☐	☐
Anthony Young	☐	☐	☑	☐
Brian Maienschein	☑	☐	☐	☐
Donna Frye	☐	☑	☐	☐
Jim Madaffer	☑	☐	☐	☐
Ralph Inzunza	☑	☐	☐	☐
Mayor Dick Murphy	☑	☐	☐	☐

AUTHENTICATED BY:

DICK MURPHY,
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

(Seal)

By Maxwell E. Kittleson, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-300203 Adopted MAR 0 8 2005

Exhibit 111

From: P. Lamont Ewell
To: LynnETurne@aol.com; tdahlberg@Krollzolfocooper.com
Date: 4/12/2005 8:01:55 AM
Subject: Re: Update

Thanks Lynne. Do you have a problem with me discusses the importance of taking each concern of KPMG and working through the issues in a comprehensive fashion before finalizing a report?

>>> <LynnETurne@aol.com> 04/11/05 05:15PM >>>
I did have a call today with Bill Osborn updating him on our progress - I did tell him this was not going to be done quickly as he was asking for timing. I said we were committed to the thorough and comprehensive investigation that KPMG would require prior to signing off. Bill Kettle was on the other line and Bill was going to have him call me when I return from DC>

Lynn

Exhibit 112

From: <LynnETurne@aol.com>
To: <PEwell@sandiego.gov>
Date: 4/22/2005 4:10:55 PM
Subject: Re: Just got off the line with Kittle

he seemed to understand what was going

Exhibit 113

From: <LynnETurne@aol.com>
To: <PEwell@sandiego.gov>
Date: 4/23/2005 11:20:45 AM
Subject: Re: Horribly Misquoted

I know some of the people at Moody's in the corporate governance area very well including a Ken Bertsch and Greg Jonas. I would be happy to take a call from Moody's.

Question - I heard our "talking points" may have been sent out to a reporter. I would like to confirm whether or not that occurred as they were to be talking points as opposed to a press release. At this time, given the time I have spent with the press, I continue to be disinclined to do a press release. Since we have already discussed where we are with them, I dont know what sending them a piece a paper saying the same thing would do. But I am always open to discussing it and hearing any new additional reasoning.

In addition to talking to the press, I have also alerted the Chamber as to current events as well as the two council members who are our contacts (as you saw in the email).

Lynn

CC: <tdahlberg@Krollzolfocooper.com>

Exhibit 114

Q&A: Lynn Turner, Arthur Levitt, Benito Romano

May 15, 2005

Three members of an audit team the city of San Diego hired in February met with the Union-Tribune's editorial board May 12. The on-the-record session was requested by the audit team to provide an update on its work. While the team hopes to finish its work before year-end, it says it is hampered by the city pension board's refusal to turn over key documents.

Levitt: I'm feeling new to the San Diego scene and I've spent the better part of the past few weeks on reading everything that's been written about a city that I thought was, you know, one of the most beautiful and prosperous, culturally accomplished and wonderful cities that I'd ever spent time in. So, I got to know the city, I thought, and then I read this incredible series of stories about what was going on here. I am concerned at the early stages of our activity of gaining great public exposure to a process that, by its very nature, has to have a certain measure of security because it is an investigation. I was attracted to this project because I have seen other cities that go through financial tribulation and I think if we can help bring about a resolution of these problems and create an environment where there is a greater measure of disclosure, we can help restore confidence and the financial integrity of the city. I think that confidence would appear to be sorely missing at this point in time. Lynn (Turner) and I have known one another and worked together at the SEC. The two of us battled the accounting profession for nearly five years with a fair measure of success. The goal here very simply is to, as quickly as possible, get KPMG to sign off on the audit and as quickly as possible means right away because the consequences to the city of not having that audit become increasingly grave as every week goes by. We have brought in Benito Romano, a former U.S. attorney in the City of New York, because we are an audit committee in effect and our independence is critical to KPMG's acceptance of what we represent. As good as many of the people in city government may be, they lack the aura of independence that KPMG must demand at this point in time. So, that's our mission. To the extent to which it is possible, we will try very hard not to engage in findings through the press. At the same time, we want to be open and available about everything that we do and our present plan is to convene on a regular basis and answer questions of any kind in terms of our progress.

Question: Where does the audit committee stand? When might the investigation be completed? When might you be able to satisfy KPMG?

Levitt: We're early in the process obviously.

Turner: With the sum of the federal funding issues and all, it (completion of the investigation) can't get beyond the end of this year. We've already started reviewing the documentation evidence. V&E (Vinson & Elkins) has started to pull together

(what was) underlying their report. We've had a number of meetings with KPMG trying to narrow down as much as we can what's key and critical to them. Of course, (current City Attorney Michael) Aguirre has done his reports. We've asked him to provide us a list of all of his concerns and the documentation behind that, which we can then compare and reconcile to what (V&E) has when we get all their stuff pulled together. Then we can figure out if there are any areas of investigation that fulfill what KPMG is looking for that still needs to turn around and be addressed and looked at. What the auditor is going to be looking at, especially in this day and age, is has someone come in independent of the city ... gathered all the evidence or documentation where there's been allegations made, looked through it, and reached their own conclusions and opinions. What are those and are there any that can have an impact on the financial statements or need to be disclosed in the financial statements? As an auditor, you need to make sure you get your hands around ... what the SEC's asking for, look at what the U.S. attorney is asking for and see if all those documents have been turned over. And then either that the investigators or the auditors have had a chance to look through all those to see that the issue has been driven to the ground.

Have those documents been turned over? Have the subpoenas – some of them are a year old now – been complied with fully?

Levitt: I don't think we know yet.

Turner: You see documents keep coming in and additional document requests keep coming in from the law enforcement agencies. (Reading one document may produce a request for another.)

Did your associate not tell the City Council on Monday that the SEC and the U.S. Attorney's Office are not satisfied with the document production thus far? Do people need to be held accountable for the lack of compliance with the subpoenas?

Turner: Well, we know that the U.S. Attorney's Office is in a dispute with the Pension Board over the assertion of privilege. One of the things we have to do is to meet with them, now that we're organized, and to make sure that we understand that they are dissatisfied and with what respects they're dissatisfied. The failure to produce documents in response to a subpoena can be explainable because of the protocol or arrangements that were made with sequential rolling production, but they could also suggest something worse. We have to be mindful of the possibility that there's a gap in the production of those because there are facts that someone doesn't want to have to disclose. We are certain that that's going to be a concern of KPMG.

Have you had time to analyze the issues of the things that have occurred such as the so-called shredding day and the boxes of documents that were turned in late? Can you evaluate for us?

Turner: Not now. We have started to look at it in terms of what V&E has put

together and in talking to people, but in terms of evaluating it ... no. It's still too early on for that.

Would you elaborate on your remark that the consequences are increasingly grave as each week goes by?

Levitt: I'm thinking most pointedly about federal funding. At the end of this year it may become a real issue. Certainly, the city attorney recognizes the gravity of the situation.

Turner: When you take federal funds, in return for that Congress passes an act that said you've got to file certain financial reports with us and you've got to have all that subject to what's known as the Single Audit Act and what is now known as the General Accountability Office oversees that. And as you go out and pull funds down from whatever program it might be, then you have an obligation to have your audited financial statements done in accordance with auditing standards. So, if you start getting out beyond a time period where you're no longer filing, you're no longer current and there are deadlines on these programs and they are different deadlines for different programs for being able to have completed the Single Audit and have the financial statements filed with the federal government, then you run the risk of that they may all of a sudden start to cut off your federal funding.

We are about to enter fiscal '06, and we don't have an audit for fiscal '03, '04 or '05. How much time does the federal government allow before it says, 'OK, no audit, no money?

Turner: You would have to go through each of the specific OMB circulars.

Levitt: One of the worrisome things about San Diego situations when cities go into extremis – interestingly enough very often various opposing bodies band together in the community interest. When New York City came close to bankruptcy the unions and the business community worked together. The Financial Oversight Board was set up and they worked out a solution. Right now ... I see so many factions in this community at war with one another and it just doesn't seem to be the kind of united will to bring about a solution. I think it's essential that these oppositional factions understand that their salvation is only in working together on this rather than continuing the kind of strife that has characterized the community.

An additional appropriation of $2 million for the investigation implies that this could drag on forever or that this is about to enter a much more labor-intensive phase. Can you give us any guidance?

Levitt: I think this project calls for resolution by the end of the year. I don't know very much about whether it's a million or two million or exactly what the number is. I can tell you my motivation in requesting certain talent to be brought into this picture. It's very simply, KPMG appropriately called for independent study. And I was not about to be part of this unless I was satisfied that I had counsel of my own choosing.

Anyone on the committee must choose their own counsel and that's why I chose the individuals that I asked to be part of this team.

Turner: The answer is we are about to enter, and probably have actually gotten into, a more labor intensive phase. People are going to be spending more time, because we are getting right into the meat of everything. And we are starting to pursue things like the (issue of) privilege. It is very difficult for not only the public but just about everyone, including financially astute people to understand what all you go through on one of these investigations. You're going through e-mails and reading e-mails and you're interviewing people. And then when someone gives us documents, then you've got to go back and re-interview. The one thing you don't want to miss is the one e-mail that turns around and says, 'Here's who did what when' that blows it up. Typically, the SEC or the law enforcement agency starts interviewing the people at the bottom. And you get all the documents out of that. And they usually ... start to tell you everything. And then you can start working up the ladder to the three or four people at the top. But that process ... may very well take three to four years. We've got to be there by the end of the year. People have to cooperate with us to get there. We've got to have the pension board turn around and waive that privilege so we can make sure we get what we need there.

What are the chances of you actually convincing the pension board to waive attorney/client privilege?

Turner: First, the U.S. attorney has requested that. Seven of the members (of the pension board) are relatively new here. Hopefully, her staff can persuade them of why they need that information, so they change it. And of course, the SEC will probably follow on that as well. If they don't get that, then there is no question in my mind the U.S. attorney will take steps.

Are there ways around the privilege issue?

Romano: Without speaking for the U.S. attorney, yes, there are exceptions to the privilege and the judge can find that exceptions apply.

If the pension board ultimately does not waive the attorney-client privilege, can you complete your work? Can KPMG ever be satisfied? Will it certify the financial records?

Turner: It's hard to know because we don't know what's in the privileged communications or what impact it would have and what answers we might obtain by looking at the material. It is conceivable that as we get closer to circumscribing that information we may be left with a black hole, from which we can only infer one thing. If they were to refuse to waive privilege it makes it a much more difficult job to get done. But on the other hand, I also think that there's hope out there that through discussions and meetings we might have with the people at the pension board, as well as administrative staff, that we'll be able to lay out facts that would convince them that it would be in their best interests, as well as the best interests of the city, to turn

around and change that vote.

Has any of that happened yet?

Romano: Well, I would think the resolutions by the Chamber of Commerce and the City Council were both viewed by us as very positive. Keep in mind we don't have subpoena power. All of a sudden now people can start refusing to talk. I am hopeful that at the end of the day the pension board will comply with the request of the U.S. attorney.

What might the second report produce that the first one did not?

Turner: I encourage you to go look at the engagement letter, the contract that they have with the city. The second contract doesn't actually call for a report. The contract actually specifically states that there's only supposed to be a summary memorandum, not a report. In these investigations, some end up with reports and some don't. And it depends upon at the end of the day, quite frankly, what the people are going to use them need. And auditors very well might turn around and say just give us the work papers. And when you got into the second engagement letter, keeping in mind that it was driven by the fact that the city was trying to get to KPMG what they wanted. What KPMG is most interested in, from my perspective, is have all the issues been investigated, all the evidence brought to light? And then whatever remediation taken that is necessary including dealing with controls and processes and quite frankly people. So if they can get all that in that binder with the summary memo on top of it ... I suspect that's why that second engagement letter very well might have been written that way.

Are you starting from scratch in your investigation?

Turner: No. That's why we've gone back to D.C. once, why we're going to be going back to D.C. again in a couple weeks, to the extent that these people have already gone through and got documentation. And we can get all that and get it organized in succinct binders by topics and whatever. We don't want to have to go back and re-pull everyone's hard drives.

So you're actually going for source documents? You're not going for what V&E finally concluded about the content of those documents?

Turner: Correct.

Was the V&E report worth the taxpayers' investment? It was not viewed by KPMG as credible.

Turner: I would encourage you again though, and I found Councilwoman (Donna) Frye on Tuesday night asking a couple of what I consider to be good questions. And that is what was that original arrangement? And when you go back and look at the actual letter, where the original arrangement was made with the city and actually

signed by one of the representatives of the city attorney, the first letter is signed by the representative of the City Attorney's Office. The second letter is signed by the city manager. But in the first letter, OK, when you go back and look at it, the scope of the engagement is to, the first sentence I think says represent the city before, in the investigations by the SEC and the U.S. attorney. They principally had done the SEC and not really the U.S. attorney.

Levitt: Let me ask you a question. Who do you think calls the shots in the city?

Well, you put your finger on the problem.

What might we anticipate from the SEC as this process winds down?

Turner: I think it depends a lot on the willingness in the city to cooperate. I think if the city cooperatives, the SEC has a public responsibility as a government agency, it certainly doesn't want to add to the city's problems. But the caveat is cooperation.

There has been a suggestion that the second summary report will be delivered orally but not in writing. As taxpayers, should we place less credibility in something that costs millions and yet has not been produced in writing?

Turner: I think we have to look at the totality of the expenditure and the product. I think if I were you I'd look at it in terms of did this exercise move the process along and if so, how much did it move it along? I don't think that I would be as concerned about whether it was in writing or not. Had the city gone down the road of an independent audit committee initially, probably we would've saved some time in the process. Was the process a total waste? No, I think absolutely not. It sounds like maybe the signals changed a number of times during the process. The mandate was different. And I asked that question at V&E. To me it sounded like it was some fuzziness in terms of the mandate, some change in the mandate.

During the process?

Turner: During the process. Let me come back to a previous question. If I were a citizen here and going through this, my, whether or not I got my money's worth would depend upon whether or not what was created, what allowed this to happen got fixed. If at the end of the day you get the right controls and processes in, if people need to be dealt with, people need to be dealt with, and competent people brought in to make sure it doesn't occur again. Because this is always done by people. So my focus would be on, at the end of the day as a citizen, did I get the controls and processes fixed that were all broken? Was the investigation done so that all the things got fixed? You've got conflicts here. You've got competency issues here. You've got probably some lack of some independence type issues here. Did they get rectified and the whole system fixed in a way so that it's fixed going forward and isn't allowed to repeat? That tells me whether or not I as a citizen got a return on my dollars. You're underfunded by what – $1.2, $1.5 billion depending on which number. So that's

costing the city a phenomenal amount and at the end of the day, whatever money you end up spending, if you can prevent that from happening again, then you probably got good return on your money.

Isn't it clear that SEC regulations were violated on the face by the failure to report the status of the pension fund?

Romano: I grant you that there's evidence of error. And the question is whether the error was done negligently or intentionally. And there's different degrees of severity then in terms of the action the SEC might take. But also once you start getting up into this intentional fraud area, that is a very high hurdle for the SEC to prove in court. When you're talking about intentional misconduct, you're talking about removing individuals and how far is the integrity of the process compromised because of the presence of individuals and certain key decision points. So it's very important if you can to come to some conclusions about those, if you're going to be of any help.

Whether negligence or intentional, can these acts constitute a firing offense?

Romano: Oh, from the standpoint of disciplining employees, you don't use the same standard in making any decisions as you would use in a court of law.

Turner: From an employer perspective, there's all sorts of reasons you might relieve an employee.

What would you like to see in a new mayor?

Levitt: I'd like to see the new mayor have an incredible laser like focus on the importance of doing those things that will most expeditiously get a clean audit report, and that takes in a lot of things. It's got to be a person of great self-confidence, a kind of integrity that will enable the public to accept touch decisions and the communication skills to be able to persuade oppositional parties to make the kind of community sacrifice that inevitably resolves these municipal problems.

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UNION-TRIBUNE EDITORIAL

Aguirre's gambit

City attorney tries to scuttle audit panel

August 11, 2005

"No man goes so high as he who knows not where he is going."

–Oliver Cromwell

By trying to scuttle the essential work of the city's independent investigative panel, City Attorney Mike Aguirre has undermined San Diego's vital interests. Had he succeeded in persuading even two members of the City Council to go along with his reckless gambit, the damage would have been incalculable.

During his early months in office, Aguirre played an invaluable role in uncovering wrongdoing at City Hall. Today, however, his obstructionist stance threatens to wreck San Diego's hopeful progress toward financial recovery.

The city attorney ought to be joining constructively with council members and the city's highly respected consultants to craft solutions. Instead, he engaged this week in an appallingly petty assault on the very experts who are trying to guide San Diego out of the swamp.

The indispensable key to getting the city back on its feet financially is the three-member audit committee chaired by former Securities and Exchange Commission chairman Arthur Levitt. Operating with total independence, the panel is assisting KPMG, the city's outside auditor, in completing the stalled financial statements that have locked San Diego out of the capital markets for over a year. Equally important, the Levitt committee is conducting an investigation that is almost certain to assign culpability to city officials who have engaged in misconduct. This probe is instrumental to both the SEC's anticipated enforcement action against the city and U.S. Attorney Carol Lam's criminal investigation.

Without the independent oversight provided by the audit committee, all of San Diego's efforts to regain its financial strength would collapse in one catastrophic stroke. Yet Aguirre, betraying resentment over what he saw as his exclusive turf, belittled Levitt and his colleagues during Tuesday's City Council meeting, urging that their contract be canceled. His sneering references to "East Coast" lawyers bristled with disturbing overtones. His prosecutorial bullying was an ugly echo of McCarthyism.

Aguirre would serve his own interests – and, more important, those of San Diego – by reflecting on Cromwell's famous utterance about the perils of blind ambition. This is not the moment for a power-hungry politician to exploit the instability at City Hall for his own self-aggrandizement. If Aguirre is incapable of becoming part of the solution, he at least must stop obstructing those who are committed to moving San Diego forward responsibly.

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Exhibit 116

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REVIVING SAN DIEGO

Looking at the numbers at City Hall

By Arthur Levitt
August 11, 2005

From the recent downgrading of the rating of the city of San Diego's bonds to the ongoing investigations of various officials, the fiscal and political crisis facing San Diego has only deepened. "America's finest city" has been tarnished almost beyond recognition.

Realizing the extent of the problems facing San Diego and the necessity for an independent assessment of its finances, the city's outside auditors – KPMG – suggested to the council that it establish an independent audit committee in the model of those required by pubic companies under the Sarbanes-Oxley Act.

In establishing this audit committee, the City Council wisely recognized the important role that qualified, committed, independent and tough-minded audit committees play as guardians of the public interest.

Our mission is clear: to act as a freestanding committee, separate and apart from the body politic, to review the investigative activity under way; to take the steps necessary to correct the city's financial disclosures and provide a remediation plan to prevent the deficiencies from recurring; and to otherwise satisfy the city's auditors – so San Diego may issue credible, transparent financial statements. This past week, the Securities and Exchange Commission confirmed the wisdom of this approach in regaining access to the sources of public funding needed to begin to restore the city's financial viability – and the viability, in particular, of its pension system.

Yet, in the months since these developments, we are at a logjam. Battles over political turf overwhelm the public interest. Openness in the pursuit of a credible, effective investigation is being frustrated and deliberately undermined by legal maneuverings and political showmanship.

Some may say that the issues facing San Diego are too complex simply to be painted as a choice between right and wrong. My colleagues and I on the audit committee disagree: the choice couldn't be clearer. Either you reject the politics, personal avarice and misguided policies that have put San Diego in the position it finds itself in – or you excuse them and grant them a pass to cause further disarray, division and distrust. It's a choice between personal grudges and the community's well-being – between arguing about the past and finding solutions for the future – between cynicism and hope.

Over the past five months since the City Council established an independent audit committee, we have made some significant progress.

Part of the audit committee's investigation is the remediation of the causes of the deficiencies that are found to exist. In doing so, the audit committee has met with city officials and leaders in the business community and labor whose support, commitment, and cooperation are essential to resolving the pension and other long-term issues that threaten this community.

Indeed, from the outset of this project, we have been clear that we cannot complete the task at hand without the active support and cooperation of key members of the San Diego community.

We approached our mission knowing we could only succeed if the leaders of this community wanted us to

succeed. Unfortunately, time and again, key figures in the leadership of San Diego have frustrated, impeded, and even thwarted our efforts.

We have encountered a refusal by the pension board to make available to the U.S. attorney, the SEC,or the audit committee documents critical to ascertainment of the truth and critical to the completion of an investigation satisfactory to us and to the auditor.

We have encountered an unrelenting drumbeat of almost nonstop public accusations by the City Attorney's Office, which have only served to cause division, uncertainty and obstacles to necessary progress.

The Audit Committee is grappling with an extraordinarily complex situation – combing through hundreds of thousands of records and scores of allegations of possible violations of criminal and civil law. We have a team of 15 lawyers and accountants, working long days and longer weeks trying – quickly and efficiently – to uncover the facts and prepare a report.

The hostile environment we are operating in only adds to the time and, in turn, cost of our review. But more than that, this contentiousness also flies in the face of two calls by the SEC for the leadership of this city to cooperate.

Ignoring these calls will only add to the costs incurred by the people of San Diego – not just in reputation lost, but also – potentially – in the size of the sanctions handed out by various law enforcement agencies.

Let me be crystal clear: There is no way San Diego can get the funds it needs from the public capital markets without an audit report; and there is no way to get such a report without a thorough investigation by a body unencumbered, untainted, and unabashedly independent from those involved in this situation.

Of course, some have suggested disbanding the audit committee, firing KPMG and seeking an auditor who would be less rigorous in its requirements. Without getting into the wrath that may be expected from regulatory officials in response to such an irresponsible approach, it is inconceivable to me that any reputable auditor would simply turn a blind eye to the legal and factual issues that must be investigated and resolved before an audit report may be issued.

Others have argued – somewhat naively – that bankruptcy is a viable option. Yet, it is far from clear that the city would even qualify for a bankruptcy filing to begin with.

A bankruptcy filing would do nothing to resolve the city's present difficulties and would only add new layers of cost and delay as all meaningful activity would have to be argued about by lawyers, subject to the scrutiny of various committees (all convened at city expense) and then separately approved by the bankruptcy court.

That responsible officials would even raise the possibility of bankruptcy speaks to the tragic circumstances of the current situation. San Diego's problems are – at their root – political problems, not economic ones. This is a city with remarkable assets – magnificent natural beauty and resources, a committed public citizenry, a hardworking populous and an extremely robust economic base. How tragic it is that infighting, intemperate political diatribe and premature public charges have so driven asunder the members of this magnificent community.

■ Levitt, who served chairman of the U.S. Securities and Exchange Commission from 1993 to 2001, supervises a team of attorneys, accountants and other professionals acting as the city of San Diego's audit committee. This article was adapted from Levitt's presentation this week to the San Diego City Council.

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Exhibit 117

Council Meeting of November 1st, 2005: Item S500

Three Actions related to Fifth Amendment to Agreement with Kroll Inc. for services related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); Fourth Amendment Agreement with Willkie Farr Gallagher to provide Independent Legal Counsel to Kroll and the Audit Committee on these matters; And acceptance of KPMG/Audit Committee Status Report.

ATKINS:
WERE GOING TO GO TO ITEM S500, AND THAT IS THE ACTION ACCEPTING KPMG AUDIT COMMITTEE STATUS REPORT.
THANK YOU, MR. CITY ATTORNEY. WE NEEDED TO HAVE THE CITY ATTORNEY REPORT OUT ON ONE ITEM FROM CLOSED SESSION THIS MORNING. MR. AGUIRRE.

AGUIRRE:
YES. THANK YOU MADAM MAYOR. THIS MORNING IN CLOSED SESSION BY UNANIMOUS VOTE THE SAN DIEGO CITY COUNCIL 4:11:43 ADOPTED A MOTION APPOINTING PAUL JACOBS AS SPECIAL COUNSEL TO THE CITY AUTHORIZING NO MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR HIS RETENTION HE HAD ALSO ESTABLISHED A CHARGERS NEGOTIATING COMMITTEE. ON THAT COMMITTEE THEY AUTHORIZED THE SERVICE OF MR. JACOBS. TWO MEMBERS FROM THE CITY COUNCIL, COUNCIL MEMBERS FRYE AND PETERS. IDENTIFIED COUNCIL MEMBER TONY YOUNG AS AN ALTERNATE MEMBER OF THE COMMITTEE, ALSO APPOINTED THE CITY AUDITOR OR A REPRESENTATIVE FROM THE CITY AUDITOR'S OFFICE ALSO IDENTIFIED THE CITY ATTORNEY AS A MEMBER OF THE COMMITTEE OR THE MAYOR OR A REPRESENTATIVE OF THE MAYOR UPON SWEARING IN OF OUR NEW MAYOR. THANK YOU MAYOR ATKINS.

ATKINS:
THANK YOU MR. AGUIRRE. WITH THAT I WANTED TO START OUT. HERE IS THE ORDER IN WHICH WE ARE GOING TO DO THIS; WE HAVE SOME PUBLIC SPEAKERS ON THIS. WE ARE GOING TO START WITH OUR CITY AUDITOR AND I WILL EXPLAIN THAT IN A MOMENT. MR. TORELL IS HERE AND THEN HAVE A PRESENTATION BY OUR CITY ATTORNEY MIKE AGUIRRE AND THEN GO TO KROLL OUR AUDIT COMMITTEE FOR THEIR REPORT AND THEN WE WILL

COMMENT ON IT AND SO AT LEAST YOU WILL HAVE A RECORD AND SOME THOUGHT HAS GONE INTO LAYING OUT THE RELEVANT CONSIDERATIONS.

AGUIRRE:
THIS HAS GONE ON WAY TOO MANY MONTHS. EVERY OTHER CONTRACTOR WITH THE CITY, EVEN THE DEFENSE ATTORNEYS-

ROMANO:
HOW MANY AUDIT COMMITTEES DO YOU HAVE?

AGUIRRE:
EXCUSE ME. THERE IS NOTHING THAT IS UNIQUE ABOUT AN AUDIT COMMITTEE WITH REGARD TO BILLINGS. IT HAS NOTHING TO DO WITH YOUR INDEPENDENCE. EVERY CPA FIRM, EVERY LAW FIRM HAS TO MAINTAIN ITS INDEPENDENCE IN A THOUSAND DIFFERENT WAYS, BUT HERE IS THE KEY POINT. RIGHT NOW WE HAVE NO IDEA WHAT YOU ARE DOING AND YOU ARE SPENDING MILLIONS OF DOLLARS. THESE ARE NOT OUR MONIES.

ROMANO:
YOU DO HAVE AN IDEA WHAT WE ARE DOING.

AGUIRRE:
NO. NO, WE DO NOT. I DO NOT KNOW. ARE YOU CHARGING FOR YOUR MEETINGS WITH THE EDITORIAL BOARD?

ROMANO:
YOU DO NOT KNOW?

ATKINS:
MRS. FRYE, I AM SORRY.

AGUIRRE:
ARE YOU CHARGING FOR YOUR MEETINGS WITH THE EDITORIAL BOARD WITH THE UNION TRIBUNE? ARE YOU CHARGING THE CITY FOR THAT?

DAHLBERG:
YES.

AGUIRRE:
SO YOU ARE CHARGING THE CITY. SO MEET. LEVITT IS CHARGING US NINE HUNDRED DOLLARS AN HOUR TO GO AND MEET AND THAT IS SOMEHOW GOING TO COMPROMISE YOUR EFFORTS FOR US TO KNOW THAT?

DAHLBERG:
NO.

AGUIRRE:
WE WOULD LIKE TO KNOW THAT. THIS IS WHAT I AM SAYING, I THINK-

DAHLBERG:
BUT WHY?

AGUIRRE:
BECAUSE WE WANT TO MANAGE-

DAHLBERG:
YOU WANT TO MANAGE OUR-

ROMANO:
I DON'T THINK THAT IS GOING TO WORK.

AGUIRRE:
WE WANT TO MANAGE- I THINK THAT-

ATKINS:
MRS. FRYE, I AM SORRY I TOOK OVER FROM YOU. I WAS TRYING TO OFFER SOMETHING THAT COULD HELP.

AGUIRRE:
I THINK WHAT YOU ARE OFFERING COULD HELP.

Exhibit 118

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Sanders' first test

Audit committee's probe must continue

UNION-TRIBUNE

December 13, 2005

The keystone of San Diego's financial recovery is its independent audit committee. The city's ability to borrow money, issue certified financial statements and conduct a range of other essential business – not to mention get out from under the cloud of multiple federal probes – all hinges on completion of the audit committee's investigation.

Yet, astonishingly, the panel is on the brink of shutting down because of an interruption in its funding from the city. Mayor Jerry Sanders and the City Council must move quickly to avert this looming calamity.

As a political matter, the work of the audit committee is controversial because it is enormously costly. To carry out its probe, the panel is examining hundreds of thousands of internal e-mails generated by mid-and upper-level city officials and members of the City Council. This entails forensic computer experts and a large staff to pore over individual documents.

To date, the city has paid the audit committee and its outside law firm $7.8 million. In the time since those funds were exhausted, however, the panel has run up an additional $3 million in billable hours while awaiting approval by the City Council to continue its work. Completing the investigation, the audit committee estimates, will require another staggering payment from the city of $9 million to $11 million.

Sanders had planned to take the issue to the council for approval today. He backed off, though, when the audit committee, chaired by former Securities and Exchange Commission chairman Arthur Levitt, would not guarantee that the $11 million figure would be enough to finish the investigation. As a result, the panel is preparing to cease operations until some time in January, when the council will return from its Christmas break.

This would mean, at the very least, a month-long postponement in completing the probe, now set to be wrapped up in mid-spring of next year. Yet far worse than the delay is the disastrous message it sends about San Diego's commitment to resolving its financial crisis under its newly elected mayor.

For starters, putting the audit committee's operations on hold would signal to KPMG, the city's outside auditor, that the mayor and council are not fully committed to an independent investigation of San Diego's financial affairs. KPMG has made it unmistakably plain it will not issue the long-delayed audit for 2003 until an independent probe is conducted. And without that audit, the city cannot return to the regular municipal bond market.

What is more, a disruption in the audit committee's work would telegraph to the SEC and the U.S. Attorney's Office that San Diego cannot be relied upon to investigate the potential wrongdoing that has occurred at City Hall in the last three years. And it would be a glaring indication to Wall Street investors that San Diego still is not prepared to tackle its financial woes.

The urgent solution here is for Mayor Sanders to reach an ironclad funding agreement with the audit committee that is satisfactory to KPMG in terms of the scope and duration of the investigation. Then Sanders

must present the matter to the City Council as soon as possible. This will require the mayor to call a special council meeting, because today's is the last regularly scheduled session of the year.

San Diego's fiscal upheaval demands strong, determined direction from the top. This all-important issue poses the first critical test of Jerry Sanders' leadership.

Find this article at:
http://www.signonsandiego.com/news/op-ed/editorial1/20051213-9999-lz1ed13top.html

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Exhibit 119

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UNION-TRIBUNE EDITORIAL

Pay the bills

City has no choice but to finance investigation

January 17, 2006

The essential first step toward extricating San Diego from its financial swamp is completion of the independent audit committee's far-ranging probe. That's why today's vote by the City Council on funding for the audit committee is so crucial to San Diego's future.

Council members may shudder, and understandably so, at the steep cost of $7 million-$10 million to finish the investigation. But the alternative – shutting down the probe in mid-course – would be far, far more costly to taxpayers in the long run.

San Diego's outside accounting firm, KPMG, is emphatic that the audit panel's investigation must be concluded before KPMG will sign off on the city's long-stalled 2003 financial statement. San Diego cannot regain access to the normal municipal bond markets until the 2003 audit is issued by KPMG.

If the City Council balks at funding for the audit committee, its investigation will collapse promptly. This, in turn, almost certainly would prompt KPMG to walk away from the 2003 audit, triggering a calamitous downward spiral in San Diego's already precarious financial situation.

Taken together, the loss of the audit committee and KPMG would send a reverberating message to Wall Street investors and the Securities and Exchange Commission that San Diego is not serious about correcting its egregious financial blunders. The results likely would include further downgrades in the city's sagging credit rating and a move by federal regulators to be even more aggressive, rather than lenient, in dealing with the city. Meanwhile, with San Diego's capacity to borrow money constrained even more severely, the prospect of municipal bankruptcy would escalate ominously.

The City Council established the audit committee last March to demonstrate a good-faith effort to examine the financial wrongdoing by city officials and take corrective action. In doing so, the council embraced the stringent standards of the federal Sarbanes-Oxley Act, which applies to corporate corruption, not local governments. The law provides for companies to create independent audit committees to probe accounting irregularities.

If San Diego now reneges on this fundamental commitment, the SEC won't be forgiving about it. Nor will the U.S. Attorney's Office. Nor will the city's creditors.

Approving the $7 million-$10 million to wrap up the audit committee's investigation requires five votes on the truncated six-member City Council. Councilwoman Donna Frye already has indicated she will oppose the funding, regardless of the consequences. This means the votes of all of the remaining members are needed to complete the audit committee probe.

In previous City Council sessions, City Attorney Mike Aguirre has tried in vain to shut down the audit panel, often hectoring its representatives in heavy-handed fashion. Our strong hope for today is that Aguirre will conduct himself in a professional manner and that Council President Scott Peters and council members Toni

Atkins, Jim Madaffer, Brian Maienschein and Tony Young will step up to their obligation to restore San Diego's financial viability.

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Exhibit 120

A sorry spectacle | Audit payment question stumped the city

[R,E,S,C Edition]

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The first City Council meeting under San Diego's revamped governmental structure did not inspire confidence that a new day had arrived at City Hall. On the contrary, the session was marred by embarrassing missteps and uncertainty at the very moment when a display of firm leadership was needed.

At issue was Mayor Jerry Sanders' crucial proposal to continue funding for the independent audit committee, which is investigating financial wrongdoing by city officials. Under Sanders' plan, 70 percent of the audit committee's costs would be paid out of the general fund, which is supported by property and sales taxes, and 30 percent would be paid out of enterprise funds, which are supported by ratepayers and other fees. Splitting costs in this fashion has been standard operating procedure for paying consulting bills and other expenses incurred by the city.

But Councilman Brian Maienschein posed a straightforward and very important query: Is the practice legal?

Mayor Sanders, astonishingly, was unable to answer the question. Even worse, Deputy City Attorney Mark Blake declared that his office did not know whether the mayor's proposal was legal. This prompted visible consternation among several council members, and understandably so. In the end, the indispensable work of the audit committee was saved by the council's decision to pay all of the $10 million cost out of the general fund until it can be established whether the 70-30 split is in fact legal.

The truth is, many council members feel they were betrayed in the past by the city bureaucracy's assurances that certain actions, such as the outrageous underfunding of the pension plan, were perfectly legal. The question asked by Maienschein -- is it legal? -- is one council members certainly should ask with regularity in the future. And never again should the response from the mayor or city attorney be: We don't know.

In a memo written yesterday, City Auditor John Torrell concluded that dividing certain city expenditures among the general fund and enterprise funds conforms with sound accounting standards and practices. City Attorney Mike Aguirre contends, however, that the legality of the practice remains an open question.

This matter must be resolved immediately, in part because this may not be the last time the council will have to approve funding for the audit committee. The panel has told the city it needs up to $13.3 million to cover its outstanding bills and finish its probe. Sanders asked the council to allocate only $10 million, in hopes that will be enough to get the job done. If not, the council will have to wrestle with the issue yet again.

We urge the audit committee to do everything it can both to stay within the allotted $10 million and also to wrap up its investigation by the end of May. The panel's long-anticipated report is the essential next step in San Diego's financial recovery.

KEYWORDS: JOHN TORELL

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Abstract (Document Summary)

At issue was Mayor Jerry Sanders' crucial proposal to continue funding for the independent audit committee, which is investigating financial wrongdoing by city officials. Under Sanders' plan, 70 percent of the audit committee's costs would be paid out of the general fund, which is supported by property and sales taxes, and 30 percent would be paid out of enterprise funds, which are supported by ratepayers and other fees. Splitting costs in this fashion has been standard operating procedure for paying consulting bills and other expenses incurred by the city.

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S.D. to summon Kroll for answers

Officials upset report on finances isn't done

By Jennifer Vigil
STAFF WRITER

July 12, 2006

Mayor Jerry Sanders delivered his anticipated criticism of a private inquiry into San Diego's finances to the City Council yesterday, which prompted council members to call for the officials conducting it to appear before them within three weeks.

Council President Scott Peters said he would work with Sanders on two letters, summoning Kroll Inc., the risk management firm handling the investigation, and KPMG, one of the city's auditors, to a future council meeting.

Councilwoman Donna Frye wanted KPMG called in too, because she said the firms are "inextricably linked now." The city hired Kroll, in part, as a response to criticism from the auditor.

Kroll's probe has cost more than $20 million since it began last year, more than 80 times the amount of the city's first contract with the group.

"For $20 million this better be the best report ever in the history of San Diego," Councilman Tony Young said. "In the world, by the way."

Sanders called on Kroll to wrap up its examination of the city's handling of its pension system and other financial matters, which are the subject of ongoing federal investigations. He also accused the firm of taking advantage of a city hobbled by political and legal scandals.

"I want the Kroll investigation finished," Sanders said. "We have spent entirely too much money not to see it come to an end. To me, it will represent closure."

Closure, however, has proven elusive on most fronts connected to the city's pension fund. That includes any possible end to the frosty relations between City Attorney Michael Aguirre and council members he blames for their roles in the pension crisis.

Aguirre announced at a news conference yesterday that he will pursue new investigations of both Kroll and the city's pension system to determine whether they made false claims while billing the city.

As he neared the end of his remarks, though, he couldn't resist needling a favorite target, Peters, accusing him and other council members of colluding with Kroll "in order to delay and obstruct" completion of the firm's inquiry.

Sanders later told the council that he holds "Kroll responsible for this, and Kroll only." Peters took it further, asking the mayor if he knew of any examples of council members attempting to block the inquiry. Sanders replied that he did not.

Kroll officials did not return calls seeking comment yesterday, and none attended the meeting.

Unrest among elected officials is one of many complications faced by the city because of its handling of the employee pension system. The city underfunded the system for nearly a decade, while the City Council raised employee benefits twice – in 1996 and 2002. For Sanders, a complete Kroll report could at least ease the financial burden.

Questions over the pension and other fiscal issues have caused delays in releasing the city's last four annual financial statements; lacking that crucial information, Wall Street rating agencies have repeatedly offered negative assessments of San Diego's credit worthiness.

Officials at KPMG, the accounting firm examining the 2003 numbers, have refused to issue their audit until they see Kroll's findings. The annual statements that follow cannot be released until KPMG's work is done.

Sanders acknowledged the difficulty of getting to that point, however, saying, "We have few productive options at our disposal."

City officials have long walked a fine line with Kroll, pressed to cooperate in the investigation, while maintaining little control over how and when it will end, despite the mounting expense.

Sanders said as much in an interview Monday, admitting he could do little more than put "pressure on (Kroll) by going public with the truth."

Young said he was "100 percent behind" the mayor's efforts, and he expects a comprehensive Kroll report. He suspects otherwise, though. "From the responsiveness I've had from this independent audit committee," he said, "I doubt it."

Accessibility is a thorny question because the Kroll group – serving as an audit committee, modeled on those that oversee corporate finances – has stressed the importance of maintaining its independence.

Kroll investigators replaced lawyers from the Houston law firm Vinson & Elkins, which lost credibility because it conducted its inquiry while also offering the city legal advice. Critics, including KPMG, cited the potential for conflict in that relationship when they condemned Vinson & Elkins' report.

Kroll, hired initially in February 2005 on a $250,000 contract, repeatedly has asked the council for more money, saying its investigation had grown more extensive.

Its billings jumped to $15 million within six months. The total now makes up more than half the city's legal and administrative expenses related to the pension system.

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Kroll unsure when report on finances will be done

Firm defends work after criticized by San Diego

By Jennifer Vigil
STAFF WRITER

July 13, 2006

Officials at a risk management firm examining San Diego's finances defended their work yesterday against attacks by Mayor Jerry Sanders and City Attorney Michael Aguirre, saying their findings will be ready in "very short order."

The $20 million investigation has yet to be completed, despite early claims by Kroll Inc. that a report could be ready late last year.

Kroll spokeswoman Jodie Rosenbloom said the delays have been caused by developments in the inquiry that call for the attention of the city and other individuals she declined to identify. Rosenbloom also refused to specify a release date for Kroll's results.

"The report has many moving parts. Its completion requires their cooperation and the support of parties other than Kroll," she said. "We recently discovered additional items that require further clarification."

Fred Sainz, Sanders' spokesman, said that Troy Dahlberg, one of three main investigators assigned to the inquiry, spoke with city officials yesterday, and also did not set a release date or explain what new issues have arisen.

Preliminary copies of the report, Sainz said, are in the hands of the U.S. Attorney's Office and an auditor, KPMG, that has refused to issue its evaluation of city financial statements without first seeing Kroll's findings. In addition, Kroll submitted a second draft to KPMG, Sainz said.

Sainz said that Dahlberg also informed the city that the U.S. Attorney's Office, one of two federal agencies investigating San Diego, would not "hold up" release of the report.

Sanders on Tuesday accused Kroll of "holding our city hostage" in its pursuit of information related to San Diego's $1.43 billion pension deficit. Aguirre followed by launching an investigation into whether Kroll violated state law by making false claims in its billings.

Rosenbloom said the false-claims law was being "inappropriately invoked" by Aguirre.

"Everything we've done has been voted on and approved," she said. "We're not asking for more money. We're wrapping things up here."

Kroll arrived in San Diego in February 2005, one year after federal agencies, including the Securities and Exchange Commission, had begun investigations into the city's financial practices, including the handling of its pension system and bond-market disclosures.

The firm was hired in part to answer questions raised by deals in 1996 and 2002 that allowed city officials to underfund the pension while increasing employee benefits. Sanders and City Council members insist they need Kroll's findings to restore San Diego's tarnished financial reputation.

Rosenbloom is from Kroll's New York headquarters. Calls to Dahlberg, who is based in Los Angeles, have not been returned for five days.

The firm, a unit of Marsh & McLennan Cos. Inc., which posts annual revenues of about $12 billion, offers a number of services, from advising corporations on restructuring and forensic accounting to providing security and recovering data.

Some of its projects, including those with public agencies, can be prolonged, a situation Rosenbloom said can spark criticism.

"Given the nature of our work as independent investigators, it's not surprising that we face ad hominem attacks, and that's what we're seeing in San Diego now," she said.

Sainz defended the mayor's right to criticize Kroll.

"He is certainly not concerned for his own sake," Sainz said. "He's concerned for the $20 million that has been picked out of the pockets of San Diego taxpayers."

Kroll has contracts with a number of public agencies. The firm has monitored the Los Angeles Police Department since 2001, as part of a court-ordered reform program sought by the federal government after a corruption scandal.

The firm has issued 19 reports on the department, as part of a five-year, $11 million pact with Los Angeles. A judge recently extended the court order by three years.

Kroll holds other government deals, including a share of a $2.5 billion federal contract to check employees and contractors for security clearances.

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Exhibit 123

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UNION-TRIBUNE EDITORIAL

Ill-advised move

Mayor's attack on audit panel harms city

July 12, 2006

We share with Mayor Jerry Sanders and the City Council the frustration over how long it has taken San Diego's independent audit committee to complete its $20 million probe of illegal acts committed by city officials. And we, too, believe the three-member panel, chaired by former Securities and Exchange Commission Chairman Arthur Levitt, must complete its work as soon as possible – consistent with a thorough report that meets the expectations of SEC investigators and KPMG, the city's outside auditor. The process has taken too long already.

All the same, Mayor Sanders' wholesale attack on the audit committee yesterday served only to undermine the city's once-laudatory commitment to a thorough and independent investigation. The fact is, the audit committee's work is essential to completing the city's chronically overdue financial statements and, ultimately, returning to the credit markets.

Yet Mayor Sanders bluntly assailed the panel for "holding our city hostage" and called the City Council's decision to establish it "ill-conceived." Whether the mayor likes it or not, the audit committee's report – which is certain to be highly critical of city officials – is the only way for San Diego to begin its financial recovery. Without it, San Diego is doomed to financial purgatory. So, let's get on with completing the report.

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Exhibit 124

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UNION-TRIBUNE EDITORIAL

Hour of decision

Report on City Hall wrongdoing finally at hand

August 6, 2006

This week will mark a crucial turn in San Diego's financial upheaval when the findings of the long-awaited audit committee investigation will be delivered to the City Council. The 370-page report is likely to document wide-scale misconduct by a raft of city officials – including potential violations of federal securities laws. Some sitting members of the City Council may be among the most prominent officials cited in the report.

As a result, the planned two-hour session at 8 a.m. Tuesday is likely to be tense and painful, exposing a very dark period in San Diego's history, starting in 1996 when the City Council embarked on the calamitous policy of deliberately underfunding the pension system even as it increased benefits to outrageous levels. All the same, the audit committee's 17-month probe, carried out under the direction of former SEC Chairman Arthur Levitt, is the essential first step toward San Diego's financial recovery.

The city has not had an audited financial statement since 2002. Consequently, it has been frozen out of the conventional municipal bond market for nearly four years. The audit committee findings, also known as the Kroll report, are to provide the comprehensive "illegal acts" investigation long demanded by KPMG, the city's independent accounting firm, before it will issue the stalled 2003 audit. In short, the audit committee's probe should now clear the way for San Diego to return to the capital markets, a very critical step forward.

The first 320 pages of the panel's report are expected to be a forensic look at what went wrong at City Hall during the past decade. The last 50 pages are said to comprise a detailed remediation plan to restore San Diego's financial health and prevent abuses from recurring. The remediation elements are likely to include stringent outside oversight and monitoring to ensure that corrective actions are implemented.

The City Council needs to focus its careful attention on both aspects of the audit committee's report. If that takes more than the scheduled two hours, so be it. Regrettably, however, City Attorney Mike Aguirre has attempted to interject into the City Council discussion another topic altogether – his unsubstantiated claims that Kroll Inc. has engaged in fraudulent billing practices in carrying out its $20 million investigation. In a bombastic letter last week, Aguirre demanded that Kroll bring to the council session "all contemporaneous daily, weekly, monthly and periodic timecards and other internal timekeeping reports for each individual who recorded time worked on this project. ..."

Never mind that such a volume of material would require a tractor-trailer to haul it into the council chambers. The city attorney clearly hopes to hijack this critically important meeting for his own political purposes. For months he has clashed with the audit committee and tried in vain to put it out of business. In previous council meetings he has launched highly personal attacks against Levitt and other members of the panel. If Aguirre engages in such ad hominem vitriol on Tuesday, he will discredit not only himself but also San Diego.

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Exhibit 125

Report on Investigation

The City of San Diego, California's

Disclosures of Obligation to Fund the

San Diego City Employees' Retirement System

and Related Disclosure Practices

1996-2004

with

Recommended Procedures and Changes to the Municipal Code

September 16, 2004

Paul S. Maco
Richard C. Sauer
Vinson & Elkins L.L.P.
Washington, D.C.

Evaluation

Conclusions

Conclusions Regarding the Disclosure Deficiencies

Standing alone, City disclosure since 1996 has failed to provide investors and other interested readers with adequate information to enable them to clearly understand the relationship between SDCERS and the City's General Fund and to fully evaluate the creditworthiness of the City. This relationship grew in significance after 1996, following the decision to implement MP1 as a means of providing the City a degree of budgetary relief. Unfortunately, neither the relief provided, nor the means of providing it – reduced contributions to SDCERS in exchange for increased retirement benefits – were ever clearly described to investors or others who read only the City's disclosures, until the City's Voluntary Disclosure on January 27, 2004. Beginning in 2000, anyone who obtained a copy of the SDCERS CAFR would have received a lengthy description of MP1.[423] MP1 was also openly discussed in the press at the time, along with a prescient prediction of future consequences by at least one reporter.

A succession of failures to disclose and discuss increases in retirement benefits and the corresponding effect upon SDCERS' funded status and, in turn, the City's future obligation to pay increased amounts out of the General Fund followed from January 1996 until the City's voluntary disclosure on January 27, 2004. The following analyzes these failures:

Surplus Earnings and the Waterfall

An inventory of the deficiencies catalogued in the disclosure chronology should begin with the "Waterfall" and the concept of "surplus earnings." The difficulty for readers of the City's disclosure is that it provides no description of the Waterfall or its potential effect upon the City's General Fund, most importantly with respect to funding the post-retirement health care benefit, in the event that surplus earnings are insufficient.

Throughout the period of our review until the City's Preliminary Official Statement of August 26, 2003, readers of Appendix A to the City's official statements were not directed to the City Charter or the Municipal Code where they could gain an understanding of both the structure of the System and the law by which it administered System assets. Instead, readers were simply

[423] Its disclosure in previous fiscal years on this topic was notably poor.