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 bringir at Oct 31, 2001 to only $14.1 million compared to $107 m last year same time. A 87% decrea

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

Sincerely,
Sleepless in San Diego

Exhibit 2

CITY OF SAN DIEGO
REQUEST FOR

CITY MANAGER ACTION

TO:	FROM: (ORIGINATING DEPT.)	DATE
CITY MANAGER	CITY ATTORNEY	January 24, 2003

SUBJECT: Agreement with Vinson & Elkins, LLP, for Electronic Disclosure Counsel Services

ACTION REQUESTED: Enter into an agreement with Vinson & Elkins, LLP for Electronic Disclosure Counsel Services, to review an Investor web page to be added to the City's existing web site.

SUPPORTING INFORMATION:

The City is in the process of creating an investor web page to be added ot the City's existing web site. The Web Page will provide publicly accessible investor information conforming to municipal regulations and industry guidelines and providing clear and comprehensive access to continuing disclosure annual reports and related investor information. The City has need of a firm to review the web page for compliance with the securities regulations and industry guidelines. Requests for Proposals were sent to six firms with specialized experience with electronic disclosure. Three firms responded. Vinson & Elkins, LLP, whose proposal included such electronic disclosure counsel services for a fixed fee, including expense reimbursement, for $30,000 was selected.

FISCAL IMPACT; $30,000 - See attachment

CITY ATTORNEY
03 FEB 12 AM 11:00
CIVIL DIVISION

DOCUMENT NO. C-11939
FILED FEB 20 2003
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

PLEASE ROUTE TO APPROPRIATE AUTHORITY REF. AR. 25.60 OR 25.70

ACCOUNT INFORMATION:	BUDGETED	UNBUDGETED
FUND See Next Page		
DEPARTMENT		
ORGANIZATION		
OBJECT ACCT.		
JOB ORDER NO.		
C.I.P. NO.		
FACILITY		
AMOUNT		
ESTIMATED COST		
AUDITORS CERTIFICATE NUMBER		

FOR INFORMATION CONTACT

NAME Kelly J. Salt

MAIL STATION 59 TELEPHONE NO 533-5800

ROUTING AND APPROVAL

APPROVING	APPROVAL	DATE
DEPARTMENT DIRECTOR	Anita Noone for Casey Gwinn Casey Gwinn	1-28-03
CLEARING AUTHORITY FM	Martin Kane	1/29/03
CLEARING AUTHORITY	M. Allen Mary Vaughn	1/30/03
CLEARING AUTHORITY EOCP	Alice Allen	2/19/03
DEPUTY CITY MANAGER		
AUDITOR	Phil Phillips	2/6/03
ORIGINATING CITY MANAGER	Patricia T. Frazier	2/11/03
CITY ATTORNEY	Anita Noone Anita Noone	1-28-03
CITY CLERK	Ellen Smith	2-20-03

CM-1544 (REV. 4-81)

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2300856

ORIGINATING DEPT. NO.: 56

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: $30,000.00

Vendor: Vinson & Elkins

Purpose: Authorizing the payment to Vinson & Elkins for the creation of an investor web page that will be used to provide publicly accessible investor information.

Date: February 6, 2003 By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
			Please see attached list for accounting							
									TOTAL AMOUNT	

FUND OVERRIDE ☐

31 (REV 2-92)

AC 2300856

C-11939

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
01	0	100	601	3300	4151	601655				$938.00
02	0	100	601	3300	4151	601655				938.00
03	0	10253	10253	2001	4151	002001				1,731.00
04	0	102214	102214	300	4151	000222				1,731.00
05	0	102211	102211	200	4151	000200				1,731.00
06	0	10330	930	2200	4151	220004				1,731.00
07	0	10226	918	2000	4151	091812				938.00
08	0	10226	918	2000	4151	091813				938.00
09	0	100	601	3000	4151	601655				1,731.00
10	0	41509	777	445	4351	005037				1,731.00
11	0	41500	760	878	4151	8780				1,731.00
12	0	79695	79695		4151	079690				1,724.00
13	0	79685	79685		4151	079680				1,731.00
14	0	79765	79765		4151	079765				1,731.00
15	0	70207	7207	2153	4151	071915				3,752.00
16	0	79705	79705		4151	079705				1,731.00
17	0	98070	98074	1001	4151	001001				1,731.00
18	0	98300	98304	1001	4151	001001				1,731.00
								TOTAL AMOUNT		$30,000.00

C-11939

COPY

AGREEMENT

FOR ELECTRONIC DISCLOSURE COUNSEL SERVICES

THIS AGREEMENT is made and entered into by and between the CITY OF SAN DIEGO [City] and Vinson & Elkins, L.L.P. [Firm].

RECITALS

WHEREAS, the City is in the process of creating an investor web page [Web Page] to be added to the City's existing web site; and

WHEREAS, the purpose of the Web Page will be to provide publicly accessible investor information that conforms to municipal securities regulations and industry guidelines, and that provides clear and comprehensive access to continuing disclosure annual reports and related investor information [Project]; and

WHEREAS, the City has need of the Firm's services for reviewing the Web Page for compliance with the securities regulations and industry guidelines; and

WHEREAS, the Firm proposed to provide such electronic disclosure counsel services for a fixed fee and capped expense reimbursement.

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

Article 1. **Scope of Services.**

A. The City hereby retains the Firm to render legal advice and assist the City with legal services pertaining to the Project. The City shall have the right in its sole discretion to determine the particular services to be performed by the Firm from time to time under this Agreement.

B. As directed by the City Attorney's Office, the Firm shall provide the following legal services:

(1) Provide legal advice regarding City- provided mock-investor Web Page.

(2) Recommend specific information that should be included and presented on the Web Page, including recommendations and direction on the Web Page layout, "touch and feel" of the design and screen flow, particularly as they pertain to the clarity and comprehensiveness of the information to be presented.

DOCUMENT NO. C-11939
FILED FEB 20 2003
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(3) Prepare all legal and best practices disclaimer information, click-through gateway language and copyright language to accompany the investor information.

(4) Recommend any additional security safeguards, procedures, and firewalls that a well-designed and secure web site should contain.

(5) Ensure the Web Page conforms with municipal securities regulations, interpretive releases, and industry guidelines.

(6) Review any legal issues related to establishing and maintaining the Web Page.

(7) Review for any inconsistencies between the legal disclosures/disclaimers between the Web Page and the City's general web site and recommend changes, if any.

(8) Provide periodic, on-going consultation and other legal services relating to the Project and web site disclosure issues as-needed for a period of one year.

Article 2. Compensation.

A. Services under this Agreement shall be performed under the direction of the City Attorney's office through Deputy City Attorney Kelly J. Salt or her designee.

(1) In light of the variability of the time and complexity of the issues involved, the Firm and the City agree to consult regularly, at least monthly, as to the level of effort which is appropriate in performing services hereunder.

(2) The Firm agrees to document a plan and budget which has been agreed to by the City Attorney's office, the Firm and the principal designee.

(3) The City shall not be obligated to pay the Firm amounts not documented, budgeted, and agreed to before being incurred by the Firm.

B. For electronic disclosure counsel services for the Project provided pursuant to this Agreement, the City shall compensate the Firm on a per hour basis in accordance with the following billing rates:

(1) For services provided by Mr. Paul Maco– $425 per hour.

(2) For services provided by Mr. Harvey Dunn– $395 per hour.

(3) For services provided by Mr. David Godschalk– $305 per hour.

(4) For services provided by Ms. Catherine Fancher– $250 per hour.

(5) For services provided by Ms. Malia Vaughn– $235 per hour.

Compensation for such services on a per hour basis and related expenses shall not exceed $30,000.

C. The Firm shall not use more than one attorney for the same specific task without the City's approval. The Firm may use the minimum number of attorneys for this engagement consistent with good professional practice after consulting with and obtaining approval by the City.

D. The Firm shall keep the City advised as to the level of attorney hours and client services performed under Article 1. Attorney travel time not devoted to the performance of client services under this retainer Agreement shall not be charged to the City.

E. The City further agrees to reimburse the Firm, in accordance with the procedures set forth in this Article, for telephone, fax, mail, messengers, federal express deliveries, document reproduction, client-requested clerical overtime, and similar out-of-pocket expenses charged by the Firm as a standard practice to its clients generally. Such items are generally referred to herein as disbursements.

(1) 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:

(a) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.

(b) Storage of open or closed files, rent, electricity, local telephone, postage, receipts or transmission of telecopier documents, or any other items traditionally associated with overhead.

(c) 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.

(d) Photocopy charges in excess of $.10 (ten cents) per page.

(e) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.

(f) Secretarial overtime. 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's, or its failure to meet deadlines known in advance.

(g) Equipment, books, periodicals, research materials, Westlaw/Lexis or like items.

(h) Express 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.

F. The individual time and 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.

G. The Firm agrees to forward to the City a statement of account on a monthly basis.

Article 3. Conflicts.

The parties hereto recognize that the Firm may have clients who may from time to time have interests adverse to the City, and the Firm reserves the right to represent such clients in matters not connected with the services provided by the Firm pursuant to this Agreement.

Article 4. Independent Contractor.

A. The Firm shall perform services as an independent contractor. It is understood that this Agreement is for unique professional services. Accordingly, the duties specified in this Agreement may not be delegated by the Firm without the prior written consent of the City. Retention of the Firm is based on the particular professional expertise of the individuals rendering the services required in the Scope of Services.

B. It is mutually agreed that Mr. Paul S. Maco, Attorney at Law, will be the principal responsible for the delivery of the described services and will be assisted by other Firm attorneys as needed. Confidentiality of information supplied to or produced by the Firm for the City will be guaranteed by the Firm upon the request of the City.

Article 5. Ownership.

A. For the purposes of this section:

(1) **Work Product** means all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code

form, all documentation and any other deliverable prepared for the City by the Firm in accordance with the terms of this Agreement.

(2) **Content** means all text, pictures, sound, graphics, video and other data supplied by the City to the Firm pursuant to this Agreement, as such materials may be modified from time to time.

(3) **Intellectual Property Rights** means any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the universe, including, but not limited to, copyrights, moral rights, and mask-works; (b) trademark and trade name rights and similar rights (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

(a) Ownership of Work Product. The Firm hereby irrevocably assigns to the City all right, title and interest in and to all Work Product and documentation produced pursuant to the City's requests for services hereunder including, without limitation, all applicable Intellectual Property Rights thereto. If the Firm has any such rights that cannot be assigned to the City, the Firm waives the enforcement of such rights, and if the Firm has any rights that cannot be assigned or waived, the Firm hereby grants to the City an exclusive, irrevocable, perpetual, worldwide, fully paid license, with right to sublicense through multiple tiers, to such rights. The Firm acknowledges that there are, and may be, future rights that the City may otherwise become entitled to with respect to the Work Product that do not yet exist, as well as new uses, media, means and forms of exploitation throughout the universe exploiting current or future technology yet to be developed, and the Firm specifically intends the foregoing assignment of rights to the City to include all such now known or unknown uses, media and forms of exploitation throughout the universe.

(b) Ownership of Content and Web Page. As between the Firm and the City, any Content given to the Firm by the City under this Agreement or otherwise, and all User Content, shall at all times remain the property of the City or its licensor. The Firm shall have no rights in such Content, other than the limited right to use such content for the purposes expressly set forth in this Agreement.

(c) Employee and Subcontractor Contracts. The Firm shall cause each individual or company employed by the Firm in connection with the Work Product to execute a contract regarding confidentiality and assignment of rights

prior to each such individual or company's commencement of services thereunder. Such contracts shall: (i) include a full assignment of all rights to the City; (ii) include a waiver of any moral or similar rights; (iii) be freely assignable; and (iv) contain restrictions on use and disclosure. The Firm further warrants that, with respect to any subcontractors which it employs: (A) the Firm shall obtain the written consent of the City; (B) the Firm shall be responsible for the direction and coordination of the services of such subcontractors; and (C) the City shall have no obligation to pay such subcontractor(s).

(d) Work Product Warranties. The Firm warrants that any Work Product or Firm-made changes to the Content shall not: (i) infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy; (ii) violate any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); (iii) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) be obscene, child pornographic or indecent; and (iv) contain any viruses, trojan horses, trap doors, back doors, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

Article 6. Confidentiality of Work.

All work performed by the Firm including, but not limited to, all drafts, data, correspondence, proposals, reports and estimates compiled or composed by the Firm pursuant to this Agreement is for the sole use of the City and shall be confidential and not released to any third party without the prior written consent of the City.

Article 7. Key Personnel.

The Firm shall submit in writing to the City, prior to assignment, the name, position description, resume and duration of assignment for each key professional employee to be designated to any project on a regular basis for more than three (3) months. The Firm will not remove, prior to the completion of the assignment, any such employee assigned to a project without the prior written approval of the City, which approval shall not be unreasonably withheld. The Firm will nominate a replacement employee to the City and will not remove any employee from a project until his/her replacement has been approved by the City. The City reserves the right at its sole discretion to request removal of any Firm employee or subconsultant assigned to a project when, in the City's opinion, the individual's performance is unsatisfactory.

Article 8. Compliance with Controlling Law.

The Firm shall comply with all applicable laws, ordinances, regulations and policies of the federal, state and local governments as they pertain to this Agreement. In addition to the

foregoing, the Firm shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws statutes, ordinances, rules or regulations.

Article 9. Acceptability of Work.

The City shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement and the amount of compensation due. In the event the Firm and the City cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Firm in this Agreement, the City or the Firm shall give to the other written notice thereof. Within ten (10) business days thereafter, the Firm and the City shall each prepare a report which supports its position and file the same with the City and the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Firm.

Article 10. Insurance.

The Firm shall not commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the City. At its sole cost and expense, the Firm shall take and maintain in full force and effect at all times during the term of this Agreement the following policies of insurance:

A. Combined single limit general liability insurance in an amount not less than One Million Dollars ($1,000,000).

B. For all of the Firm's employees which are subject to this Agreement, to the extent required by the State of California, workers' compensation insurance in an amount not less than One Hundred Thousand Dollars ($100,000).

C. Professional liability insurance in an amount not less than Five Million Dollars ($5,000,000) per claim, and with a deductible of not greater than One Million Five Hundred Thousand Dollars ($1,500,000) per claim.

D. All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California, or which are members of the California Surplus Lines Association, or which are licensed by the Department of Insurance in the state(s) in which the Firm is licensed to do business. A certificate evidencing such insurance must be provided upon inception of this Agreement. The Firm may effect for its own account insurance not required under this Agreement.

Article 11. Drug Free Work Place.

The Firm agrees to comply with the City's Drug-Free Workplace requirements. Every person awarded a contract by the City of San Diego for the provision of services shall certify to the City

that it will provide a drug-free workplace. Any subcontract entered into by the Firm pursuant to this Agreement shall contain this provision.

Article 12. Equal Opportunity Program.

A. The Subconsultant List, form EOP-5 (Attachment A), attached hereto is a part of this Agreement.

(1) All subcontractors have been listed and it is agreed that no changes to the Subconsultant List will be allowed without prior written approval from the City.

(2) The City is charged with the responsibility of approving requests for substitution of Subconsultants, these requests should be forwarded to EOCP on receipt.

(3) Subconsultants are to complete a minimum of 75% of their listed scope of work with their own work forces.

(4) The Firm shall submit to the City statistical information as requested in the City of San Diego Contract Activity Report (Attachment B), indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant, subcontractor, vendor, and service provider listed in the report.

B. The Firm acknowledges and agrees that it is aware of, and will comply with, the City's Council Ordinance No. 18173, Section 22.2701, EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, which is attached hereto and incorporated herein as Attachment C.

(1) The Firm and all its subcontractors are individually responsible to abide by its contents.

(2) The Firm and each of its subconsultants will comply with Title VII of the Civil Rights Act of 1964, as amended, and such other federal and state laws and regulations, including but not limited to the California Fair Employment Practices Act, as may by their terms be applicable.

(3) The Firm will not discriminate against any employee or applicant for employment on any basis prohibited by law.

(4) The Firm has submitted, and the City acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code which sets forth the actions that the consultant will take to achieve the City's commitment to equal employment opportunities.

(5) The Firm agrees that compliance language with the foregoing provisions will be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subconsultant. The Firm's compliance with these EEO provisions will be monitored and reviewed by the City's EOCP staff.

C. The Firm acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all city contracts. The Firm will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts for work associated with this Agreement from local residents and firms as opportunities occur. The Firm agrees to hire qualified local residents and firms whenever feasible.

D. The Firm understands that failure to comply with the above requirements, and/or submitting false information in response to these requirements, may result in the City withholding progress payments until the Firm complies, or termination of this Agreement, and /or suspension from participating in future City contracts as a prime or subconsultant, for a period of not less than 1 year.

(1) For additional or subsequent violation, the period of suspension may be extended for a period of up to three (3) years.

(2) Failure to satisfy penalties imposed pursuant to this section shall prohibit the consultant from participating in future City contracts until all penalties have been satisfied.

Article 13. <u>Compliance Investigations</u>.

Upon the City's request, the Firm agrees to provide the City, within 60 calendar days, a truthful and complete list of the names of all subconsultants, vendors, and suppliers that the Firm has used in the past 5 years on any of its contracts that were undertaken within the San Diego County, including the dollar amount paid by the Firm for each subcontract or supply contract. The Firm further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501 through 22.3517) [Ordinance]. The Firm understands and agrees that a violation of this Article 13 shall be considered a material breach of this Agreement and may result in remedies being ordered against the Firm up to and including termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Ordinance. The Firm further understands and agrees that the procedures, remedies, and sanctions provided for in the Ordinance apply only to violations of the Ordinance.

Article 14. <u>Non-Discrimination</u>.

The Firm shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The Firm shall provide equal opportunity for subcontractors

to participate in subcontracting opportunities. The Firm understands and agrees that violation of clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

Article 15. Americans with Disabilities.

Every person or organization awarded a contract, lease or grant by the City of San Diego acknowledges and agrees to comply with Council Policy 100-04, adopted by Resolution No. 282153 relating to the Federally mandated Americans With Disabilities Act (ADA). The Firm will be individually responsible for its own ADA program.

Article 16. Effective Date and Term.

This Agreement shall be effective upon adoption by this City Council and continue until completion of the Scope of Services, or upon written notice of cancellation. This Agreement may be extended at the mutual consent of the Firm and the City, and may be terminated at any time by mutual consent of both parties in its discretion, by written notice to the other.

Article 17. Notices.

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereunder, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to:

Ms. Kelly J. Salt
Deputy City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101

cc: Ms. Mary E. Vattimo
City Treasurer
City of San Diego
202 C Street, MS 7B
San Diego, CA 92101

Notice to the Firm shall be addressed to:

Mr. Paul S. Maco, Esq.
Vinson & Elkins, L.L.P.
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004

Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

Article 18. Headings.

All Article Headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

Article 19. Time of Essence.

Time is of the essence for each provision of this Agreement.

Article 20. Municipal Powers.

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

Article 21. California Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Firm covenants and agrees to submit to the personal jurisdiction of any state court in the State of California for any dispute, claim or matter arising out of or related hereto.

Article 22. Integrated Agreement.

This Agreement including Attachments and/or Exhibits contains all of the Agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the City and the Firm.

Article 23. Severability.

The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

Article 24. Waiver.

The failure of the City to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

Article 25. Extension.

The City retains the right, in its sole discretion, to renew this Agreement for one additional year, provided the parties can agree on the terms and conditions of such extension.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 30 day of January, 2003.

City of San Diego

By: _____
Mary E. Vattimo
City Treasurer

The Firm

By: _____
Paul S. Maco, Esq.
Vinson & Elkins, L.L.P.

Approved as to Form and Legality: CASEY GWINN, City Attorney

By: _____
Anita Noone
Assistant City Attorney

KJS:pev

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial (202) 639-6705
Direct Fax (202) 639-8905
pmaco@velaw.com

January 23, 2003

VIA FEDERAL EXPRESS

Ms. Kelly J. Salt
Deputy City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101

Re: Agreement with City of San Diego for Electronic Disclosure Counsel Services

Dear Ms. Salt:

By return Federal Express, enclosed are five originals signature pages of the agreement, which I have signed.

Please call if you have any questions.

/s/ Paul Maco
Paul S. Maco
Enclosures

C-11939

Document Number: C-11939

FILED 02/20/03
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY MANAGER ACTION

Agreement with Vinson & Elkins, LLP for Electronic Counsel Services, to review an investor web page to be added to the City's existing web site.

NO COUNCIL ACTION

cc: Kelly Salt (1 dup) (2 wet copies)
Auditor (1 wet copy)

Picked up by:
Pat Vaughn on 2/20/03

es

If this sheet is accidently taken by the originator, please interoffice back to Ellen Smith MS #2A.

Exhibit 3

CITY OF SAN DIEGO

REQUEST FOR

CITY MANAGER ACTION

TO:	FROM:	DATE:
CITY MANAGER	CITY ATTORNEY	12/09/03

SUBJECT:
First Amendment to Agreement with Vinson & Elkins LLP for Electronic Disclosure Counsel Services

ACTION REQUESTED:
Enter into a First Amendment to the Agreement with Vinson & Elkins, LLP for Electronic Disclosure Counsel Services, to provide additional services related to disclosure matters.

SUPPORTING INFORMATION:
The City is in the process of creating an investor web page to be added to the City's existing web site. The Web Page will provide publicly accessible investor information conforming to municipal regulations and industry guidelines and providing clear and comprehensive access to continuing disclosure annual reports and related investor information. The City needed a firm to review the web page for compliance with securities regulations and industry guidelines. Requests for Proposals were sent to six firms with specialized experience with electronic disclosure. Three firms responded. Vinson & Elkins, LLP [Firm], whose proposal included such electronic disclosure counsel services for a fixed fee, including expense reimbursements, for $30,000, was selected. The City has need of additional services for other disclosure related matters. The Firm has agreed to provide such additional services, including expense reimbursements, for an additional amount not to exceed $27,000.

FISCAL IMPACT:

$27,000 with this amendment

$30,000 for initial contract

$57,000 total fiscal impact

CITY MANAGER ACTION

DOCUMENT NO. C-12547

FILED FEB 05 2004

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

2004 JAN 14 PM 3:19

PLEASE ROUTE TO THE APPROPRIATE AUTHORITY – REF: A.R. 25.60 OR 25.70

ACCOUNTING INFORMATION	BUDGETED	BUDGETED
FUND	41509	
DEPARTMENT	777	601
ORGANIZATION	445	3300
OBJECT ACCOUNT		4222
JOB ORDER NUMBER	5024	000330
C.I.P. NO.		
FACILITY		
AMOUNT	$6,750	$20,250

ESTIMATED COST: $27,000

AUDITOR'S CERTIFICATE NUMBER: 2400703

FOR INFORMATION CONTACT:

NAME: Kelly J.Salt

MAIL STATION: MS 59

TELEPHONE NUMBER: 533-5800

ROUTING AND APPROVAL

APPROVING AGENCY	APPROVAL SIGNATURE	DATE
DEPARTMENT DIRECTOR	Casey Gwinn [signature]	
EOCP	[signature]	1.5.04
FINANCIAL MANAGEMENT	[signature]	1.17.2004
FINANCING SERVICES	[signature]	1/14/04
AUDITOR	Phil Phillips [signature]	1/15/04
ORIGINATING DEPARTMENT	[signature]	
CITY MANAGER	[signature]	1/20/04
CITY ATTORNEY	[signature]	
CITY CLERK	[signature]	2-5-04

CM-1544 (Rev. 4-81)

MS Word XP (Rev. 08/2002)

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2400703
ORIGINATING DEPT. NO.: 777/601

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: $27,000.00

Vendor: Vinson & Elkins LLP

Purpose: To authorize expenditure of funds for electronic disclosure counsel services.

Date: January 15, 2004 By: Robert T. Lewis
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	41509	777	445	4222	005024				$6,750.00
2	0	100	601	3300	4222	000330				20,250.00
									TOTAL AMOUNT	$27,000.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐

C-12547

AC 2400703

COPY

FIRST AMENDMENT TO AGREEMENT FOR ELECTRONIC DISCLOSURE COUNSEL SERVICES

THIS FIRST AMENDMENT TO AGREEMENT is made by and between THE CITY OF SAN DIEGO, a municipal corporation, City, and Vinson & Elkins, L.L.P. [Firm].

RECITALS

WHEREAS, the City entered into an Agreement with the Firm to assist in an investor web page [Web Page] to be added to the City's existing web site; and

WHEREAS, the City has need of the Firm's services with regard to other disclosure related matters for compliance with securities regulations and industry guidelines; and

WHEREAS, the Firm proposed to provide such services for a fixed fee and capped expense reimbursement.

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

Article 1.B(8) of the Agreement is hereby amended to read:

Article 1. Scope of Services

(8) Provide periodic, on-going consultation and other legal services relating to the Project and web site and other disclosure related issues as-needed for a period of two years.

Article 2.B of the Agreement is hereby amended to read:

Article 2. Compensation

B For disclosure counsel services for the Project and other disclosure related issues provided pursuant to this Agreement, the City shall compensate the Firm on a per hour basis in accordance with the following billing rates:

(1) For services provided by Mr. Paul Maco– $425 per hour.

(2) For services provided by Mr. Harvey Dunn– $395 per hour.

(3) For services provided by Mr. David Godschalk– $305 per hour.

(4) For services provided by Ms. Catherine Fancher– $250 per hour.

(5) For services provided by Ms. Malia Vaughn– $235 per hour.

Compensation for such services on a per hour basis and related expenses shall not exceed $57,000.

All other terms and conditions of the Agreement shall remain in full force and effect.

DOCUMENT NO. C-12547
FILED FEB 05 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement on the 12th day of December, 2003.

THE CITY OF SAN DIEGO

By _____
Mary E. Vattimo
City Treasurer

The Firm

By _____
Paul S. Maco, Esq.
Vinson & Elkins, L.L.P.

Approved as to form and Legality:

CASEY GWINN, City Attorney

By _____
Anita Noone
Assistant City Attorney

KJS:pev
12/08/03
Or.Dept: CityTreas.

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Ana Maria Ablaza
Direct Dial 202-639-6569
Direct Fax 202-639-6604
aablaza@velaw.com

December 23, 2003

Kelly J. Salt
Deputy City Attorney
City of San Diego
1200 Third Ave., Suite 1100
San Diego, CA 92101-4100

Re: Vinson & Elkins L.L.P. Workforce Report

Dear Ms. Salt:

On David Godschalk's request, I enclose a copy of our firm's most recent workforce report.

Sincerely,

Ana Maria Ablaza

Ana Maria Ablaza
Secretary to Paul S. Maco

Enclosure

C-12547

WORK FORCE REPORT – Page 2

NAME OF FIRM: VINSON & ELKINS L.L.P. DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

(1) African-American, Black
(2) Latino, Hispanic, Mexican-American, Puerto Rican
(3) Asian, Pacific Islander
(4) American Indian, Eskimo
(5) Filipino
(6) Caucasian
(7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial	4	1	1	0	0	1	0	0			19	27		
Professional Specialty	15	11	17	14	7	8	1	1			538	236		
Engineers/Architects														
Technicians and Related Support	2	7	6	3	5	1	0	0			19	13		
Sales														
Administrative Support/Clerical	17	89	23	83	1	24	0	2			52	509		
Services	1	0	0	0	0	1	0	0			20	1		
Precision Production. Craft and Repair	0	0	1	0	0	0	0	0			0	0		
Machine Operators, Assemblers, Inspectors	0	0	0	0	0	0	0	0			1	0		
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*	0	0	0	0	0	0	0	0			0	0		

*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN	39	108	48	100	13	35	1	3			649	786		

GRAND TOTAL ALL EMPLOYEES	1782

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

Document Number: C-12547

FILED 02/05/04
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY MANAGER ACTION

First Amendment to Agreement with Vinson & Elkins, LLP for Electronic Disclosure Counsel Services, to provide additional services related to disclosure matters.

NO COUNCIL ACTION

cc: Kelly Salt (1 dup) (1 wet copy)
Auditor (1 copy)

Picked up by:

Pat G. U 2/5/04

Print Name **Date**

If this sheet is accidentally taken by the originator, please interoffice back to Ellen Smith MS #2A.

Exhibit 4

11/24/03

Macro. Teri's Quicks notes

Miami case -- related to CAFR footnote misleading disclosure -- found footnote to be fraudulent. In ruling we get the message:
* Even though something is immaterial per GAAP it can still be in violation of anti-fraud law.

Paul M. can see how Paul W. could find these errors material due to (1) quantity (2) the big error on leases (3) lack of solid processes on city & CJO that didn't catch this stuff -- loose ~~credible~~ credibility

Therefore

1. Do ~~reco~~ advise putting in transmittal letter see attached.

To be cautious 2. Do file voluntarily with NEMRS the Paul W. language from POS or wait on CAFR and get POS out ~~be~~ at same date as CAFR (once POS out CAFR is out since in it)

3. Do put reference on web site to NEMRS

~~[illegible] to be con~~

End of notes since have to leave work

EXHIBIT # 68

Exhibit 5

to - 8 11/27/84

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

---

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
(F ial 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 h y represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:

Iss 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)

$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)

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

$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)

$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)

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

$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)

$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.

Final 11/1/07

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

---

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 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.

Final 11/21/04

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

---

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.

ıereby 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.

Exhibit 6

REQUEST FOR

CITY MANAGER ACTION

TO:	FROM:	DATE:
CITY MANAGER	CITY ATTORNEY	1/22/04

SUBJECT:
RETENTION OF VINSON & ELKINS, AS OUTSIDE COUNSEL, IN CONNECTION WITH THE CITY OF SAN DIEGO FINANCIAL DISCLOSURES.

ACTION REQUESTED:
Authorize a Retainer Agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed $150,000 for legal services related to the City of San Diego financial disclosures.

SUPPORTING INFORMATION:
The City needs outside legal expertise to assist it in performing a review of current and past financial disclosure practices, and in responding to an inquiry by the Securities and Exchange Commission. Vinson & Elkins has been identified as the law firm best suited to provide the necessary services. The City Attorney shall monitor and direct the firm's work.

DOCUMENT NO. C-12576

FILED MAR 0 2 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

PLEASE ROUTE TO THE APPROPRIATE AUTHORITY – REF: A.R. 25.60 OR 25.70

ACCOUNTING INFORMATION	BUDGETED	BUDGETED
FUND	100	41509
DEPARTMENT	601	777
ORGANIZATION	3300	445
OBJECT ACCOUNT	4141	4141
JOB ORDER NUMBER	000330	005024
C.I.P. NO.		
FACILITY		
AMOUNT	$112,500	$37,500

ESTIMATED COST: Not to exceed $150,000

AUDITOR'S CERTIFICATE NUMBER: AC2400800

FOR INFORMATION CONTACT:

NAME: Leslie J. Girard

MAIL STATION: 59 TELEPHONE NUMBER: (619) 236-7726

ROUTING AND APPROVAL		
APPROVING AGENCY	APPROVAL SIGNATURE	DATE
DEPARTMENT DIRECTOR	Leslie Girard	2/20/04
FINANCIAL MANAGEMENT (CIP)	Pat Frazier	2/23/04
CLEARING AUTHORITY		
DEPUTY CITY MANAGER		
AUDITOR	Terri Webster	2/23/04
ORIGINATING DEPARTMENT		
CITY MANAGER	Michael Uberuaga	2/23/04
CITY ATTORNEY	Leslie Girard	2/20/04
CITY CLERK		3/2/04

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2400800

ORIGINATING DEPT NO: 247

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Amount: $150,000.00

Vendor: Vinson & Elkins LLP

Purpose: Expert legal services

Date: February 11, 2004 By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
01	0	100	601	3300	4141	000330				$112,500.00
02	0	41509	777	445	4141	005024				$37,500.00
										$150,000.00

EV 2-92)

FUND OVERRIDE ☐

AC 2400800

C-12576

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE. N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial (202) 639-6705
Direct Fax (202) 879-8905
pmaco@velaw.com

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.

DOCUMENT NO. C-12576
FILED MAR 02 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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 7

Les Girard - RE: Attorney-Client Communication

From: "Maco, Paul S." <pmaco@velaw.com>
To: "Casey Gwinn" <caseygwinn@SanDiego.gov>
Date: 2/16/2004 11:40 AM
Subject: RE: Attorney-Client Communication
CC: "Les Girard" <LJGirard@SanDiego.gov>

Casey and Les, I've conferred with colleagues Rick Sauer, a former senior SEC enforcement lawyer, and Mark Tuohey, a former AUSA, Senior DOJ lawyer and Deputy Independent Counsel:

1) while it potentially is the City's pocketbook, it is also appropriate for the officials to request their own counsel and the City to consider providing it. If you like, I can prepare a list of experienced SEC enforcement lawyers.

2) We see no conflict in our serving in both the report capacity and as your SEC lawyers, rather it is complementary and will avoid doubling up cost. For example, we would not be able to do a thourough report unless we reviewed everything turned over to the SEC in any event. We would also be well positioned to engage in any negotiations with the SEC staff upon completion of the report.

3) It may make sense to add a criminal lawyer who knows the S.D. US Attorney office well. We can recommend a few.

Paul

-----Original Message-----
From: Casey Gwinn [mailto:caseygwinn@SanDiego.gov]
Sent: Monday, February 16, 2004 1:42 AM
To: Maco, Paul S.
Cc: Les Girard
Subject: Re: Attorney-Client Communication

Paul,

For your further reflection, I have spoken with Ed Ryan and Pat Frazier today and both have concerns about you and the City Attorney's Office representing them. They have not yet made a final decision but they are considering asking the City to hire outside lawyers for them. This will be very controversial for the Council. The three Councilmembers under indictment were not allowed to have City paid defense attorneys in their investigation.

There will be a clear perception that Pat and Ed have committed unlawful acts if they request their own lawyers.

Pat and Ed also raised questions about your representation of the City since you were already assisting City staff on these issues. I don't see the legal issue, but Pat made the point that they were going to have you do an internal review and now you are "investigating" the staff you have been working with. This has been all exascerbated by the Mayor's comments in the paper that any wrongdoing will be prosecuted to the

fullest extent of the law.

Pat and Ed feel that they are personally in clear jeopardy. I asked her to consider whether she wanted the City to hire a lawyer for her or whether she wanted to hire a lawyer with her own money. I told her that I could not authorize a lawyer for her. She would have to make a formal request and the City Council would have to consider it in Closed Session.

Casey

>>> "Maco, Paul S." <pmaco@velaw.com> 02/15/04 09:31 AM >>>
Casey, thank you for this message. I am giving careful consideration to these issues and discussing with a few partners who also have senior SEC experience and Justice Department experience. I look forward to Tuesday.

Paul

-----Original Message-----
From: Casey Gwinn <caseygwinn@SanDiego.gov>
To: Maco, Paul S. <pmaco@velaw.com>
Sent: Sun Feb 15 11:02:42 2004
Subject: Attorney-Client Communication

Paul,

As you know, I spoke Friday night with the Assistant United States Attorney Jason Forge. His comments were stunning and deeply troubling. The United States Attorney has no evidence of any criminal wrongdoing but has created a criminal investigation in order to avoid being "one upped" by the SEC. The internal politics of federal agencies may impact the financial markets and has profoundly impacted public opinion and still, there is no evidence of any criminal or even civil liability.

I am very concerned about Councilmembers and City staffers. We called many of the key players yesterday. They all want to know if they should be getting their own lawyers. I cannot authorize that nor am I recommending it. Many are scared and stunned by the abuse of power by the United States Attorney and the FBI. I still cannot see any legal wrongdoing in any of this. Yet, many are being destroyed in the media with no evidence. All we continue to see are allegations motivated for political reasons. I continue to believe that attorney Pat Shea is driving most of this behind the scenes. He is married to Diann Shippione and he is very close to City Attorney candidate Mike Aguirre. A convergence of forces is mushrooming this relatively light breeze matter into a whirlwind.

The politics of the Mayor's race and the City Attorney's race are, in many ways, overwhelming the real issues. The Mayor is getting knocked all over the place even though he appears to have done nothing wrong from a legal stand point. The public does not know who did what or even what the issues are, they just know "bad things" happened.

I look forward to having you here on Tuesday and developing a strategy for advising many concerned staff members and elected officials. We also need to decide what we can and cannot say publicly to explain to the public what the issues even are. No one knows what the issues are

but when they hear FBI and US Attorney they assume serious criminal misconduct.

The FBI is now publicly commenting on their investigation in the newspaper! I am stunned by that. The Assistant US Attorney is telling me they have no evidence of any criminal wrongdoing and the US Attorney and FBI are leaking information which is destroying the reputations and careers of staff members and elected officials with no evidence whatsoever. It is the same strategy they have used in the indictments of the three Councilmembers. I repeat...I more and more see both situations as abuses of power based on the arrogance of the United States Attorney and the FBI with no regard for how there actions are going to impact the outcome of city-wide elections.

I look forward to seeing you Tuesday morning.

Casey

>>> "Maco, Paul S." <pmaco@velaw.com> 02/13/04 15:36 PM >>>
Cell. 202-607-7300

E-mail by blackberry at this address 24/7.

AUSA agreed to serve your office on behalf of individual employees instead of employees.

- .....CONFIDENTIALITY NOTICE.....

The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Thank You.
-

Exhibit 8

FY 04 04/01/04 15:53:11

THE CITY OF SAN DIEGO
REQUEST FOR DIRECT PAYMENT

DP NO. 4087042

VENDOR INFORMATION

VENDOR NUMBER & ALPHA: 0003689288 VEL

VENDOR NAME: VINSON & ELKINS L.L.P

VENDOR ADDRESS: PO BOX 200113

HOUSTON TX 772160113

PREPARER INFORMATION

DEPT/GROUP: 045

NAME: DIANE MAGLARAS

PHONE NO: 619 236 6484

MAIL STATION: 59

PREPARED FOR DEPT. NO:

ENCUMBRANCE DOC. NO.

☐ COMPLETE AC2400800

SORT KEY 6 2 2 0

AUTHORITY FOR PAYMENT RES/DOC NO:

PURCHASING APPROVAL

AGENT

I CERTIFY THIS CLAIM IS VALID UNDER THE CITY CHARTER, COUNCIL POLICIES, ADMINISTRATIVE REGULATIONS, AND OTHER APPROPRIATE GOVERNING RULES, AND IS EVIDENCED BY SUPPORTING DOCUMENTATION.

Rachel Shah

DEPT. HEAD OR DESIGNEE

FUND OVERRIDE ☐

PAYMENT DATE 04/07/04

DESCRIPTION OF EXPENSE/SPECIFIC CITY BENEFIT & PURPOSE:

PAYMENT FOR LEGAL SERVICES PER ATTACHED INVOICE SEC INVESTIGATION.

COMMENTS AND/OR SPECIAL INSTRUCTIONS:

CITY OF SAN DIEGO CONTROLLER RECEIVED 2004 APR -2 P 1:11

RELEASED: 04/01/04 15:53

FINAL-RELEASED

PAYEE REMITTANCE INFORMATION

SEQ	INVOICE NUMBER OR DESCRIPTION	INVOICE DATE	PAYMENT CATEGORY	LATE CODE	AMOUNT	TAX CODE
B	25085936	03 12 04	1		149,987.22	P

TOTAL AMOUNT $ 149,987.22

DISTRIBUTION OF CHARGES TO BE COMPLETED BY ORIGINATING DEPARTMENT

SEQ	CY/PY	FUND	DEPT.	ORG.	ACCT.	JOB ORDER	OPER ACCT	BENE/ EQUIP	FAC.	AMOUNT	AUDITOR APPROVAL	DATE
001	0	100	601	3300	4141	000330				112,490.42		04-06
002	0	41509	777	445	4141	005024				37,496.80		4/9/04

TOTAL AMOUNT $ 149,987.22

Unreleased

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.

AUSTIN BEIJING DALLAS HOUSTON LONDON MOSCOW NEW YORK SINGAPORE WASHINGTON, D.C.

March 12, 2004

San Diego, City of, California
Office of the City Attorney
1200 Third Avenue
Suite 1620
San Diego, CA 92101

Client/Matter	SAN068 36000
Invoice Number	25085936
Billing Attorney	Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

REMITTANCE COPY

Fees for services posted through February 29, 2004	$144,873.75
Disbursements and other charges posted through February 29, 2004	5,113.47
TOTAL INVOICE	**$149,987.22**

Ok to pay
149,987.22
3/18/04
AC # 2400800

Please return this page with your payment

Total amount (payable in U.S. dollars) due by April 11, 2004

Please reference account and invoice numbers when remitting.

I.R.S. NO. 74-1183015

PLEASE REMIT TO: P.O. BOX 200113
HOUSTON, TEXAS 77216-0113

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.

AUSTIN BEIJING DALLAS HOUSTON LONDON MOSCOW NEW YORK SINGAPORE WASHINGTON, D.C.

March 12, 2004

San Diego, City of, California
Office of the City Attorney
1200 Third Avenue
Suite 1620
San Diego, CA 92101

Client/Matter	SAN068 36000
Invoice Number	25085936
Billing Attorney	Paul S. Maco

Please return this page with your payment

Total amount (payable in U.S. dollars) due by April 11, 2004

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial (202) 639-6705
Direct Fax (202) 879-8905
pmaco@velaw.com

March 12, 2004

Les Girard, Esq.
Assistant City Attorney
Office of the City Attorney
Civic Center Plaza
1200 Third Ave, Suite 1620
San Diego, CA 92101

Dear Les:

Enclosed please find our firm's invoice for legal services rendered and disbursements and additional charges incurred through February 29, 2004, in connection with matters relating to San Diego Municipal Bond Securities Offerings (MLA-2842). 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

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.

AUSTIN BEIJING DALLAS HOUSTON LONDON MOSCOW NEW YORK SINGAPORE WASHINGTON, D.C.

March 12, 2004

San Diego, City of, California
Office of the City Attorney
1200 Third Avenue
Suite 1620
San Diego, CA 92101

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Re: In the Matter of San Diego Municipal Bond Securities Offerings (MLA-2842)

Fees for services posted through February 29, 2004, as follows:

Date	Init	Description	Hours
02/07/04	PSM	Calls with Les Girard and review materials.	2.00
02/08/04	PSM	Review materials prior to conference call with Les Girard and others; continue review of materials.	8.50
02/09/04	PSM	Continue review of disclosure materials and meet with City Staff; discuss current status and considerations.	7.50
02/10/04	PSM	Meet with City Attorney, Paul Webber, City management, closed Council session.	9.50
02/11/04	PSM	Meet with Paul Webber, City attorney, closed City Council session on investigation matters.	11.50
02/12/04	PSM	Review Webber materials.	2.00
02/12/04	RCSA	Call to forensic accountant.	0.25
02/13/04	PSM	Call with Webber, call from SEC, calls to Casey Gwinn, conference call with SEC, calls from AUSA for San Diego, and consult Tuohey and Sauer.	6.50
02/13/04	RCSA	Conference with P. Maco; review documents from City; telephone conference with City officials.	3.00
02/14/04	PSM	Calls from Casey Gwinn, calls and e-mails w/Sauer and Tuohey.	3.50
02/14/04	RCSA	Review e-mails and City disclosure documents.	2.00
02/15/04	PSM	E-mails Webber and Sauer, call w/ Touhey.	0.50
02/15/04	RCSA	Review City disclosure documents.	1.50
02/16/04	GGS	Telephone conference with and e-mails regarding pension issues in connection with SEC investigation.	0.50
02/16/04	MHT	Conference with Paul Maco; telephone conference with	0.50

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
		Paul Maco.	
02/16/04	PSM	Review documents, calls with SEC, prepare plan and line up team.	7.50
02/16/04	RCSA	Review City disclosure documents.	1.25
02/17/04	GGS	Telephone conference with Paul Maco and Maria Bickerton regarding San Diego case; review e-mails from Maria Bickerton; preliminary review of city code.	2.50
02/17/04	MHT	Conference with Paul Maco and Rick Sauer regarding legal issues and investigation protocol.	2.25
02/17/04	PSM	Conference call with Sauer and Tuohey re investigation issues, conference call with Bickerton and Short re pension matters, meet with City Attorney staff, City management.	12.00
02/17/04	TDEI	Perform legal research regarding financial disclosure of pension obligations.	5.50
02/17/04	MEBI	Telephone conference with Paul Maco and Gary Short regarding pension plan issues; review Article 4 of the Municipal Code regarding the City Employees' Retirement System ("CERS"); communicate conclusions from review to Gary Short; telephone conference with Tim Deithloff regarding the background of this representation; arrange for transmittal of Article 4 of the CERS to Gary Short and Tim Deithloff.	2.75
02/17/04	RCSA	Telephone conferences with members; review documents.	3.75
02/18/04	GGS	Review and analysis regarding actuarial issues and San Diego code provisions regarding pension benefits and funding requirements; e-mails regarding same.	1.50
02/18/04	MHT	Telephone conference with Paul Maco; conference with associates selected to assist in document review; draft of memo.	3.00
02/18/04	BSL	Confer with Mark Tuohey and Amy Drew regarding San Diego project.	0.50
02/18/04	PSM	Conference call with Tuohey and Sauer, meet w/City	12.50

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
		attorney, City management, and continue work for report.	
02/18/04	TDEI	Perform legal research regarding GASB disclosure of pension obligations and obtaining representative financial statements and offering documents.	3.50
02/18/04	MEBI	Communicate with Gary Short regarding how the City's contribution obligations for the City Employees' Retirement System ("CERS") are determined under Article 4 of the Municipal Code; begin reviewing the 2003 actuarial report for the CERS; continue researching the constitution of the CERS Board of Administration, its power and duties, the City's funding obligations, and the provisions of the Constitution of the State of California, the City Charter, and the Municipal Code with regard to the CERS; telephone conference with Tim Deithloff regarding research results; communicate research results to Gary Short.	3.50
02/18/04	ANDR	Meet with Mark Tuohey to discuss project.	0.50
02/18/04	RCSA	Review CERS filings, telephone conference with SEC staff; conference with P. Maco and M. Tuohey; review city documents.	4.00
02/19/04	GGS	Attorney conference with Maria Bickerton regarding issues in connection with San Diego pension plan; review terms of plan.	2.50
02/19/04	MHT	Review of filings and preparation of letter; conference with team members.	1.50
02/19/04	PSM	Conference call with S&P, calls with SEC LA staff, continue review of materials.	6.50
02/19/04	TDEI	Perform legal research regarding independence standards to auditors of governmental entities; teleconferences with Rick Sauer regarding same; perform legal research regarding accounting for pension obligations.	4.50
02/19/04	DMPA	Telephone conferences with Barbara Lundholm, Ben Lippard, and Ana Ablaza regarding document review project; prepare for San Diego project; review City of San Diego website.	3.25

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
02/19/04	CDTO	Download and printout New Yellow Book and related documents from General Accounting Office website for Tim Deithloff.	1.00
02/19/04	MEBI	Conference with Gary Short regarding the retirement system issues based on the information in our possession; research the allegations in the Gleason class action litigation; report results of research to Gary Short; communicate with Paul Maco to obtain additional documents for purposes of further evaluating the retirement system issues.	1.25
02/19/04	RCSA	Telephone conference with members of team; telephone conferences with forensic accountant; research regarding auditing standards; review city documents.	5.50
02/20/04	GGS	Review city code provisions regarding city retirement plan and fax regarding same; e-mails regarding same and other documents relating to disclosure.	2.25
02/20/04	MHT	Review of retainer letter; telephone conference regarding strategy; draft of memo.	2.00
02/20/04	BSL	Teleconference with Mark Tuohey, Paul Maco, Richard Sauer, and Amy Drew regarding case issues; review draft memorandum on witness interviews; arrange for team email and voicemail groups.	2.00
02/20/04	PSM	Conference call Sauer and Tuohey, meet with City attorneys, meet with City staff, continue organization for production, meet with Salt re dirt-bond disclosure and calls re same, identify space for team and planning re same.	12.00
02/20/04	TDEI	Perform legal research regarding auditor independence; review related correspondence; obtain source documents and research materials for accounting and disclosure issues; teleconference with Paul Maco.	5.25
02/20/04	DMPA	Telephone conferences with Barbara Lundholm, Ana Ablaza, Paul Maco, and IT group regarding San Diego project issues; review request for information from the SEC and related news articles; conferences with IT group	10.00

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
		regarding technology issues; conferences with Kathy Fisher and Lori Thornton regarding database issues; continue to prepare for project; prepare forms to be utilized; make travel arrangements.	
02/20/04	CDTO	Order, download and printout Official Statements and CAFRs for Tim Deithloff from DPC.	3.50
02/20/04	MEBI	Communicate with Paul Maco and Gary Short regarding documents needed for analysis of the retirement system issues; begin reviewing the complete 2003 actuarial valuation report sent by Paul Maco.	0.75
02/20/04	ANDR	Conference call with Ben Lippard, Paul Maco, Rick Sauer to discuss plans for project; draft memo outlining interview procedures.	2.00
02/20/04	RCSA	Research and prepare memo regarding auditor independence; telephone conferences with accountants;	7.75
02/21/04	PSM	Calls and conference call with SEC, conference call to accounting firm, meet with City attorney, meet with City managers on market entry and rating agency issue, prepare organizational materials.	9.50
02/21/04	TDEI	Perform legal research regarding auditor independence; review related correspondence.	4.50
02/21/04	DMPA	Plan for needs for document production; prepare and distribute master calendar for team; review documents distributed to team.	4.50
02/21/04	RCSA	Document review.	2.25
02/22/04	BSL	Prepare for San Diego trip.	1.25
02/22/04	TDEI	Perform legal research regarding auditor independence; review related correspondence from working group.	3.50
02/22/04	DMPA	Review information regarding San Diego project; revise log forms; review San Diego news articles; travel to San Diego.	14.25
02/22/04	RCSA	Access and review documents.	3.25

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
02/23/04	GGS	Review and analysis of pension and actuarial aspects of various securities filings.	2.50
02/23/04	MHT	Review of memo on discipline; telephone conference with client.	0.75
02/23/04	BSL	Review documents related to San Diego project. Travel to San Diego for client project.	9.75
02/23/04	PSM	Organize multiple tasks, approach and needed cooperation; meet with City attorney and City team re downgrading draft.	11.00
02/23/04	TDEI	Perform legal research regarding auditor independence issues; review outside auditor contracts; draft and send email to Paul Maco regarding same; review GFAO guidance regarding pension disclosures.	4.50
02/23/04	DMPA	Conferences with Karen DeCrescenzo of the City Attorney's staff regarding anticipated document production and related space, equipment, and manpower needs; tour offices to meet staff and look at space possibilities; conferences with team; review documents distributed to team; telephone conferences with Barbara Lundholm and Jennifer Williams regarding database requirements; prepare list of preliminary needs and questions for Compliance Inc.	10.75
02/23/04	MEBI	Begin preparing portion of report with background information regarding the retirement system; continue reviewing the actuarial report for the year ending June 30, 2003; conference with Tim Deithloff regarding the status of the project; begin reviewing the Ballpark bond disclosure with respect to the pension obligations.	4.25
02/23/04	ANDR	Travel to San Diego; review City of San Diego's latest voluntary disclosure document.	6.50
02/23/04	RCSA	City of San Diego document review; conferences with city officials and V&E attorneys.	7.75
2/24/04	GGS	Review SEC report.	0.50
02/24/04	MHT	Review of documents memo from SEC staff; telephone	1.75

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
		conference with Paul Maco and Rick Sauer.	
02/24/04	BSL	Meeting with Paul Maco, Rick Sauer, Amy Drew and Doris Parker regarding SEC investigation and internal report; orientation at client site; investigative activities including conferences with client personnel, obtaining and reviewing relevant documents, conferring with team members.	10.50
02/24/04	PSM	Meetings with City attorney and staff, calls with accountants, calls with SEC, continue inquiry and planning.	10.00
02/24/04	DKG	Review contract issues.	0.50
02/24/04	TDEI	Draft, review and revise memorandum regarding auditor independence and disclosure of pension obligations; review correspondence from working group; review official statements and CAFR's for comparative pension disclosures.	8.25
02/24/04	DMPA	Conferences with team regarding various issues and tasks; revise task list; work with Karen DeCrescenzo regarding production issues; attend staff meeting; review documents distributed to team; assist team; telephone conferences with Barbara Lundholm regarding logistics; telephone conference with IT regarding database issues.	10.00
02/24/04	MEBI	Review e-mail sent by Paul Maco regarding the decline in the San Diego bond rating; continue reviewing the Ballpark disclosure with respect to the retirement system obligations; organize documents related to the retirement system in order to continue preparing the report on the retirement system.	1.75
02/24/04	ANDR	Attend meeting with V&E team and City Attorney's office representatives regarding plans for document review collection and review; begin reviewing pleadings from Gleason litigation to determine City's arguments and documents available supporting those arguments; meet with San Diego team to discuss plans.	12.00
02/24/04	RCSA	Conferences with city officials and V&E attorneys; document review.	11.25

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours
02/25/04	GGS	Review additional documents regarding e-mails relating to pension funding.	1.25
02/25/04	MHT	Review od document protocol.	0.50
02/25/04	BSL	Review draft task list; investigative activities at client site including conferring with client personnel, obtaining and reviewing relevant documents, review of relevant news articles, and disclosure review project.	8.75
02/25/04	PSM	Meet with City Attorney and team, City management re market issues, calls with SEC, planning of document production, calls with potential accounting firms.	9.00
02/25/04	TDEI	Draft, review and revise internal memorandum regarding auditor independence; review offering documents for comparative disclosures.	6.50
02/25/04	DMPA	Conferences with Karen DeCrescenzo regarding document production project and various logistical issues; revise contacts list and tasks and progress list; attend presentation by Compliance Inc. regarding document production project; conferences with and provide assistance to team regarding various issues and tasks; telephone conferences with Barbara Lundholm, Charlotte Harris, and Jennifer Williams regarding database issues; research CACI as possible alternative to Compliance Inc.	10.25
02/25/04	MEBI	Coordinate with Amy Drew and Gary Short to schedule conference call with Paul Maco and the City Attorney's office regarding the Gleason litigation; communicate with Tim Deithloff regarding access to the Government Accounting Standards Board pronouncements.	0.25
02/25/04	ANDR	Continue reviewing pleading from Gleason litigation as well as research and legal opinion memoranda regarding retirement board; interview City Attorney Chris Morris regarding Gleason case; attend meeting with San Diego team with Les Girard and City Attorney's office representatives to discuss plans for investigation.	8.50
02/25/04	RCSA	Document review; interview with city official; conferences	9.75

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Date	Init	Description	Hours	
		with city officials and V&E attorneys.		
02/26/04	DMPA	Revise and finalize contacts list and tasks and progress list for distribution at client team meeting; attend client team meeting regarding priority tasks; conferences with and provide assistance to team regarding various issues and tasks; telephone conferences with Barbara Lundholm, Charlotte Harris, Kathy Guthrie and Jennifer Williams regarding database issues; research CACI as possible alternative to Compliance Inc.; make arrangements for delivery of supplies; make additional revisions to task list, including changing format, and to contacts list; conferences with Karen DeCrescenzo regarding various issues and status; send documents via Federal Express to Maria Bickerton and Tim Deithloff; leave voice mail for Walter Wright regarding technology-based issues.	11.50	
			Total fees	**$144,873.75**
			Total hours	**432.75**

Disbursements and other charges posted through February 29, 2004

	Miscellaneous		
02/23/04	TDEI	VENDOR: AMEX INVOICE#: CON118286 DATE: 2/26/2004 Other Expenses-Governmental Accounting Standards Board publicatio	179.42
02/27/04	TDEI	VENDOR: AMEX INVOICE#: CON118499 DATE: 3/1/2004 Other Expenses-Municipal disclosure documents from DPC Data	50.00
		Miscellaneous	$229.42
	Travel		
02/07/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 02/08/04-Southwest Airlines-DC-SanDiego-DC-Meet with City staff and review documents	661.47
02/08/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 San Diego-Cab from San Diego airport to hotel	20.00
02/08/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Nightly room rate-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	206.00
02/08/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Tax on	21.63

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

		hotel room-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	
02/09/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Nightlyroom rate-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	206.00
02/09/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Tax on hotel room-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	21.63
02/09/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Agency Fees - Hotel-Internet access (3 days @9.95)	29.85
02/10/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Nightly room rate-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	206.00
02/10/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Tax on hotel room-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	21.63
02/11/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Nightly room rate-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	206.00
02/11/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 Tax on hotel room-MAN GRAND HYATT SAN DIEGO-San Diego-Meet with City staff and review documents	21.63
02/12/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 San Diego-Cab from San Diego hotel to airport	15.00
02/12/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 02/16/04-United Airlines-DC-San Diego-DC-Meetings with City representatives	768.37
02/16/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 Nightly room rate-MAN GRAND HYATT SAN DIEGO-San Diego-Meetings with City representatives	242.00
02/16/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 Tax on hotel room-MAN GRAND HYATT SAN DIEGO-San Diego-Meetings with City representatives	25.41
02/16/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 Agency Fees - Hotel-Internet access-2 days @9.95 per day	19.90
02/17/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 Nightly room rate-MAN GRAND HYATT SAN DIEGO-San Diego-Meetings with City representatives	242.00
02/17/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 Tax on hotel room-MAN GRAND HYATT SAN DIEGO-San Diego-Meetings with City representatives	25.41

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

02/19/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 San Diego-Cab from airport to hotel	15.00
02/20/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 San Diego-Cab from City offices to airport	15.00
		Travel	$2,989.93
	Business Meals		
02/09/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 MAN GRAND HYATT SAN DIEGO-1-San Diego-Room service - lunch	27.48
02/09/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 MAN GRAND HYATT SAN DIEGO-1-San Diego-Room service breakfast	35.11
02/10/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 -1--Room Service lunch	54.18
02/11/04	PSM	VENDOR: AMEX INVOICE#: CON116869 DATE: 2/11/2004 -1-San Diego-Room Service - lunch	30.35
02/16/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 MAN GRAND HYATT SAN DIEGO-1-San Diego-Room service - lunch	29.85
02/17/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 MAN GRAND HYATT SAN DIEGO-1-San Diego-Room service - breakfast	36.84
02/17/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 MAN GRAND HYATT SAN DIEGO-1-San Diego-Room service - lunch	28.08
		Business Meals	$241.89
	Computer Legal Research		
02/21/04	TDEI	SAN068-58000-001982	448.78
		Computer Legal Research	$448.78
	Photocopy		
02/12/04	PSM	1 pages @ 0.15 per page	0.15
02/12/04	PSM	48 pages @ 0.15 per page	7.20
02/13/04	PSM	4 pages @ 0.15 per page	0.60
02/13/04	PSM	1 pages @ 0.15 per page	0.15
02/17/04	MEBI	107 pages @ 0.15 per page	16.05
02/17/04	MEBI	107 pages @ 0.15 per page	16.05
02/20/04	DMPA	1 pages @ 0.15 per page	0.15
02/20/04	PSM	393 pages @ 0.15 per page	58.95
02/20/04	BSL	98 pages @ 0.15 per page	14.70
02/27/04	PSM	1 pages @ 0.15 per page	0.15
		Photocopy	$114.15
	Courier Services		
02/20/04	TDEI	VENDOR: AMEX INVOICE#: CON118286 DATE: 2/26/2004 Shipping Costs-PDF copies of OSes and CAFRs	425.00
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER SAN DIEGO CA 02/20/04	69.30

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

		Track# 650401365736	
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER, GUEST ARRIVING 2 SAN DIEGO CA 02/20/04 Track# 650401365747	16.68
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER, GUEST ARRIVING 2 SAN DIEGO CA 02/20/04 Track# 650401365758	119.54
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER, GUEST ARRIVING 2 SAN DIEGO CA 02/20/04 Track# 650401365769	69.50
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER, GUEST ARRIVING 2 SAN DIEGO CA 02/20/04 Track# 650401365770	58.38
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER, GUEST ARRIVING 2 SAN DIEGO CA 02/20/04 Track# 650401365780	63.94
02/20/04	DMPA	FEDEX - Inv. 161122913 DORIS PARKER, GUEST ARRIVING 2 SAN DIEGO CA 02/20/04 Track# 650401365791	144.56
02/26/04	DMPA	FEDEX - Inv. 161146286 MARIA BICKERTON AUSTIN TX 02/26/04 Track# 844973403630	43.29
		Courier Services	$1,010.19
	Telefax		
02/20/04	RCSA	15122363286	19.00
		Telefax	$19.00
	Long Distance Telephone		
02/17/04	DKME	NEW YORK NY 1-212-438-4510 001982	2.55
02/17/04	PSM	VENDOR: AMEX INVOICE#: CON118138 DATE: 2/24/2004 San Diego-Lodging	31.54
02/18/04	DKME	SAN DIEGO CA 1-619-533-4000 102098	2.67
02/18/04	TDEI	LEONIA NJ 1-201-346-0701	7.38
02/19/04	TDEI	ATLAS TX 1-817-589-2059	8.00
02/19/04	TDEI	ATLAS TX 1-817-589-2059	1.11
02/20/04		SAN DIEGO CA 1-619-232-1234 MANCHESTER HYATT	1.97
02/24/04	TDEI	CHICAGO IL 1-312-977-9700 SAN DIEGO	2.63
02/25/04		SAN DIEGO CA 1-619-291-5720	2.26
		Long Distance Telephone	$60.11
		Total disbursements and other charges	**$5,113.47**
		Total Invoice	**$149,987.22**

San Diego, City of, California

Client/Matter SAN068 36000
Invoice Number 25085936
Billing Attorney Paul S. Maco

Summary of services on this invoice

Init	Name	Hours	Eff. Rate	Amount
MEBI	Maria E. Bickerton	14.50	255.00	3,697.50
TDEI	Tim J. Deithloff	46.00	225.00	10,350.00
ANDR	Amy N. Drew	29.50	255.00	7,522.50
DKG	David K. Godschalk	0.50	305.00	152.50
BSL	Benjamin S. Lippard	32.75	420.00	13,755.00
PSM	Paul S. Maco	141.50	425.00	60,137.50
DMPA	Doris M. Parker	74.50	140.00	10,430.00
RCSA	Richard C. Sauer	63.25	425.00	26,881.25
GGS	Gary G. Short	13.50	450.00	6,075.00
CDTO	Daniel Tolliver	4.50	80.00	360.00
MHT	Mark H. Tuohey	12.25	450.00	5,512.50
		432.75		$144,873.75

OUTSIDE COUNSEL INVOICE ROUTING SLIP

SHORT NAME OF MATTER: SEC investigation

MATTER NUMBER: _____ *(From Outside Counsel Data Base)*

INVOICE DATE: 3/12/04

DATE INVOICE RECEIVED: 3/12/04

Initials of Assistant to Monitoring Attorney

MONITORING ATTORNEY

NAME OF ATTORNEY: Leslie J. Girard

AMOUNT OF INVOICE: $ 149,987.22

AMOUNT APPROVED FOR PAYMENT: $ 149,987.22

FUNDING SOURCE: _____ RISK MANAGEMENT

X 1544

X AC NO. 2400800 *(Please attach copy of AC)*

AMOUNT OF AVAILABLE FUNDS: $ 150,000

_____ AC NO. _____ *(Please attach copy of AC)*

AMOUNT OF AVAILABLE FUNDS: $_____

_____ OTHER (Specify): _____

ASSISTANT CITY ATTORNEY HANDLING OUTSIDE COUNSEL

AMOUNT OF INVOICE APPROVED FOR PAYMENT: $ 149,987.22

Initials

When completed, please forward this form to Nancy Al Hibshi, or, if unavailable, to Karen DeCrescenzo. Thank you.

DP4086197

0003689288-VEL

				Current Payment	
Original Total	Orig Allocation	% of Total		Total	
$150,000.00				$149,987.22	
	$112,500.00	75.00%		$112,490.42	
	$37,500.00	25.00%		$37,496.81	
		0.00%		$0.00	
		0.00%		$0.00	
	$150,000.00				
			Total	$149,987.22	
Total					

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2400800

ORIGINATING DEPT. NO: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Amount: $150,000.00

Vendor: Vinson & Elkins LLP

Purpose: Expert legal services

Date: February 11, 2004 By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
01	0	100	601	3300	4141	000330				$112,500.00
02	0	41509	777	445	4141	005024				$37,500.00
										$150,000.00

FUND OVERRIDE ☐

C-361 (REV 2-92)

AC 2400800

CITY OF SAN DIEGO

REQUEST FOR

CITY MANAGER ACTION

TO:	FROM:	DATE:
CITY MANAGER	CITY ATTORNEY	1/22/04

SUBJECT:

RETENTION OF VINSON & ELKINS, AS OUTSIDE COUNSEL, IN CONNECTION WITH THE CITY OF SAN DIEGO FINANCIAL DISCLOSURES.

ACTION REQUESTED:

Authorize a Retainer Agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed $150,000 for legal services related to the City of San Diego financial disclosures.

SUPPORTING INFORMATION:

The City needs outside legal expertise to assist it in performing a review of current and past financial disclosure practices, and in responding to an inquiry by the Securities and Exchange Commission. Vinson & Elkins has been identified as the law firm best suited to provide the necessary services. The City Attorney shall monitor and direct the firm's work.

PLEASE ROUTE TO THE APPROPRIATE AUTHORITY – REF: A.R. 25.60 OR 25.7

ACCOUNTING INFORMATION	BUDGETED	BUDGETED
FUND	100	41509
DEPARTMENT	601	777
ORGANIZATION	3300	445
OBJECT ACCOUNT	4141	4141
JOB ORDER NUMBER	000330	005024
C.I.P. NO.		
FACILITY		
AMOUNT	$112,500	$37,500

ESTIMATED COST: Not to exceed $150,000

AUDITOR'S CERTIFICATE NUMBER: AC2400800

FOR INFORMATION CONTACT:

NAME: Leslie J. Girard

MAIL STATION: 59

TELEPHONE NUMBER: (619) 236-7726

ROUTING AND APPROVAL		
APPROVING AGENCY	APPROVAL SIGNATURE	DATE
DEPARTMENT DIRECTOR	Leslie Girard	2/20/04
FINANCIAL MANAGEMENT (CIP)	Pat Frazier	
CLEARING AUTHORITY		
DEPUTY CITY MANAGER		
AUDITOR	Terri Webster	
ORIGINATING DEPARTMENT		
CITY MANAGER	Michael Uberuaga	
CITY ATTORNEY	Leslie Girard	2/20/04
CITY CLERK		

Exhibit 9

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 10

(R-2004-1044)

RESOLUTION NUMBER R- 299077

ADOPTED ON APR 12 2004

WHEREAS, the City of San Diego previously retained the law firm of Vinson & Elkins ("V&E") to provide services related to the representation of the City at the Securities & Exchange Commission ("SEC") in the SEC's investigation into certain City financial matters, and to prepare an internal report ("Report") on the City's securities disclosure practices from 1996 through the present; and

WHEREAS, the contract is currently in an amount not to exceed $150,000; and

WHEREAS, additional contract authorization is necessary and appropriate to permit V&E to complete the Report and continue the representation before the SEC; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is hereby authorized and directed to execute an amendment to the retention agreement with V&E for an additional amount not to exceed $350,000, for a total contract amount not to exceed $500,000.

APPROVED: CASEY GWINN, City Attorney

By _____
Leslie J. Girard
Assistant City Attorney

LJG:km
04/07/04
Aud.Cert:
Or.Dept:Atty.
R-2004-1044

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial 202-639-6705
Direct Fax 202-879-8905
pmaco@velaw.com

March 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

Re: Our Engagement Letter of February 18, 2004

Dear Mr. Gwinn:

Pursuant to the fifth paragraph under the caption "Scope of Our Engagement," we mutually agree to supplement the amount referred to by an additional $350,000, for a total amount not to exceed of $500,000.

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

PROJECT NAME: SECURITY & EXCHANGE COMMISSION AC: 2400800
ORIGINAL AMOUNT: $150,000.00 DATE: 2/11/04

BALANCE	DATE	INVOICE NO.	INVOICE AMOUNT	PAYMENT AMOUNT
$150,000.00	2/11/04	NA	NA	NA
12.78	3/12/04	25085936	149,987.22	149,987.22
- 0 -	2/23/04	25082650	6,991.70	12.78

PROJECT NAME: SECURITY & EXCHANGE COMMISSION AC: 2400977
ORIGINAL AMOUNT: $350,000.00 DATE: 4/06/04

BALANCE	DATE	INVOICE NUMBER	INVOICE AMOUNT	PAYMENT AMOUNT
$350,000.00	4/06/04	NA	NA	NA
346,218.26	2/23/04	25082650	6,991.70	3,781.74
22.89	5/12/04	25093715	346,195.37	346,195.37
- 0 -	5/26/04	25096084	307,735.03	22.89

PROJECT NAME: SECURITY & EXCHANGE COMMISSION AC: 2401131
ORIGINAL AMOUNT: $800,000.00 DATE: 5/27/04

BALANCE	DATE	INVOICE NUMBER	INVOICE AMOUNT	PAYMENT AMOUNT
$800,000.00	5/27/04	NA	NA	NA
492,287.86	5/26/04	25096084	307,735.03	307,712.14
255,396.01	6/25/04	25099849	236,891.85	236,891.85
-0-	7/26/04	25103673	311,217.58	255,396.01 (-55,821.57)

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY): AC 2400977

O: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: 4/7/04

S'

TENTION OF VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES & EXCHANGE COMMISSION AND TO PREPARE AN INTERNAL REPORT ON DISCLOSURE PRACTICES.

. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Leslie J. Girard

6. TELEPHONE NO.: 236-7726

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: X

8.COMPLETE FOR ACCOUNTING PURPOSES

UND				
EPT.				
RGANIZATION				
BJECT ACCOUNT				
OB ORDER				
.I.P. NUMBER				
MOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

The estimate for this matter is $500,000, although additional funds may be required to complete the scope of services.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	CITY ATTORNEY		4/7/04	8	CITY MANAGER		4/6/04
2	FINANCIAL MANAGEMENT		4/7/04	9	AUDITOR		4-6-04
3				10	CITY ATTORNEY		4/7/04
4				11	ORIGINATING DEPARTMENT		4/7/04
5					MGR. DOCKET COORD:		COUNCIL REP.
				✓	RULES COMMITTEE	☑ CONSENT	☐ ADOPTION
7						☐ REFER TO:	DATE: 4-12

11. PREPARATION OF: ☒RESOLUTIONS ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing an amendment to the retention letter between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional $350,000, for legal services related to representing the City before the Securities & Exchange Commission and preparing an internal report on disclosure practices, for a total contract amount not to exceed $500,000.

11A. MANAGER'S RECOMMENTATIONS:

Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): N/A

CITY CLERK INSTRUCTIONS: N/A

ENVIRONMENTAL IMPACT: This action is not a "project" for purposes of CEQA.

OTHER ISSUES: N/A

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE: 4/7/04

SUBJECT:

RETENTION OF KPMG LLP TO PERFORM AN AUDIT OF THE CITY'S FY 2003 BASIC FINANCIAL STATEMENTS.

BACKGROUND:

The City previously retained the law firm of Vinson & Elkins ("V&E") to prepare in internal report on the City's securities disclosure practices from 1996 through the present. The City Manager authorized the retention in an amount not to exceed $150,000. Subsequently, the City was informed that the Securities & Exchange Commission ("SEC") had begun an investigation into certain City financial matters, and the City requested that V&E expand their scope of services to include representing the City at the SEC. The initial authorization is insufficient for these purposes, and additional authorization is now being sought in an amount not to exceed $350,000, for a total contract amount not to exceed $500,000.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2400977

ORIGINATING DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Amount: $350,000.00

Vendor: Vinson & Elkins

Purpose: Supplement to retainer agreement for legal services related to the City of San Diego financial disclosures

Date: April 6, 2004 By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3501	4151	81141				$350,000.00
										$350,000.00

AC (REV 2-92)

FUND OVERRIDE ☐

AC 2400977

Exhibit 11

LES GIRARD
MS-59

(R-2004-1324)

RESOLUTION NUMBER R- 299313

ADOPTED ON JUN 07 2004

WHEREAS, the City of San Diego previously retained the law firm of Vinson & Elkins ("V&E") to provide services related to the representation of the City at the Securities & Exchange Commission ("SEC") in the SEC's investigation into certain City financial matters, and to prepare an internal report ("Report") on the City's securities disclosure practices from 1996 through the present; and

WHEREAS, the contract is currently in an amount not to exceed $500,000; and

WHEREAS, additional contract authorization is necessary and appropriate to permit V&E to complete the Report and continue the representation before the SEC; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is hereby authorized and directed to execute an amendment to the retention agreement with V&E for an additional amount not to exceed $800,000, for a total contract amount not to exceed $1.3 million.

APPROVED: CASEY GWINN, City Attorney

By _____
Leslie J. Girard
Assistant City Attorney

LJG:km
05/27/04
Or.Dept:Atty.
R-2004-1324
Form=r-t.frm

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY): 2401131

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: 5/27/04

4. SUBJECT:
AMENDMENT TO RETENTION AGREEMENT WITH VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES & EXCHANGE COMMISSION AND TO PREPARE AN INTERNAL REPORT ON DISCLOSURE PRACTICES.

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Leslie J. Girard

6. TELEPHONE NO.: 236-7726

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: X

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140			
DEPT.	81140			
ORGANIZATION	3501			
OBJECT ACCOUNT	4141			
JOB ORDER	08 1141			
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:
The additional funding requested for this matter is $800,000, although further additional funds may be required to complete the scope of services.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	CITY ATTORNEY		5/26/04	8	CITY MANAGER		
2	FINANCIAL MANAGEMENT	Patricia T. Frazier	5/27/04	9	AUDITOR		5/27/04
3				10	CITY ATTORNEY		5/26/04
4				11	ORIGINATING DEPARTMENT		5/26/04
5							
6							
7							

✓ MGR. DOCKET COORD: _____ COUNCIL REP.

RULES COMMITTEE ☐ CONSENT ☐ ADOPTION ☐ REFER TO: _____ DATE: _____

11. PREPARATION OF: ☒ RESOLUTIONS ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing an amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional $800,000, for legal services related to representing the City before the Securities & Exchange Commission and preparing an internal report on disclosure practices, for a total contract amount not to exceed $1.3 million.

11A. MANAGER'S RECOMMENTATIONS:

Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): N/A

CITY CLERK INSTRUCTIONS: N/A

ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA.

OTHER ISSUES: N/A

MAY 27 2 57 PM '04
CITY ATTORNEY

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE: 5/27/04

SUBJECT:
AMENDMENT TO RETENTION AGREEMENT WITH VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES & EXCHANGE COMMISSION AND TO PREPARE AN INTERNAL REPORT ON DISCLOSURE PRACTICES.

BACKGROUND:

The City previously retained the law firm of Vinson & Elkins to prepare in internal report on the City's securities disclosure practices from 1996 through the present. The City Manager authorized the retention in an amount not to exceed $150,000, and subsequently the City Council authorized an additional $350,000 as a result of the initiation of an investigation into certain City financial matters by the federal Securities & Exchange Commission [SEC]. The current authorization is insufficient to complete the internal report and continue the City's representation before the SEC due to the complexity of the issues, the significant document production required to the SEC, and the scope of the report under preparation. An additional authorization is now being requested in an amount not to exceed $800,000, for a total contract amount not to exceed $1.3 million. It is anticipated that the additional authorization will be sufficient to complete and present the report, and continue representation before the SEC for the next several months. Additional funding may be required if additional issues arise or the scope of services expands.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2401131

ORIGINATING DEPT. NO.: 81140

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: $800,000.00

Vendor: Vinson & Elkins

Purpose: Authorizing the expenditure for legal services related to representing the City before the Securities Exchange Commission and preparing an internal report on disclosure practices, in an amount not to exceed $800,000.00.

Date: May 27, 2004 By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3501	4141	81141				$800,000.00
									TOTAL AMOUNT	$800,000.00

FUND OVERRIDE ☐

1 (REV 2-92)

AC 2401131

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
ATTORNEYS AT LAW
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial 202-639-6705
Direct Fax 202-879-8905
pmaco@velaw.com

May 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

Re: Our Engagement Letter of February 18, 2004

Dear Mr. Gwinn:

Pursuant to the fifth paragraph under the caption "Scope of Our Engagement," we mutually agree to supplement the amount referred to by an additional $800,000, of which an amount not exceeding $500,000.00 is for continuation of investigation and completion of report and $300,000 is for SEC/US Attorney representation and document production, for a total amount not to exceed: $1,300,000.00.

Please contact me if you have any questions. We are honored to have this opportunity to be of service to The City of San Diego and to work with you.

Very truly yours,

VINSON & ELKINS L.L.P

By: Paul S. Maco

AGREED TO AND ACCEPTED:

The City of San Diego

By: /s/
Leslie J. Girard
Assistant City Attorney

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
ATTORNEYS AT LAW
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Vinson&Elkins V&E

Clementina
Here is a copy of the Rentention Agreement with Vinson & Elkins. The Cover Sheet (orig. sign) is a Supplement of the Orig. Agreement. I think the orig. sign. Agt is with V&E

Paul S. Maco
Direct Dial 202-639-6705
Direct Fax 202-879-8905
pmaco@velaw.com

May 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

For Clementina, Add supplement to C-Contract (C-12576) folder

Copy also added to this folder for ref. Jm. 5/18/05

Re: Our Engagement Letter of February 18, 2004

Dear Mr. Gwinn:

Pursuant to the fifth paragraph under the caption "Scope of Our Engagement," we mutually agree to supplement the amount referred to by an additional $800,000, of which an amount not exceeding $500,000.00 is for continuation of investigation and completion of report and $300,000 is for SEC/US Attorney representation and document production, for a total amount not to exceed: $1,300,000.00.

Please contact me if you have any questions. We are honored to have this opportunity to be of service to The City of San Diego and to work with you.

Very truly yours,

VINSON & ELKINS L.L.P

By: [signature]
Paul S. Maco

Please call if you need further assistance

Anna Inzunza
55789

AGREED TO AND ACCEPTED:

The City of San Diego

By: /s/
Leslie J. Girard
Assistant City Attorney

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial (202) 639-6705
Direct Fax (202) 879-8905
pmaco@velaw.com

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 12

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.

KPMG LLP, a U.S. limited liability partnership, is the U.S. member firm of KPMG International, a Swiss cooperative.

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 13

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

 Copyright © 1998, American Institute of Certified Public Accountants, Inc.

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.

 Copyright © 1999, American Institute of Certified Public Accountants, Inc.

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]

---

[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.]

 Copyright © 1999, American Institute of Certified Public Accountants, Inc.

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 14

L. Girard
59

(R-2005-204)

RESOLUTION NUMBER R- 299693

ADOPTED ON SEP 27 2004

WHEREAS, the City of San Diego previously retained the law firm of Vinson & Elkins ("V&E") to provide services related to the representation of the City at the Securities & Exchange Commission ("SEC") in the SEC's investigation into certain City financial matters, and to prepare an internal report ("Report") on the City's securities disclosure practices from 1996 through the present; and

WHEREAS, the contract is currently in an amount not to exceed $1.3 million; and

WHEREAS, additional contract authorization is necessary and appropriate to permit V&E to complete the Report and continue the representation before the SEC; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is hereby authorized and directed to execute an amendment to the retention agreement with V&E for an additional amount not to exceed $700,000, for a total contract amount not to exceed $2.0 million.

APPROVED: CASEY GWINN, City Attorney

By _____
Leslie J. Girard
Assistant City Attorney

LJG:km
08/24/04
Or.Dept:Atty.
R-2005-204
Form=r-t.frm

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY): 2500255

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: 8/24/04

4. SUBJECT: AMENDMENT TO RETENTION AGREEMENT WITH VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES & EXCHANGE COMMISSION AND TO PREPARE AN INTERNAL REPORT ON DISCLOSURE PRACTICES.

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Leslie J. Girard

6. TELEPHONE NO.: 236-7726

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: X

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

The additional funding requested for this matter is $700,000, although further additional funds may be required to complete the scope of services.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	CITY ATTORNEY		9/10/04	8	CITY MANAGER		9/10/04
2	FINANCIAL MANAGEMENT	P. Frazier	9/10/04	9	AUDITOR	Leonard Grunthal	9/13/04
3				10	CITY ATTORNEY		9/10/04
4				11	ORIGINATING DEPARTMENT		9/10/04
					MGR. DOCKET COORD:		COUNCIL REP.
				✓	RULES COMMITTEE	☐ CONSENT	☐ ADOPTION
						☐ REFER TO:	DATE:
7							

11. PREPARATION OF: ☒ RESOLUTIONS ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing an amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional $700,000, for legal services related to representing the City before the Securities & Exchange Commission and preparing an internal report on disclosure practices, for a total contract amount not to exceed $2 million.

11A. MANAGER'S RECOMMENTATIONS:

Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): N/A

CITY CLERK INSTRUCTIONS: N/A

ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA.

OTHER ISSUES: N/A

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE: 8/24/04

SUBJECT:
AMENDMENT TO RETENTION AGREEMENT WITH VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES & EXCHANGE COMMISSION AND TO PREPARE AN INTERNAL REPORT ON DISCLOSURE PRACTICES.

BACKGROUND:

The City previously retained the law firm of Vinson & Elkins to prepare in internal report on the City's securities disclosure practices from 1996 through the present. The City Manager authorized the retention in an amount not to exceed $150,000, and subsequently the City Council authorized an additional $350,000 as a result of the initiation of an investigation into certain City financial matters by the federal Securities & Exchange Commission [SEC]. Subsequently, the City Council authorized the addition sum of $800,000, for a total contract amount not to exceed $1.3 million. The current authorization is insufficient to complete the internal report and continue the City's representation before the SEC due to the complexity of the issues, the significant document production required to the SEC, and the scope of the report under preparation. An additional authorization is now being requested in an amount not to exceed $700,000, for a total contract amount not to exceed $2.0 million. It is anticipated that the additional authorization will be sufficient to complete and present the report, and continue representation before the SEC for the immediate future. Additional funding may be required if additional issues arise or the scope of services expands.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2500255

ORIGINATING DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto ned resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby rurtner certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: $700,000.00

Vendor: Vinson & Elkins

Purpose: Authorizing an amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional $700,000.00, for legal services related to representing the City before the Securities & Exchange Commission and preparing an internal report on disclosure practices, for a total contract amount not to exceed $2,000,000.00.

Date: September 13, 2004 By: Leonard J. Alfonte
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	82240		4141	082240				$700,000.00
									TOTAL AMOUNT	$700,000.00

FUND OVERRIDE ☐

(REV 2-92)

AC 2500255

Exhibit 15

KPMG LLP
Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

September 1, 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: Follow-up from meeting on August 27, 2004

Dear Mr. Girard:

We write to follow-up on our meeting on Friday in San Diego. We appreciate the opportunity afforded by that meeting to hear from the Vinson & Elkins ("V&E") representatives a status report on their investigation and to discuss with them and with you our respective views on the scope of the investigation as well as how its results will be shared with us.

On several occasions over the last few months we have had discussions about the investigation and we think it is fair to say that over that period we have expressed concerns about the scope of the investigation as it has been described to us. We expressed some of those concerns in our August 9, 2004 letter. While we remain concerned that the scope of the investigation may not be sufficient to enable us to conclude that the City has adequately addressed certain issues pertinent to our audits of the City's financial statements, we are prepared to proceed as outlined in our meeting by continuing to review the additional information being provided to us while we await the opportunity to review the final report.

Based upon our discussion on Friday, we understand that a number of the concerns raised in our August 9, 2004 letter may be addressed to some extent in the V&E report. However, you and V&E made it clear that V&E was retained only to investigate the City's disclosure practices and that, while there may be factual information pertinent to our broader concerns discussed in the report, we should not anticipate that all of the questions identified in our August 9, 2004 letter to you will be answered by the report. We will work diligently to review the information provided to us, determine whether such information is sufficient for our purposes and discuss our conclusions with you. We also appreciate your assurances that we will have access to V&E to discuss their report and the investigation; that the City will respond fully to any questions KPMG may pose that may not be addressed in the V&E report; and that the City is not imposing any deadline on KPMG to complete its work.

However, without in any way prejudging what our reaction to the final report will be, you should be aware that, if following our review of the V&E report we conclude that the V&E report is not sufficient to resolve all of the issues we face in the audit, we may advise you that additional investigative procedures may be necessary before KPMG can complete its work. In certain circumstances, we, as auditors may be obligated

KPMG LLP, a U.S. limited liability partnership, is the U.S. member firm of KPMG International, a Swiss cooperative.

F.O.I.A. CONFIDENTIAL TREATMENT
REQUESTED by Morrison & Foerster LLP
3811 Valley Centre Drive, Suite 500
San Diego, CA 92130 Telephone: 858.720.5100

to raise any unresolved questions with the City Council which, according to our engagement letter, is the body to which our audit report is to be addressed. In addition, KPMG reserves the right to resign this engagement if it concludes, in its professional judgment, that the City's investigation of these issues has not been sufficiently comprehensive to enable KPMG to reach conclusions necessary for the issuance of an audit report.

In light of the issues currently facing us and to ensure that KPMG's position is clear to all concerned, we believe it is appropriate that we provide a copy of this letter to Lamont Ewell, City Manager, and Terri Webster, Acting City Auditor and Comptroller.

Thank you again for your time on Friday. Please contact us at your convenience to discuss any of the foregoing issues in greater detail.

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

---

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

F.O.I.A. CONFIDENTIAL TREATMENT
REQUESTED by Morrison & Foerster LLP
3811 Valley Centre Drive, Suite 500
San Diego, CA 92130 Telephone: 858.720.5100

Exhibit 16

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.

Nevertheless, in the early 1980s the results coming out of San Diego's "meet and confer" (labor negotiation) process began to treat surplus earnings as available for a variety of uses other than to support the underlying soundness of the retirement system. Initially, surplus earnings were used to improve the lot of retirees who had seen the buying power of their pension checks dissipate with the severe inflation of the late 1970s. Soon after, the City granted healthcare benefits to retirees as an incident of withdrawing from the Social Security System. Rather than paying the premium cost of the healthcare policies from its operating funds, it dedicated SDCERS surplus earnings for this purpose. To this day, all costs of health insurance for City retirees has come from this source.

In 1996 labor negotiations, the City acceded to a significant package of pension benefit enhancements. Together with certain negative changes in actuarial assumptions then pending, this threatened to significantly and immediately increase the City's required contributions to the System. Instead, the City prevailed upon the SDCERS Board to grant it a lengthy period to ramp-up to the higher contribution levels. At that time, investment returns had exceeded actuarial projections over many years and SDCERS had run record surpluses. Fiduciary counsel for SDCERS and the City, and the SDCERS Actuary, gave their approval to the agreement, which came to be known as Manager's Proposal 1 (or "MP1"). Actuarial projections showed that the contribution shortfall from the agreement would approximately equal the unallocated surplus accumulated to that time. Thus there existed reasonable, if ultimately misplaced, cause for optimism that this departure from strict actuarial funding would not undermine the soundness of the System.

After the adoption of MP1, the City's public disclosure concerning its retirement system began to exhibit significant inaccuracies and omissions. In the main, this appears to be the result of a failure of City personnel to understand the increasing complexities of SDCERS funding, poor communications with outside professionals and an unsophisticated view, going to the highest levels of City administration, of the demands of adequate disclosure. Although it cannot be said with certainty that no one in City administration recognized inadequacies in the City's disclosure and consciously declined to remedy them, there is no evidence of affirmative deception, and the individuals responsible for the City's disclosure lacked both motive and opportunity to mislead. We found no evidence that any City employees were personally enriched as a result of disclosure decisions in which they participated. None appear to have felt their careers would be advanced by concealing negative information. Every element of the City's disclosure was created and reviewed by a number of people, both inside and outside the City, reducing the possibility that any could have engineered a deception. Further, much of the information at issue was available from other public sources, including the Municipal Code, SDCERS publications and local newspaper articles. Nevertheless, the disclosure problems should not be understated.

First, the City contended in public disclosure that remained current until January 2004 that the cost of MP1 was covered in reserves established from surplus earnings. This assertion, however, was based on a misunderstanding of the nature and function of those reserves. More generally, the

their careers would be advanced by concealing negative information. Every element of the City's disclosure was created and reviewed by a number of people, both inside and outside the City, reducing the possibility that any could have engineered a deception. Further, much of the information at issue was available from other public sources, including the Municipal Code, SDCERS publications and local newspaper articles. Nevertheless, the disclosure problems should not be understated.

First, the City contended in public disclosure that remained current until January 2004 that the cost of MP1 was covered in reserves established from surplus earnings. This assertion, however, was based on a misunderstanding of the nature and function of those reserves. More generally, the City's public disclosure concerning MP 1 did not convey the risks inherent in departing from actuarially determined contribution rates. These risks were exacerbated by the inclusion in the agreement of a mechanism with the potential to trigger a massive payment from the City to SDCERS. This, too, was not adequately disclosed.

From 1998 to 2000, additional uses were found for SDCERS surplus earnings. They went to fund certain cost of living increases for retirees and to underwrite the cost of employee contributions to SDCERS. In addition, when its members sued the System over the way in which benefits were calculated, a provision of the resulting settlement committed surplus earnings to fatten checks to current retirees. That settlement also provided for substantially increased benefits for future retirees and thereby elevated the System's total projected liabilities. The City described the suit in only one instance in its public disclosure and did so inadequately. Altogether, the various uses of surplus earnings added over time have been arranged by relative priority in a Municipal Code provision commonly known as "the waterfall."

The effects on SDCERS' funding of this history of increased benefits, under-funding and inadequately addressed changes in actuarial assumptions were masked for years by rich investment returns from the bull market of the 1990s, and by the time lag built into actuarial calculations of asset values. Nor did City disclosure during this period – aside from mandated disclosure of the amount of its existing contribution shortfall – draw attention to potential problems with the retirement system. By early 2002, however, it became apparent that SDCERS' funding level had gone into a slump, implicating the trigger mechanism built into the 1996 agreement between the City and SDCERS. The City responded by seeking another accommodation from the SDCERS Board. This time it requested, and was granted, relief from the trigger mechanism in exchange for stepped-up contributions to the System that still did not achieve the actuarial rate. The deal, known as Manager's Proposal 2 ("MP2") also granted various benefit enhancements, adding significantly to the overhead cost of the System. Again fiduciary counsel and the System actuary acquiesced in this arrangement, although expressing concerns about the general direction of the City's relationship to SDCERS, particularly as it affected future funding levels.

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.

description of the Manager's proposals.[349] City Treasurer Mary Vattimo commented in an e-mail to Deputy City Manager Pat Frazier:

> I think we need a conference call with Cathy, Terri, etc., because I don't think that he [Mr. Webber] fully understands the agreements (or maybe I don't understand what he is communicating.) In addition, this disclosure is OVERKILL and I would like to confidentially submit this to FA on Ballpark (Gary) and Paul Maco (through Elizabeth and Lakshmi) to get their view on the necessity of this.[350]

The relationship between Mr. Webber and City officials became progressively more strained over time. Mr. Webber felt that City officials did not appreciate the seriousness of the disclosure issues. In an interview with Vinson & Elkins, he alleged that City Auditor Ed Ryan attempted to pass off the financial statement errors as typographical errors "to pull the wool over the eyes" of the City Council. Late in the process, Mr. Webber complained in an e-mail to member of the City's legal staff:

> I could see no upside to us to having to recommend that the City make the disclosures, and have sensed from the outset a growing anger as the disclosures grew as we found out more information. The angst and anger, I believe, has grown as disclosure day has approached. Terri [Webster]'s last email to me exemplifies that anger. ("Onto the public flogging . . . I can't wait.") Mary [Vattimo]'s response was "much ado about nothing all you had to do was ask." Well I did ask, and I also asked why no one had bothered sharing that with me. So far that has not been answered, and I don't imagine will be.[351]

The issue referred to in this e-mail, and a source of distrust between the City and bond counsel, was Mr. Webber's belief that projections of the City's pension-related liabilities had been withheld from him. As noted earlier, the City staff had commissioned PFM to provide projections of its future liability to its retirement system as a basis for recommended actions to contain that liability. In September 2003, Mr. Webber asked the City to have the SDCERS actuary perform a series of "stress tests" that would explore various funding scenarios.[352] Rather than commission additional, potentially expensive, work from Mr. Roeder, the City's Financing

---

[349] E-mail from Cathy Smith, Orrick, to Pat Frazier Re: Paul Webber's Transmission of Pension Plan Disclosure (Sept. 12, 2003).

[350] E-mail from Mary Vattimo to Pat Frazier, re: Fwd: Paul Webber's Transmission of Pension Plan Disclosure (Sept. 15, 2003). Mr. Maco, a Vinson & Elkins partner who is also an author of this Report, had, prior to this time, provided Securities law advice to the City on a matter unrelated to the matters at issue here. He was asked by the City to also serve as a "sounding board" as the City prepared its pension disclosure and asked as to whether the expansive disclosure advocated by Mr. Webber was appropriate. He concurred with Mr. Webber's judgment.

[351] E-mail from Paul Webber to Kelly Salt , Office of the City Attorney, (Jan. 26, 2004).

[352] E-mail from Paul Webber to Mary Vattimo re: Stress Tests (Sept. 25, 2003).

Conclusions Regarding Intent

Readers of the San Diego press have had the benefit of strong coverage of City pension-related issues, touching on many of the points made above, since 1996. In addition, at least from FY 2000 forward, many of the gaps in City disclosure are closed when City CAFRs are coupled with SDCERS CAFRs, although errors do remain, particularly the incorrect description of the funding mechanics established to offset the reduction in City contributions to SDCERS after MP1. This disparity is all the more remarkable given that Calderon, Jaham, & Osborn reviewed and compared the notes to the financial statements for both the City and SDCERS (although SDCERS staff prepared the notes to its financial statements) and that the City Auditor and Comptroller maintained the financial records for both the City and SDCERS. Given the availability of additional public disclosure from the SDCERS CAFRs, a history of local news coverage highlighting many of the risks surrounding MP1 and MP2, and the presence in the Municipal Code of a menu for the distribution of surplus earnings, it appears that any efforts on the part of City staff to conceal SDCERS funding situation would have been an exercise in futility, had the issue attracted interest prior to the abrupt decline in SDCERS funding that followed the reversal of its investment fortunes. Thus it is difficult to attribute the City's failure to fully and accurately describe this matter to intentional misconduct on the part of individual employees.

The failure to provide any meaningful discussion in Appendix A of the relationship between the City and SDCERS, including an explanation of the exchange of short-term relief in budgetary pressure for a *potential* longer-term obligation to pay an increased pension contribution of uncertain magnitude, likewise, is hard to categorize as intentional. The reliance on the surplus earnings concept long ago set the stage for a series of benefits increases combined with the agreed-upon underfunding of SDCERS that was reflected in the Municipal Code and in the SDCERS CAFRs. An unprecedented bull market shrouded the significance of these actions until the sudden jump in benefits and resulting drain on SDCERS brought on by the *Corbett* settlement and collapse of the bull market in the same year tore the curtain away. The Blue Ribbon Committee appreciated what was revealed and alerted the City. The SDCERS and City bureaucracies responded slowly, and the City's disclosure did not provide a full picture of the relationship between the City and SDCERS until January 27, 2004.

Conclusions Regarding the Disclosure Process

As a result of failures in the City's disclosure process, issues like the effect of benefit increases and actuarial changes and the consumption of surplus earnings on the City's pension obligations, which should have been disclosed, were not. If the City had been more attentive to the meaning and content of its disclosures, readers of its disclosure would have received a more accurate picture of the City's fiscal health, and – equally as important – City officials would have been better informed about the state of the pension system, with a greater capacity to advise the City Council as to

Exhibit 17

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.

---

[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.

[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 18

Vinson&Elkins
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial 202-639-6705
Direct Fax 202-879-8905
pmaco@velaw.com

October 28, 2004

= Meeting w/ SDC.

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]

---

[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

---

[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,

---

[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.

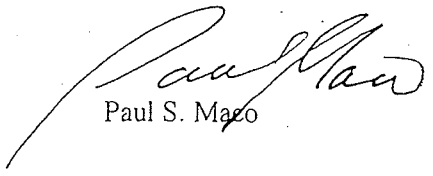
Moreover, should the SEC determine the City has violated any provisions of the federal securities laws, we believe it would consider the following facts in determining what remedies are appropriate:

- 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 19

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

---

[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 20

CITY OF SAN DIEGO
REQUEST FOR
CITY MANAGER ACTION

TO:	FROM:	DATE:
CITY MANAGER	CITY ATTORNEY	10/22/04

SUBJECT:
RETENTION OF VINSON & ELKINS TO PERFORM ADDITIONAL INVESTIGATION RELATED TO THE CITY'S OUTSIDE AUDITOR, KPMG, AND THE COMPREHENSIVE ANNUAL FINANCIAL REPORT.

ACTION REQUESTED:
Authorize a Retainer Agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed $250,000, for an additional investigation related to the City's outside auditor, KPMG, and finalization of the City's Comprehensive Annual Financial Report.

SUPPORTING INFORMATION:
In order to secure the opinion from the City's outside auditor, KPMG, for the FY 2003 Comprehensive Annual Financial Report, the City desires to have performed additional investigation into alleged improper acts related to financial reporting. Having performed an investigation for the City into disclosure practices, and having provided a Report to the City Council on that investigation, the law firm of Vincent & Elkins is the appropriate choice to perform the necessary additional investigation. The additional investigation is beyond the scope of the City's prior retention agreement with Vincent & Elkins, and a new agreement for that purpose is necessary. The contract will be managed by the City Manager's Office, but Vincent & Elkins will report directly to the Mayor with respect to the results of the additional investigation.

DOCUMENT NO. C- 13043
FILED NOV 02 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

PLEASE ROUTE TO THE APPROPRIATE AUTHORITY – REF: A.R. 25.60 OR 25.70

ACCOUNTING INFORMATION	BUDGETED	BUDGETED
FUND	81140	
DEPARTMENT	82240	
ORGANIZATION		
OBJECT ACCOUNT	4141	
JOB ORDER NUMBER	082240	
C.I.P. NO.		
FACILITY		
AMOUNT	$250,000	

ROUTING AND APPROVAL		
APPROVING AGENCY	APPROVAL SIGNATURE	DATE
DEPARTMENT DIRECTOR	Leslie Girard	10/22/04
FINANCIAL MANAGEMENT (CIP)	Pat Frazier	10/22/04
CLEARING AUTHORITY		10/22/04
DEPUTY CITY MANAGER		
AUDITOR	Terri Webster	10-22-04
ORIGINATING DEPARTMENT		
CITY MANAGER	P. Lamont Ewell	
CITY ATTORNEY	Leslie Girard	10/22/04
CITY CLERK		

ESTIMATED COST:
Not to exceed $250,000

AUDITOR'S CERTIFICATE NUMBER:
AC 2500413

FOR INFORMATION CONTACT:

NAME:
Leslie J. Girard

STATION: 59

TELEPHONE NUMBER: (619) 236-7726

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2500413

ORIGINATING DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: $250,000.00

Vendor: Vinson & Elkins

Purpose: To authorize a Retainer Agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed $250,000.00, for an additional investigation related to the City's outside auditor, KPMG, and the finalization of the City's Comprehensive Annual Financial Report.

Date: October 26, 2004 By: Leonard J. Alfonte
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	82240		4141	082240				$250,000.00
									TOTAL AMOUNT	$250,000.00

(REV 2-92)

FUND OVERRIDE ☐

AC 2500413

C - 13043

Vinson&Elkins V&E
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Paul S. Maco
Direct Dial 202-639-6705
Direct Fax 202-879-8905
pmaco@velaw.com

October 15, 2004

Mr. P. Lamont Ewell
City Manager
City of San Diego
202 "C" Street, MS 9A
San Diego, CA 92101

DOCUMENT NO. C- 13043
FILED NOV 02 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Re: Investigation in Support of Independent Audit

Dear Mr. Ewell:

We appreciate being asked to represent the City of San Diego, California (the "City") in connection with an investigation of certain matters connected to the City's internal reporting (the "Investigation") in order to support the issuance of an audit report by the City's independent auditor, KPMG (the "Independent Auditor"). The Investigation will compliment our Report on Investigation of September 16, 2004 (the "Report"), and address certain matters of interest to the Independent Auditor. 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, California. 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.

Scope of Engagement

As counsel to the City we will, to the extent necessary, receive direction from and report directly to the Mayor and City Council on the progress of the Investigation and its results. We will conduct the Investigation substantially along the lines of a program for inquiry addressing certain matters of interest to the Independent Auditor and prepare and present the results of the Investigation in a Summary Memorandum. As with the Report on Investigation, we agree that the Summary Memorandum is not to be an advocacy document, but an objective "warts and all" report. You have assured us of the City's full cooperation and non-interference with and our

complete independence in the conduct of the Investigation and preparation of the Summary Memorandum. 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

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.

Cooperation

In order to enable us to render effectively the legal services contemplated, the City of San Diego has agreed to disclose fully and accurately all facts and keep us informed of all developments relating to the litigation. 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 its employees and agents available to attend meetings and interviews and otherwise to cooperate fully with the Investigation.

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 upon our understanding of this matter, we anticipate that most of the work will be undertaken by me and by my partner, Richard C. Sauer, with the assistance of several associates as needed. We will also be assisted by our partner Mark Tuohey. Mr. Sauer's and my hourly rate for this matter will be $425, and Mr. Tuohey's will be $450. All associates and paralegals will be billed at their level II rates, in recognition of the governmental nature of the client. In addition to Mr. Tuohey, we may seek the advice of our partners having expertise in certain areas, such as pension and employee benefits law. Their time will be charges 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. Please feel free at any time to ask for our current rates.

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.

We understand that our fees for this engagement is in an amount not to exceed $250,000. this amount may be supplemented in the future based upon mutual agreement.

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, California

By: _____
P. Lamont Ewell,
City Manager

Approved as to form and legality
this 15 day of MAY 2004
CASEY GWINN, City Attorney

By _____
~~Deputy~~ City Attorney
ASST.

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 Texas Disciplinary Rules of Professional Conduct **[District of Columbia Rules of Professional Conduct].**

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.

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.

With your advance agreement, the fees ultimately charged may be based upon a number of factors, such as:

- The time and effort required, the novelty and complexity of the issues presented, and the skill required to perform the legal services promptly;
- The fees customarily charged in the community for similar services and the value of the services to you;
- The amount of money or value of property involved and the results obtained;
- The time constraints imposed by you as our client and other circumstances, such as an emergency closing, the need for injunctive relief from court, or substantial disruption of other office business;
- The nature and longevity of our professional relationship with you;
- The experience, reputation and expertise of the lawyers performing the services;
- The extent to which office procedures and systems have produced a high-quality product efficiently.

For certain well-defined services (for example, a simple business incorporation), we will (if requested) quote a flat fee. It is our policy not to accept representation on a flat-fee basis except in such defined-service areas or pursuant to a special arrangement tailored to the needs of a particular client. In all such situations, the flat fee arrangement will be expressed in a letter, setting forth both the amount of the fee and the scope of the services to be provided.

We also will, in appropriate circumstances, provide legal services on a contingent fee basis. Any contingent fee representation must be the subject of a separate and specific engagement letter.

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 $.06 per minute for each long distance call made within the United States. This rate ($.06) 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.

Advances

Clients of the firm are sometimes asked to deposit funds as an advance payment with the firm. The advance payment will be applied first to payment of charges for such items as photocopying, messengers, travel, etc., as more fully described above, and then to fees for services. The advance will be deposited in our client advance account and we will charge such other charges and our fees against the advance and credit them on our billing statements. In the event such other charges and our fees for services exceed the advance deposited with us, we will bill you for the excess monthly or may request additional advances. Any unused portion of amounts advanced will be refundable at the conclusion of our representation.

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 21

Aguirre wins S.D. city attorney race | Victory is his first in five tries for office

[1,2,6,7 Edition]

The San Diego Union - Tribune - San Diego, Calif.
Author: Greg Moran
Date: Nov 20, 2004
Start Page: B.1
Section: LOCAL
Document Types: RESULTS;
Text Word Count: 871

Document Text

Copyright Union-Tribune Publishing Co. Nov 20, 2004

Editions vary | For chart see end of text.

For Mike Aguirre, the fifth time was the charm.

After four unsuccessful bids at elective office over the better part of two decades, Aguirre now has what he has long sought:

A win.

With all ballots counted, Aguirre, 55, is the winner in the race for San Diego city attorney. He edged out Leslie Devaney, the top aide in the administration of departing City Attorney Casey Gwinn, with 50.39 percent of the vote to Devaney's 49.61 percent.

Having survived a race that was unexpectedly close, Aguirre heads into office with a full plate of issues. Last night, Devaney congratulated her opponent and said that while she was disappointed with the result, she was gratified by the campaign she ran.

"Hardly anyone gave me a chance," said Devaney, who emerged from the primary with 28 percent of the vote -- far less than Aguirre's leading 46 percent. "I never gave up and my supporters never gave up."

She said she would work with Aguirre on the transition to a new administration in the coming weeks.

Aguirre said chief among his priorities is trying to resolve a $100 million civil verdict hanging over the city from the Roque de la Fuente case.

The verdict was handed down by a jury in 2001 in a case in which developer de la Fuente said the city broke terms of a development agreement and also intentionally devalued a business park he owned in Otay Mesa.

The case is being appealed and has been assigned to the 4th District Court of Appeal in Riverside.

It was sent there because nearly all of the justices in San Diego had to recuse themselves because of relationships with the trial court judge, whom the city accused in post-trial motions of having a conflict of interest.

A settlement conference on the case is scheduled for next month.

"It's a burning fuse right now," Aguirre said of the case. "If we lose that case on appeal, that's not something I want to be bringing to the council, that kind of bad news."

Aside from that case, Aguirre said his top priority is to "change the culture in the office." During the campaign, Aguirre repeatedly said the leadership of the office too often represented the wishes of the council and City Hall and not citizens.

"The No. 1 priority is to change the culture of the office so it is an office that represents the interests of the people of San Diego," he said. "We want to change the whole attitude so people feel the city attorney's their attorney."

Also high on the list is working with KPMG, the auditing firm hired by the city to review its 2003 finances. The firm has

said it can't complete the work because it is not assured that City Hall has fully investigated the possibility that illegal acts occurred.

And he said he would begin the legal research and work needed to implement the strong-mayor form of government that was approved by voters Nov. 2. Aguirre opposed the measure but said he is committed to bringing in the best talent to "make sure we get the very best strong-mayor charter we can."

A securities lawyer in private practice, Aguirre said he wants to build an office that is more on top of issues in the city.

He referred to the recent mayoral election controversy over the conflict between the city charter, which appears to ban write-in candidates in the general election, and the municipal code, which allows them.

When the state Supreme Court issued a ruling in November 2002 thatreversed a portion of the municipal code section, no action was taken by City Hall.

"That's one of the things we need to change," he said. "We need to be ahead of the curve so that if a decision comes down from the Supreme Court that overrules a part of our code, we need to be more proactive and get the council to deal with it."

Gwinn and Aguirre are scheduled to meet Monday to begin planning the transition. Several top-ranking lawyers already have announced they will leave, including Assistant City Attorney Les Girard and Deputy City Attorney Rick Duvernay.

Aguirre said he is putting together a new administration with new faces, but has declined to announce who will be in the new positions.

The final margin was far narrower than virtually all political observers expected. A poll about 10 days before the race had Devaney down by more than 20 percentage points, and the consensus was that election night would be a walkover for Aguirre.

It wasn't. As the results came in, Devaney closed on Aguirre's lead and passed him. But in the early morning hours, as the last city precincts reported in, Aguirre spurted ahead and ended the evening with a slim lead of about 1,500 votes.

Over the next 17 days, he never gave that margin up and gradually padded it.

San Diego city attorney

Final unofficial results

Mike Aguirre 50.39% Leslie Devaney 49.61%

Greg Moran: (619) 542-4586; greg.moran@uniontrib.com

[Illustration]
2 PICS | 1 CHART; Caption: 1. Mike Aguirre (Eds. 1,2,7) 2. Leslie Devaney (Eds. 1,2,7) 3. San Diego city attorney

Credit: STAFF WRITER

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Abstract (Document Summary)

With all ballots counted, [Mike Aguirre], 55, is the winner in the race for San Diego city attorney. He edged out Leslie Devaney, the top aide in the administration of departing City Attorney Casey Gwinn, with 50.39 percent of the vote to Devaney's 49.61 percent.

Aside from that case, Aguirre said his top priority is to "change the culture in the office." During the campaign, Aguirre repeatedly said the leadership of the office too often represented the wishes of the council and City Hall and not citizens.

It wasn't. As the results came in, Devaney closed on Aguirre's lead and passed him. But in the early morning hours, as the last city precincts reported in, Aguirre spurted ahead and ended the evening with a slim lead of about 1,500 votes.

Exhibit 22

Jen Girard
59

(R-2005-535)

RESOLUTION NUMBER R-299880

ADOPTED ON NOV 2 3 2004

WHEREAS, the City of San Diego previously retained the law firm of Vinson & Elkins [V&E] to provide services related to the representation of the City at the Securities & Exchange Commission [SEC] in the SEC's investigation into certain City financial matters, and to prepare an internal report [Report] on the City's securities disclosure practices from 1996 through the present; and

WHEREAS, additional investigative services are now required to facilitate the completion of the audit of the City's FY 2003 basic financial statements; and

WHEREAS, additional contract authorization is necessary and appropriate to permit V&E to perform the additional investigation and to continue to provide representation of the City before the SEC; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized and directed to execute an amendment to the retention agreement with V&E for an additional amount not to exceed $350,000 for services related to the conduct of additional

investigation concerning the City's FY 2003 basic financial statements, and for continued representation before the SEC.

APPROVED: CASEY GWINN, City Attorney

By

Leslie J. Girard
Deputy City Attorney

LJG:ai
11/10/04
Or.Dept:ATTY
R-2005-535

R-359880

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY): AC 2500496

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: 11/08/04

4. SUBJECT:
AMENDMENT TO RETENTION AGREEMENT WITH VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES & EXCHANGE COMMISSION AND TO PERFORM ADDITIONAL INVESTIGATION WITH RESPECT TO THE AUDIT OF THE CITY'S FY 2003 FINANCIAL STATEMENTS.

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Leslie J. Girard

6. TELEPHONE NO.: 236-7726

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: X

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140			
DEPT.	82240			
ORGANIZATION				
OBJECT ACCOUNT	4151			
JOB ORDER	082240			
C.I.P. NUMBER				
AMOUNT	$350,000			

9. ADDITIONAL INFORMATION / ESTIMATED COST:
The additional funding requested for this matter is $350,000, although further additional funds may be required to complete the scope of services.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	CITY ATTORNEY	Catherine Gladley	11/10/04	8	CITY MANAGER	[illegible]	11/16/04
2	FINANCIAL MANAGEMENT	P Frazier	11/10/04	9	AUDITOR	[illegible]	11/16/04
3				10	CITY ATTORNEY	[illegible]	11/16/04
4				11	ORIGINATING DEPARTMENT	[illegible]	11/16/04
					MGR. DOCKET COORD:		COUNCIL REP.
6				✓	RULES COMMITTEE	☐ CONSENT ☐ REFER TO:	☐ ADOPTION DATE:

11. PREPARATION OF: ☒ RESOLUTIONS ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing an amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional $350,000, for legal services related to representing the City before the Securities & Exchange Commission, and to perform additional investigation related to the audit by KPMG of the City's FY 2003 Finanical Statements.

11A. MANAGER'S RECOMMENTATIONS:

Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): N/A

CITY CLERK INSTRUCTIONS: N/A

ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA.

OTHER ISSUES: N/A

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2500496

ORIGINATING DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
									TOTAL AMOUNT	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: $350,000.00

Vendor: Vinson & Elkins

Purpose: Authorizing the expenditure for an amendment to the retention agreement with Vinson & Elkins to provide representation before the Securities & Exchange Commission and to perform additional investigation with respect to the audit of the City's FY 2003 financial statements, in an amount not to exceed $350,000.00.

Date: November 15, 2004 By: Leonard J. Aliscente
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	82240		4151	082240				$350,000.00
									TOTAL AMOUNT	$350,000.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2500496

Exhibit 23

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.

###

Exhibit 24

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 25

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 26

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.

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 27

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

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: Mark Winkler Day 4

CLOSED SESSION 5

ITEM-50: Amending the San Diego Municipal Code Relating to Signs 8

ITEM-51: Proposed Amendments to the City's Land Development Code and Local Coastal Program 9

ITEM-100: Grant Application to the State of California Department of Transportation for the Construction of Perimeter Fencing and Access Control Project at Montgomery Field Airport – Phase III 10

ITEM-101: Penasquitos Town Center Linear Park – Site Acquisition and Development 11

ITEM-102: South Chollas Landfill Gas Lease and Liquified Natural Gas (LNG) Purchase Agreements 14

ITEM-103: Participation in Vehicle License Fee Gap Receivables Financing Program 16

ITEM-104: Utility Agreement for Relocation of Potable Waterlines within State Route 125 17

ITEM-105: Participation Agreement with Black Mountain Ranch, LLC, for Design and Construction of the North Villages at Del Sur Reclaimed Water Lines 19

ITEM-106: Appointment and Reappointment to the San Diego Housing Commission 21

ITEM-107: Appointing Councilmember Tony Young as Chair of the San Diego Consortium Policy Board of the San Diego Workforce Partnership 22

ITEM-108: Excusing Councilmember Madaffer from the Natural Resources and Culture Committee Meeting of February 9, 2005 23

ITEM-109: Nonprofit Management Solutions Salute to Excellence Day 23

ITEM-150: Proposals for Short-Term Interim Use of San Diego Community Concourse Golden Hall and Related Facilities 24

ITEM-250: **Notice** of Pending Final Map Approval – Miramar Self Storage 26

ITEM-251: **Notice** of Pending Final Map Approval – Black Mountain Ranch North Cluster and Black Mountain Ranch North Village Unit No. 9 27

ITEM-252: **Notice** of Pending Final Map Approval – The Egyptian 28

ITEM-S400: Awarding a Contract to Commercial and Industrial Roofing Company, Inc., for the San Diego Aerospace Museum Roofing Repair Phase II 28

ITEM-S401: Two actions related to the Construction of the Balboa Park Veterans Memorial Garden 31

ITEM-S402: Appointment and Reappointment to the San Diego Planning Commission 33

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 34

ITEM-S404: **Notice** of Pending Final Map Approval – 3956 Texas Street 36

ITEM-S405: **Notice** of Pending Final Map Approval – 1792 Missouri Street 36

NON-DOCKET ITEMS 37

ADJOURNMENT 37

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 28

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 29

#5402

CLERK'S FILE COPY

(R-2006-284)

RESOLUTION NUMBER R-300182

ADOPTED ON MARCH 1, 2005

WHEREAS, the City of San Diego previously retained the law firm of Vinson & Elkins [V&E] to provide services related to the representation of the City at the Securities & Exchange Commission [SEC] in the SEC's investigation into certain City financial matters, and to prepare an internal report [Report] on the City's securities disclosure practices from 1996 through the present; and

WHEREAS, additional investigative services are now required to facilitate the completion of the audit of the City's FY 2003 basic financial statements; and

WHEREAS, additional contract authorization is necessary and appropriate to permit V&E to perform the additional investigation and to continue to provide representation of the City before the SEC; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized and directed to execute a second amendment to the retention agreement with V&E for an additional amount not to exceed $1,200,000 for services related to the conduct of additional investigation concerning the City's FY 2003 basic financial statements, and for continued representation before the SEC.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed $723,360 from Fund No. 81140, Dept. No. 82240, Object Account No. 4151, Job Order No. 082240; $301,080 from Fund No. 41506, Dept. No. 776, Org. No. 455, Object Account No.

4151, Job Order No. 776260; and $175,560 from Fund No. 41500, Dept. No. 760, Org. No. 163, Object Account No. 4151, Job Order No. 000163 is hereby authorized, solely and exclusively for the purpose of providing funds for the above agreements.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Stephanie Rahlfs
Stephanie Rahlfs
Deputy City Attorney

SR:jb
09/24/2005
Aud.Cert:2500773
Or.Dept:Fin.Mgmt.
R-2006-284

5402
2/28/05

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY): 2500773

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): Financial Management

3. DATE: February 28, 2005

SUBJECT:
Second amendment to retention agreement with Vinson & Elkins to provide representation before the Securities and Exchange Commission and to perform additional investigation with respect to the audit of the City's FY 2003 financial statements

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Lisa Irvine/8A

6. TELEPHONE NO.: 619/236-6070

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: ☒

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140	41506	41500	
DEPT.	82240	776	760	
ORGANIZATION		~~445~~ 455	163	
OBJECT ACCOUNT	4151	~~4222~~ 4151	4151	
JOB ORDER	082240	776260	000163	
C.I.P. NUMBER				
AMOUNT	$723,360	$301,080 MN	$175,560	

9. ADDITIONAL INFORMATION / ESTIMATED COST:
The additional funding requested for this matter is $1,200,000, although additional funds may be required to complete the scope of services.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	M. [signature]	2/24/05	5	CITY MANAGER	[signature]	
2	FINANCIAL MANAGEMENT			6	AUDITOR	[signature]	
3	WATER	[signature]		7	CITY ATTORNEY		
4	MWWD	[signature]		8	ORIGINATING DEPARTMENT		
	RISK MGMT	[signature]					

✓ MGR. DOCKET COORD: _____ COUNCIL REP.

RULES COMMITTEE: ☐ CONSENT ☑ ADOPTION ☐ REFER TO: _____ DATE: 2/28

11. PREPARATION OF: ☐ RESOLUTIONS ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing a second amendment to the retention agreement between the CIty of San Diego and Vinson & Elkins, in an amount not to exceed an additional $1,200,000, for legal services related to representing the City before the Securities and Exchange Commission, and to perfrom additional investigation related to the audit by KPMG of the City's FY 2003 Financial Statements.

11A. MANAGER'S RECOMMENTATIONS:
Approve the resolution

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): N/A

CITY CLERK INSTRUCTIONS: N/A

ENVIRONMENTAL IMPACT: N/A

OTHER ISSUES: This action is not "project" for purposes of CEQA.

CM-1472

MSWORD2002 (REV. 2005-02-24)

200182 MAR 01 2005

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE: 2/28/2005

SUBJECT:

SECOND AMENDMENT TO RETENTION AGREEMENT WITH VINSON & ELKINS TO PROVIDE REPRESENTATION BEFORE THE SECURITIES AND EXCHANGE COMMISSION AND TO PERFROM ADDITIONAL INVESTIGATION WITH RESPECT TO THE AUDIT OF THE CITY'S FY 2003 FINANCIAL STATEMENTS

BACKGROUND:

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

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

V&E was retained to perform the additional investigation by the City Manager. The intial contract amount was not to exceed $250,000, which was amended by the City Council in November 2004 for an additional $350,000. The City has also retained additional expertise to advise it in these matters, including the law firm of Susman Godfrey, which provides expertise in accounting law, and the firm Chicago Partners, which provides forensic auditing expertise. The City continues to work cooperatively with KPMG on progress of the additional investigation. In addition, the City Attorney is also conducting an investigation of these allegations of wrongdoing. In order to complete the additional investigation, additional funding for V&E's services is required. An additional $1,200,000 is needed to continue with the additional investigation. Additional sums may be necessary in the future depending on any additional scope and requirements as a result of the ongoing investigation.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

ITEM S402
2-28-05

We received Original 1472, 1472A page and Aud. Cert.

We have **not** been provided with original Resolution prior to the Council meeting of February 28, 2005.

Raquel Rodgers

R - 300182

CITY CLERK ROUTE SLIP

City of San Diego, California

TO: CITY MANAGER CITY ATTORNEY	FROM: Mary Cepeda, Deputy Clerk PHONE: 533-4023 DATE: March 7, 2005

Item No. S402 from the Council Docket of Tuesday, March 1, 2005

Subject: Second amendment to Retention Agreement with Vinson & Elkins to provide Representation before the Securities and Exchange Commission and to perform additional investigation with respect to the audit of the City's FY 2003 Financial Statements.

COUNCIL DIRECTIVE: Motion/Directive by: PETERS/INZUNZA/FRYE

This item was adopted with the following directions to the City Attorney to consider: 1) Whether there is a way to manage the budget for the attorney fees that would allow potentially some consolidation of all the legal services; 2) Viewing the legal representations for criminal investigations differently particularly with respect to people who are only involved as witnesses.

Accept Council Member Frye's requests for the City Attorney to: 1) Provide a memorandum to Council next week with an update on each of the major firms that the City has retained, both the accounting as well as the law; 2) Provide an update on the progress of the Vinson and Elkins Report and the number of people who still have to be interviewed without identifying the people; 3) Provide Council with a progress report, either weekly or every two weeks, informing Council of the ongoing progress. Report should include a timeline, milestones and benchmarks.

Accept Council Member Frye's request to the City Manager that as the investigation continues, inform Council either on a form or by pointing out to them before a vote is taken, which items would be over budget or would kick the City over budget.

NOTE: Docketing, Redocketing, Resolutions, or Ordinances may require a CM-1472 Request for Council Action Form. Please consult with the City Manager Council Liaison or the City Attorney.

X Due by as stated by Council. *SEE REQUIRED RESPONSE DATE BELOW.

____ A four week suspense date of XXXXX has been set as no due date was specified by Council. If anticipated response date is other than date set, please contact Deputy Clerk.

FILE LOCATION: MEET

ADDRESSEE'S ACTION: Prepared by _____ Date _____

*Note: If necessary, all material must be received in the Clerk's Office by Wednesday at 2:00 p.m. two weeks prior to Council Meeting Date.

CC-37 (Rev. 1-80)

R- 300182

CITY ATTORNEY

MAR 11 7 38 AM '05

City of San Diego
MEMORANDUM

DATE: March 7, 2005

TO: CITY ATTORNEY –

FROM: Office of the City Clerk- **Mary Cepeda**

SUBJECT: Item S402 of the 03/01/2005 City Council Meeting

ITEM-S402: Second Amendment to Retention Agreement with Vinson & Elkins to Provide Representation Before the Securities and Exchange Commission and to Perform Additional Investigation with Respect to the Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) Tb(CACTION Tb)

Authorizing a second amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional $1,200,000, for legal services related to representing the City before the Securities and Exchange Commission, and to perform additional investigation related to the audit by KPMG of the City's FY 2003 Financial Statements.

CITY MANAGER SUPPORTING INFORMATION:

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

The City's FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG, LLP to perform the audit of the City's FY 2003 basic financial statements. Pursuant to accounting standards and practices, the City needs to conduct additional investigation beyond the

R-300182

scope of the Vinson & Elkins Report on Investigation to address issues relating to the financial statements. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned. The additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the Vinson & Elkins Report.

V&E was retained to perform the additional investigation by the City Manager. The initial contract amount was not to exceed $250,000, which was amended by the City Council in November 2004 for an additional $350,000. The City has also retained additional expertise to advise it in these matters, including the law firm of Susman Godfrey, which provides expertise in accounting law, and the firm Chicago Partners, which provides forensic auditing expertise. The City continues to work cooperatively with KPMG on progress of the additional investigation. In addition, the City Attorney is also conducting an investigation of these allegations of wrongdoing. In order to complete the additional investigation, additional funding for V&E's services is required. An additional $1,200,000 is needed to continue with the additional investigation. Additional sums may be necessary in the future depending on any additional scope and requirements as a result of the ongoing investigation.

Ewell/Vattimo

Aud. Cert. 2500773.

Staff: Martin Kane – (619) 236-6882

COUNCIL ACTION WAS:

To adopt with the following directions to the City Attorney to consider: 1) Whether there is a way to manage the budget for the attorney fees that would allow potentially some consolidation of all the legal services; 2) Viewing the legal representations for criminal investigations differently particularly with respect to people who are only involved as witnesses.

Accept Council Member Frye's requests for the City Attorney to: 1) Provide a memorandum to Council next week with an update on each of the major firms that the City has retained, both the accounting as well as the law; 2) Provide an update on the progress of the Vinson and Elkins Report and the number of people who still have to be interviewed without identifying the people; 3) Provide Council with a progress report, either weekly or every two weeks, informing Council of the ongoing progress. Report should include a timeline, milestones and benchmarks.

Accept Council Member Frye's request to the City Manager that as the investigation continues, inform Council either on a form or by pointing out to them before a vote is taken, which items would be over budget or would kick the City over budget.

COUNCIL VOTE WAS:

Yeas-12345678M. Nays-none. Not present-none.

Please prepare the Resolution to reflect Council's Action using the appropriate language, and return to the City Clerk's Office for further processing. Resolution Number R-300182 has been assigned to this action.

CHARLES G. ABDELNOUR
City Clerk

By: Mary Cepeda
Mary Cepeda, Deputy

Enclosure: Clerks Papers

Exhibit 30

Kroll

660 South Figueroa, 9th Floor
Los Angeles, CA 90017
tel: 213 443 6000
fax: 213 443 6050

www.krollworldwide.com

May 6, 2005

Mr. P. Lamont Ewell
City Manager
202 C Street, Suite 900
San Diego, CA 92101

Re: Audit Committee – Investigation Status

Dear Mr. Ewell:

This letter is an effort to update you on the status of the Audit Committee's investigation. Consistent with our engagement letter, the Audit Committee has or is currently performing the following:

- Reviewed the reports and related exhibits prepared by Vinson & Elkins, the City Attorney, and Luce Forward.
- Meeting and holding discussions with the independent auditors to coordinate its work.
- Ongoing communication with law enforcement agencies.
- Has requested documents and records and is in the process of reviewing information received from the City Attorney, Vinson & Elkins, NTI Breakwater and San Diego Data Processing Center.
- Has requested the City Attorney provide it with a complete listing of each concern the attorney has with respect to the matters under investigation. Additionally, we have requested documentation supporting the City Attorney's concerns and investigation, including all of the procedures and methodologies applied and all documents identified. We believe it is important issues raised by the City Attorney be thoroughly investigated.

Ex 2

Kroll

- Reviewing the work of Vinson & Elkins, including assessing their work product and work papers for their September 16th Report and Phase II of their investigation, in order to determine whether additional procedures need to be performed.

- Meeting with representatives of San Diego City Employees' Retirement System ("SDCERS") and their advisors regarding various issues involved with the investigation.

At this time, Vinson & Elkins's work continues on going with no change in the City's or Audit Committee's relationship. The Audit Committee will use the work completed by Vinson & Elkins, including documents and evidence retrieved, to the extent possible as set forth in our engagement letter. Of course, as is also set forth in our engagement letter, we will undertake necessary procedures to ensure an independent, thorough and complete investigation.

Questions have been raised as to whether or not Vinson & Elkin's work program will result in another report from that firm. The independent auditors have not specifically requested that from the Audit Committee. However, the auditors have requested the Audit Committee provide them with a letter that communicates an independent, complete and thorough investigation has been completed in the opinion of the Audit Committee. They have also asked for our opinion on whether appropriate remediation has been undertaken. Ultimately, we do expect to issue a final report as noted in our contract.

As set forth in the Audit Committee engagement letter signed by the City Mayor, Attorney and Manager and voted on and approved by the City Council, the Audit Committee has determined to retain their own independent legal counsel to obtain guidance on matters of law. The completion of the Audit Committee's work is contingent upon our ability to retain outside independent legal counsel pursuant to the terms of our engagement. This is normal in the scope of investigations that are performed by Audit Committees for public companies. We are faced with a number of major legal issues which require independent legal guidance. These issues include, but are not limited to: investigating certain illegal acts as appropriately requested by the independent auditors and required by generally accepted auditing standards, and SDCERS assertion of privilege. We attach for your information a copy of an article describing how independent investigations are typically conducted. Also attached is guidance by the American Institute of Certified Public

Kroll

[illegible] that is to be followed by independent auditors in performing their audit of the City's financial statements.

Lastly, we have discussed questions regarding the length of time necessary to complete our investigation. We have been clear from the inception of our retention in this matter that we need full cooperation from all parties involved in order to complete our investigation. This will also require full compliance and production requested in subpoena's requested by any law enforcement agency.

The staff of the Securities and Exchange Commission has clearly articulated to the City Mayor, Attorney and Manager and members of the Council that the criteria for cooperation in an investigation, set forth in the accompanying Commission enforcement report commonly referred to as "Seaboard," be met. These criteria apply to all aspects of this investigation. Seaboard requires that entities under investigation, including in this instance the City, all city employees and officials and SDCERS, fully cooperate and provide complete access to all information as well as thoroughly remediate any issues that are identified during the investigation. To date, complete production of all materials requested by the SEC and the United States Attorney have not occurred in a timely manner. Some documents have not been produced. Some of the problems with document production may have been the result of how production was initially set up, but certainly not all of it. But a year into the process, this issue must be quickly addressed, better managed and production completed.

A copy of a letter from the U.S. Attorney to the Counsel for the Board of Administration of SDCERS, requesting waiver of privilege is attached. Unfortunately, we understand the Board quite inappropriately in our opinion rejected that request. We understand the City Council will vote on a resolution on May 16, 2005, requesting the SDCERS's Board waive its privilege and cooperate fully with the law enforcement agencies and Audit Committee. We strongly support passage of such a resolution.

It is also imperative a complete and thorough remediation plan be developed and implemented. Our investigation and recommendations will include addressing the appropriate steps necessary to remediate issues that have, or may arise. Until these issues are resolved, it is difficult if not impossible, to determine when the investigation will be completed. However, we believe that if the criteria of Seaboard

Kroll

are met soon by all involved, it is important and certainly our goal that the investigation will be resolved before the end of the calendar year.

Sincerely,

Troy Dahlberg

Troy Dahlberg
Audit Committee Member

Attachments:

SECURITIES EXCHANGE ACT OF 1934 Release No. 44969 / October 23, 2001

AICPA Practice Alert 2004-1, Illegal Acts

The Metropolitan Corporate Counsel – Eighteen Safeguards To Corporate Self-Investigation

Letter dated April 14, 2005 from U.S. Attorney Carol C. Lam to Gregory A. Vega, Esquire

Exhibit 31

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 2003 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 32

CLIENT PRIVILEGES TO SOME BUT NOT WAIVING THEM TO ALL BECAUSE I AM NOT CLEAR ON THE DIFFERENCES BETWEEN THAT PARTICULAR-

AGUIRRE:
GIVE ME JUST A SECOND TO SEE IF I CAN CLARIFY THE RECORD AND IF IT'S ALRIGHT WITH COUNCILMEMBER MADAFFER BECAUSE I THINK HE PROBABLY... OK, ALRIGHT. SIR WOULD YOU PLEASE ITEMIZE THE EXACT AS BEST YOU CAN THE LIST OF DOCUMENTS YOU INTEND TO BE COVERED BY THIS WAIVER?

DAHLBERG:
AT WHAT LEVEL OF DETAIL ARE WE TALKING ABOUT?

AGUIRRE:
AT THE LEVEL OF DETAIL THAT YOU HAVE A COMMAND.

DAHLBERG:
JUST OF MY HEAD?

AGUIRRE:
AS BEST AS YOU CAN.

DAHLBERG:
LET'S SEE, THERE IS THE SUMMARY MEMORANDUM THAT THEY HAVE, THERE ARE A GROUP OF BINDERS THAT HAVE BEEN PREPARED THAT HAVE ANALYSIS IN THEM, COPIES OF DOCUMENTS, 2:50:00 WHERE THEY GOT THE DOCUMENTS FROM THEN BEHIND THAT THERE ARE A NUMBER OF DOCUMENTS LIKE INTERVIEW MEMORANDUM, RESEARCH THAT THEY HAVE DONE SOME ON LOSS, SOME ON FINANCIAL ACCOUNTING ISSUES, THEY HAVE DONE A LOT OF BACKGROUND SOME OF IT IS LIKE PUBLIC RECORD TYPE OF THINGS LIKE NEWSPAPER CLIPPINGS BUT OF THE TOP OF MY HEAD THAT'S PROBABLY MOSTLY WHAT IT IS.

AGUIRRE:
DID YOU SAY THOSE DOCUMENTS ARE UPSTAIRS?

DAHLBERG:
I'M NOT SURE THAT EVERYTHING IS.

[MULTIPLE VOICES]

AGUIRRE:
WITH DEPUTY MAYOR'S ....

ATKINS:
GO AHEAD. I'M SORRY MR. AGUIRRE.

AGUIRRE:
NO PROBLEM. COULD YOU IDENTIFY THE LOCATION OF THE DOCUMENTS? SOME OF THE DOCUMENTS ARE UPSTAIRS IN THE CITY MANAGER'S OFFICE?

DAHLBERG:
SOME DOCUMENTS-

AGUIRRE:
I'M SORRY I DIDN'T MEAN TO SAY THAT. WHEN YOU SAY UPSTAIRS. WHAT DO YOU MEAN UPSTAIRS?

DAHLBERG:
WE HAVE A WORKSPACE UPSTAIRS...I'M SORRY DOWNSTAIRS, YOU RIGHT I'M JUST SAYING... ON THE 9TH FLOOR OF THIS BUILDING WE HAVE A WORKSPACE THAT HAS SOME OF THE-WELL MOST OF THE DOCUMENTS BUT NOT ALL.

AGUIRRE:
ALL RIGHT, LET'S JUST TAKE IT SLOWLY. SO ON THE 9TH FLOOR, WE'VE TALKED ABOUT CATEGORIZE OF DOCUMENTS AND NOW WE ARE TALKING ABOUT LOCATIONS, SO ON THE 9TH FLOOR ON YOUR WORKSPACE THERE ARE DOCUMENTS. ARE THERE ANY OTHER DOCUMENTS LOCATED ANY OTHER LOCATION- ARE THERE ARE ANY OTHER DOCUMENTS LOCATED ELSEWHERE ON THE 9TH FLOOR THAT WOULD BE COVERED BY THIS WAIVER?

DAHLBERG:
VINSON AND ELKINS PROBABLY HAS SOME DOCUMENTS THAT COULD BE COVERED BY THIS WAIVER THAT WE DON'T HAVE ON THE 9TH FLOOR.

AGUIRRE:
OK AND THAT WOULD BE IN THEIR OFFICES IN WASHINGTON DC?

DAHLBERG:
I BELIEVE SO. THERE IS ELECTRONIC DOCUMENTS TOO THAT POTENTIALLY COULD BE FLOATING AROUND. THAT'S BEEN PRODUCED ASSUMING THAT THE FCC ALREADY HAS THOSE

AGUIRRE:
ALL RIGHT. THERE IS TWO. YOU'VE IDENTIFIED SOME CATEGORIZE OF DOCUMENTS AND THEN YOU'VE IDENTIFIED TWO LOCATIONS. CORRECT?

DAHLBERG:
YES

AGUIRRE:
ALL RIGHT. WOULD IT BE POSSIBLE FOR YOU TO MAKE A LIST OF FOR THE COUNCIL? OF AT AN APPROPRIATE LEVEL OF DETAIL SO THAT COUNCIL COULD HAVE THAT LIST IN FRONT OF THEM, TO KNOW WHAT IT IS THAT THEY ARE WAIVING?

DAHLBERG:
YES.

AGUIRRE:
MAYBE I WOULD SUGGEST THAT YOU DO THAT, JUST SO THAT THEY HAVE RECORD OF WHAT IT IS THAT THEIR WAIVING, BECAUSE ONE OF THE THINGS THAT COUNCIL HAS DONE IS, THEY ARE TRYING TO MANAGE THIS THING A LITTLE BIT MORE EFFECTIVELY. SO IF WE COULD HAVE A LIST OF THE POTENTIAL DOCUMENTS THAT ARE TO BE WAIVED AT A LEVEL OF DETAIL, NOT EACH DOCUMENT BUT AT A LEVEL OF DETAIL THAT WOULD GIVE US THIS SENSE OF WHAT DOCUMENTS THEY ARE WAIVING.

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.

Exhibit 33

DRAFT 7/15/2005
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
ATTORNEY WORK PRODUCT
FOR DISCUSSION PURPOSES ONLY; MAY CONTAIN ERRORS

CONFIDENTIAL

DRAFT

POTENTIAL VIOLATIONS OF THE FEDERAL SECURITIES LAWS BY THE CITY OF SAN DIEGO AND ASSOCIATED INDIVIDUALS

Paul S. Maco
Richard C. Sauer

VINSON & ELKINS L.L.P.
2005

TABLE OF CONTENTS

Source of Issues: 1
INTRODUCTION 2
Background 2
The Investigation 3
The September 16, 2004 Report 4
Limitations of the Available Evidence and the Investigation 6
Conclusions of the Investigation 7
Change at the City and at the San Diego City Employees Retirement System 9
I. Applicable Legal Standards 10
A. The Anti-fraud Provisions 11
1. The elements of a violation of the anti-fraud provisions 13
2. Available Defenses to Application of Anti-fraud Provisions 20
3. Application of the Anti-fraud Provisions in the Municipal Market 20
II. Early Uses of Surplus Earnings 21
III. Manager's Proposal 1 24
A. Overview of Legal Issues 24
B. Potential Conflicts with the City Charter and Municipal Code 26
C. Potential Conflicts of Interest in the Adoption of MP1 29
1. Disclosure Issues Concerning the Potential of MP1 to Result in Funding Deficits 31
IV. SDCERS Deteriorating Funded Status: 2000-2002 39
A. Additional Information About the Pension Footnote 39
B. The *Corbett* Litigation 41
C. The Blue Ribbon Finance Committee Report 44
1. Warnings contained in the Report 44
2. The City Attorney's criticism of the Blue Ribbon Committee Report 50
3. Additional inquiries by Mr. Vortmann 51
4. Disclosure issues related to the Blue Ribbon Committee Report 53
V. *Manager's Proposal 2* 53
A. Implications of the Earnings Shortfall 53
B. The Meet-and-Confer Process 57

DRAFT
CONFIDENTIAL

C. The Adoption of MP2 62

D. The Legality of MP2 69

1. Potential violations of the City Charter, Municipal Code and California Constitution 69
2. Potential conflicts of interest 70

E. Disclosure Issues Concerning the MP1 Trigger and MP2 73

1. Potential material deficiencies 73
2. Potential individual legal liability for FY2002 disclosure failures 81

VI. Disclosure Issues in FY 2003 and FY 2004 102

A. The City Disclosure Documents 102

B. The Rating Agency Presentations 107

C. The January 2004 Voluntary Disclosure 108

VII. Potential Culpability of Individual Actors for FY 2003 and FY 2004 Disclosure Failures 109

A. Material omissions concerning the deteriorating status of pension system funding 109

B. Individual culpability analysis 111

1. Employees of the Auditor and Controller's Office 111
2. The Treasurer's Office/Financing Services 111
3. The City Manager's Office 113
4. The City Attorney's Office 115
5. The Mayor and City Council 115

VIII. CONCLUSION 117

DRAFT
CONFIDENTIAL

CONFIDENTIAL

There is no evidence to suggest that the Mayor or any member of the Council resisted this effort to correct the City's public disclosure or, indeed, contributed at any time to any of its inadequacies. Instead, the key question is whether they were remiss in approving disclosure without affirmatively probing its accuracy. The Available Evidence conclusion that the standard set in the Orange County 21(a) Report, particularly as counseled by Mr. Boltz, was not met. As pointed out above, the 21(a) Report represents the view of the Commission, a view not yet adopted by any court. Thus, it is not clear that a court would conclude that the Mayor and Council failed to exhibit the level of due care to be expected of individuals in their positions under the facts and circumstances of this case.

VIII. CONCLUSION

The V&E Report cataloged numerous shortcomings of the City's financial disclosure and provided proposals to prevent future deficiencies. That Report found insufficient evidence to conclude that any members of City administration had *intentionally* caused the City's to provide materially misleading information to the public but made no comment on the potential applicability of lesser standards of liability. The supplemental procedures followed in connection with the second phase of our investigation – including the analysis of approximately 350,000 additional electronic documents and the completion of over 50 additional interviews – have provided a more high-resolution picture of the inner workings of the City's disclosure procedures and the sources of its deficiencies. From this it is possible to more precisely assess the potential culpability of individual actors.

It is apparent from the Available Evidence that the City fell short of acceptable standards in a variety of areas over a period of years. We conclude that the City's disclosure concerning the financial status of its pension system was materially misleading. Further, it appears that a number of "gatekeepers" for the City's public disclosure failed to effectively evaluate the fiscal implications of the City's unique approach to funding its pension system in conjunction with its increasingly expensive benefit structure. Specifically, they treated the disclosure process as essentially mechanical and ministerial: a matter of cutting and pasting information from various sources without asking whether the true financial status of the City was being accurately presented to the public. It should be mentioned that this failure of perception may have included a number of outside professionals.

The additional evidence, in our view, falls short of establishing that the City's flawed disclosure resulted from intentional wrongdoing on the part of City employees. The record does not indicate that any City employees, including its senior officers, suspected at any time that they were engaging in conduct that might be prohibited by law. Nor is there Available Evidence that any City employees consciously misled the City's auditors, outside counsel or, indeed, anyone else. The most damaging insight to come from this phase of the investigation is that certain officials consciously avoided bringing negative information to the attention of the bond rating agencies. There is no indication that they made false statements to the rating agencies, or evaded direct requests for information. Nevertheless, this demonstrates an attitude toward the City's disclosure obligations that is clearly unacceptable and supports a possible conclusion that certain City officials failed to meet the standard of due care to be expected of them.

DRAFT

Exhibit 34

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.

//

//

//

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

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 35

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 36

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 37

CONTINUED WITH THE MANAGER OF THE COUNCIL. IT GOT MORE EXPANSIVE BECAUSE OF THE REPORTS AND THE EXTENDED SCOPE. I WOULD SAY, HAVING BEEN A PERSON TO HEAR FROM THE SEC, THAT I THINK WE MUST STAY ON THIS PATH. IT IS CRITICAL FOR OUR CITY TO GET OUR AUDITS DONE, WHICH WILL TELL US MORE INFORMATION THAT THEY ARE GOING TO HAVE TO DEAL WITH TO MOVE FORWARD AND ACTUALLY IMPLEMENT SOME OF THE MITIGATION RECOMMENDED BY OUR AUDIT COMMITTEE, THE MITIGATION RECOMMENDED BY OUR AUDITOR, OUR DISCLOSURE WORKING GROUP, YOU KNOW IT ALL HAS TO COME TOGETHER, AND IT IS COMPLICATED. IT IS COMPLEX AND THERE ARE MANY MOVING PARTS. ALL DEPENDENT UPON EACH OTHER. WE HAVE HEARD A LOT ABOUT THE WAIVER, BUT THAT IS NOT THE ONLY THING WE HAVE TO DEAL WITH AS WE MOVE FORWARD. SO I APPRECIATE THE WORK OF OUR CONSULTANTS. GODSPEED AND LETS TRY TO STAY FOCUSED ON THE END BECAUSE WE CERTAINLY HAVE A LOT RIDING ON IT AND WITH THAT, I WILL ASK MR. AGUIRRE IF YOU CAN JUST VERY BRIEFLY.

AGUIRRE:
MR. MACO, WOULD YOU MIND COMING BACK UP FOR A MOMENT IF YOU WOULDN'T MIND. MR. MACO, IS IT CORRECT THAT YOU DID CAUSE CERTAIN HARD DRIVES TO BE COPIED COMPUTER HARD DRIVES OR IMAGED AS YOU SAY?

MACO:
THE CITY ENTERED INTO CONTRACTS WITH NTA BRAKE WATER TO IMAGE 28 HARD DRIVES OF CITY EMPLOYEES.

AGUIRRE:
ALL RIGHT. DID YOU INCLUDE WITHIN THE 28 HARD DRIVES THAT YOU IMAGED THE HARD DRIVES THAT BELONGED TO THE MAYOR, MAYOR MURPHY AND THE MEMBERS OF THE CITY COUNCIL.

MACO:
THE SELECTION OF THE HARD DRIVES THAT WAS ULTIMATELY IMAGED BY NTI BRAKE WATER WAS PART OF THE WORK PLANS IDENTIFIED BY THE CITY AND ITS CONSULTANT.

AGUIRRE:
BUT DID THAT INCLUDE THE HARD DRIVES OF THE MAYOR AND THE MEMBERS OF THE CITY COUNCIL

MACO:
THEY DID NOT.

AGUIRRE:
THEY DID NOT, IS THAT CORRECT ?

MACO:
CORRECT, THEY DID NOT.

AGUIRRE:
MR. LEVITT, IF YOU WOULDNT MIND COMING BACK UP, SIR, MR. LEVITT, HAVE YOU HAVE YOU GONE THROUGH THE REPORT THE REPORTS THAT THE CITY ATTORNEYS OFFICE HAS ISSUED AND COMPARED THE FOOTNOTES TO THE EXHIBITS?

LEVITT:
I HAVE GONE THROUGH THE REPORTS. I HAVE LOOKED AT THE FOOTNOTES. I HAVE NOT COMPARED THEM TO THE EXHIBITS.

AGUIRRE:
ALL RIGHT. SO HAS ANYONE AT KROLL GONE THROUGH TO SEE IF THE FOOTNOTE SOURCE OF AUTHORITY FOR THE FACTUAL EXPRESSIONS IN THE CITY ATTORNEY'S INTERIM REPORTS WERE IN FACT SUPPORTED BY THE EVIDENCE CITED AND PROVIDED?

LEVITT:
I WOULD HAVE TO ASK MY COLLEAGUE THAT QUESTION

AGUIRRE:
IM SORRY, COULD YOU COME ON UP IF YOU ARE GOING TO SAY SOMETHING?

LEVITT'S COLLEGUE:

Exhibit 38

Mail

Close

Previous Next

From: Mike McGhee
To: Ryan Ed; Webster, Terri; Kelley, Dan
CC: Lawrence, Bob; Wilson, Bob; Heap, Elmer
Date: 5/21/2002 9:12 AM
Subject: Re: Meet and Confer Update - Changes for FY 2003 / FY 2004 / FY 2005

Dan shared with me your comments Terri. I assure you that Ron is well aware of the contingent nature of the benefits, after our repeated statements at the negotiations table regarding the benefits being contingent upon your noted approvals. Cathy was very specific on those points at every discussion. The various proposals are all specific to the necessary approvals and available funding from the reserves, although this is not stated in this "highlights" to the departments.

>>> Terri Webster 5/21/02 9:22:50 AM >>>
Dan
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 presidetial leave (?)) were contingent on the trigger.... especially need Ron behind releasing the trigger since he runs the show at CERS...

>>> Dan Kelley 05/21/02 08:27AM >>>
We are starting the Retirement Offsets with the first full pay period in the Fiscal Year.

We are going to talk to you on Presidential Leave and "Grandparenting" of 2.5% @ 55.

We are scheduling an implementation with your staff, Personnel and the Attorney's for this week.

Further discussion required on Direct Deposit and "Modified Agency Shop".

Local 127 has until this Friday to let us know if they want the "Modified Agency Shop" and the Direct Deposit.

Dan

>>> Ed Ryan 5/20/02 5:50:51 PM >>>
Dan, the Bob's thought they heard one of your staff say the retirement pickup started in the first full pay period of July. This seems to say different. Which is it? Also , is this the language you are proposing for Presidential Leave? I thought that the Attorney , you and I were going to discuss that.

>>> Dan Kelley 5/20/2002 5:37:58 PM >>>
Please share this information with your Executive Management Teams only.

Dan Kelley
Labor Relations Manager

EXHIBIT # 19

DRAFT 7/15/2005
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
ATTORNEY WORK PRODUCT
FOR DISCUSSION PURPOSES ONLY; MAY CONTAIN ERRORS

CONFIDENTIAL

DRAFT

POTENTIAL VIOLATIONS OF THE FEDERAL SECURITIES LAWS BY THE CITY OF SAN DIEGO AND ASSOCIATED INDIVIDUALS

Paul S. Maco
Richard C. Sauer

VINSON & ELKINS L.L.P.
2005

CONFIDENTIAL

committee appointed by Mayor Murphy to assess the City's long- term financial health.[217] One of the issues addressed by this "Blue Ribbon Finance Committee" was the funded status of the retirement system. The primary author of that section of the report was San Diego businessman Richard Vortmann.[218] As he acknowledged in interviews with V&E, this effort was in some ways preliminary.[219] Nevertheless, his section of the Blue Ribbon Report flagged the most significant issues threatening the financial soundness of SDCERS.

Mr. Vortmann concluded that the City was pushing liabilities connected to its pension system into the future. Initially, he did not find that alarming, so long as the City understood that it would eventually have to address the shortfall.[220] As his fieldwork progressed during the summer and fall of 2001, however, he became increasingly concerned that the City not only was failing to fund its retirement system on a "generation neutral" basis but, in fact, had little grasp of the its prospective future costs. This included, in addition to the cost of the basic pension benefit, the increasing liability for retiree medical benefits. As his section of the Blue Ribbon Report stated:

> The potential risk is that policy makers grant benefit enhancements today (to satisfy employee concerns, to negotiate trade-offs with unions, etc.), but avoid recognizing the actual annual cost of such by actuarially spreading the cost over years far out in the future, long after the individuals who made the policy decisions are gone. This is particularly acute where the retiree benefit enhancements are granted "retroactively," i.e. new improved benefits, which are applied to past, as well as future, years of service for active employees. This retroactive approach is the general practice of the City.[221]

The report notes the magnitude of the benefit improvements granted in 1996 and 2000 (a total increase of 32%), observes that the City's contributions are held down by "an unconventional actuarial driven plan [MP1]" and accurately describes the retiree healthcare benefit as "a non-discretionary expense which, as an almost certainty, will grow faster, and most probably much faster, than the current employee salary base in the City budget."[222] Further, Mr. Vortmann was not greatly comforted by the fact that the System enjoyed the relatively high

---

217 The genesis of this report is explained in more detail in *V&E Report* at 74-75.

218 He brought to that task an understanding of pension matters in private industry but no experience with governmental retirement plans, which are subject to different legal requirements.

219 Memorandum of Interviews with Richard Vortmann (June 8, 2004), at 3 and (Mar. 28, 2005), at 1-2.

220 E-mail from Richard Vortmann (via Leilani Hughes) to Terri Webster, Subject: Questions for City Pension Manager (July 31, 2001).

221 *Blue Ribbon Committee Report* at 20.

222 *Id.* at 21.

funded ratio of approximately 97%, noting that this was the result of uncommonly fat times in the securities markets.

> A point of possible concern is that after an unprecedented 9-year boom in the equity market when many pension plans became flush and actually over-funded, allowing the sponsors to reduce actual cash contributions, the City still has an unfunded liability.[223]

Mr. Vortmann was assisted in his analysis by the staff of the City Auditor's Office, primarily Terri Webster, with Ed Ryan looking over her shoulder. Depending on which communications are selected, she and Mr. Ryan can be portrayed as either encouraging Mr. Vortmann to shine a light on the City's short-sighted policies concerning its retirement system, or lobbying him to soften the outlines of the still harsher picture he initially intended to draw. Ms. Webster and Mr. Ryan apparently viewed Mr. Vortmann as a well-meaning amateur, with a tendency to overstate problems. They supported the basic message of his contribution to the Blue Ribbon Report: that the City needed to take additional steps to reign in the growing costs of its pension system. As Ms. Webster wrote him in September 2001:

> Overall: I support highlighting that there is a negative fiscal impact to the City when retiree benefits are increased and they need to be reminded that they are paying artificial low rates now and pushing the liability out to the future. This is timely since the labor side of the Board was successful in June in pulling $100[million] out of FY 00 earnings so they have a pot to bargain with in the upcoming labor negotiations.[224]

Nevertheless, Ms. Webster and Mr. Ryan contended that Mr. Vortmann saw only the negative side of the situation, when mitigating factors should also be considered. They exchanged e-mails about Mr. Vortmann's propensity for dark pronouncements.[225] Mr. Vortmann, however, remained obdurate and, indeed, his position hardened as the release date for the report approached. As he wrote Ms. Webster on February 19, 2002:

> Terri[,] some of this is semantics and some is that you and I just do not agree. My position is that the City is not expensing (per a line item in the annual budget) anything for retiree health (not pay as you go for retirees and certainly not "accruing" the cost as it is earned by current ee's). Medical is being paid out of "surplus earnings" in the pension trust, such trust being funded by the city based

---

223 *Id.* at 23.

224 E-mail from Terri Webster to Richard Vortmann, Subject: Final Report (Sept. 4, 2001). The $100 million reserve referred to was folded back into plan assets the following year, rather than being used to fund additional benefits. *V&E Report* at 75.

225 *See, e.g.*, E-mail from Terri Webster to Chris Morris, cc: Les Girard, Re: FY 03 Financial Statement Disclosure (Nov. 18, 2003); and E-mail from Cathy Smith to Pat Frazier, Re: Paul Webber's Transmission of Pension Plan Disclosure (Sept. 12, 2003).

on actuarial calcs which do not include medical. In fact as we know the actuarial funding requirements are not even being met per the Mgr.'s Proposal. The tip of the iceberg is becoming much more visible.[226]

Ms. Webster wrote to Committee Chair Joe Craver on December 31, 2001, urging that he speak with Mr. Vortmann about the tone of his section.

> Maybe you can talk to Dick before Fri and turn him. He's turned all 6, 100%, reported topics into a negative. Doom and gloom . . . we're a good looking apple that is rotten once you bite into it. . . . Not an accurate or fair representation at all (as confirmed by 3 different rating agencies; dozens of outside Independent Auditor[s]; State and Fed level recognition for being "the top"[,] etc[.,] etc[.])[.] Good luck![227]

The view that the tone of the report was veering toward the excessively critical hit a responsive chord with other committee members. Linc Ward opined to fellow members in early January 2002:

> In the version which April Boling worked on so diligently and in which she has incorporated some of Dick Vortmann's input I find that we have inadvertently structured the potential for a media feast of "accentuating the negative." And one which potentially might also have a very deleterious impact on out bond ratings (we're telling them they're wrong and should look deeper!).[228]

In reply, Ms. Boling accepted Mr. Ward's suggestion that the report could benefit from a more balanced tone. By reply e-mail, she wrote:

> I do not mean to accentuate the negative. . . . On the other hand, I do not believe that we should stamp a big "smiley face" on a situation that is not particularly positive. . . . I do not believe that the bond rating agencies need to look any deeper. They have specific rating criteria and the City does meet those criteria. We are able to meet our debt service requirements. A 97% funding level on the pension plan is also within acceptable pension plan parameters. But that doesn't mean it's the right thing to do, or indicative of good management.[229]

---

226 E-mail from Richard Vortmann to Terri Webster, No Subject (Feb. 19, 2002).

227 E-mail from Terri Webster to J.W. Craver, Re: new copy (Dec. 31, 2001). *See also* E-mail from Terri Webster to April Riel, Re: blue ribbon (Jan. 2, 2002).

228 E-mail from Linc Ward to Terri Webster and members of the Blue Ribbon Committee, Subject: 12-30-01 draft (Jan. 3, 2002).

229 *Id.*

DRAFT

The result of this discussion, according to Mr. Vortmann, was a toning down of the Report's summary section, but not of the pension section.[230] In the view of Ms. Webster, the Report continued to reflect Mr. Vortmann's excessively pessimistic views. As she wrote to Mr. Ryan:

> I don't see the values [sic] of arguing with him on the wording of the other issues any more and it is too complicated for the rest of the committee to grasp and help change Dick's mind . . . so I suggest we agree to disagree . . . we gave a good shot at changing him . . . he just didn't fall for it.[231]

The exchanges between Mr. Vortmann and Ms. Webster illustrate the conflicting perspectives they brought to the work of the Blue Ribbon Committee. This foreshadowed present inquiries into the limitations of the City's disclosure practices. Mr. Vortmann brought a business-oriented view of the need for information used for decision-making. Ms. Webster was grounded in technical accounting rules, and displayed a strong disinclination toward placing the City in a negative light through disclosure not specifically required under GASB standards.

For example, Mr. Vortmann, as noted above, was concerned that the City did not know (much less disclose) the potential cost of the retiree healthcare benefit. From his experience in private industry, he understood that the cost of healthcare was rising at a pace that outstripped the general inflation rate. His suggestion that the City disclose the value of this liability was met by Ms. Webster with insistence that the City was following all applicable GASB requirements.[232] In fact, GASB did not then require that governmental issuers estimate and disclose this liability, and most did not.[233] To Ms. Webster, this was all that mattered. Mr. Vortmann, however, in a hand-written note to Ms. Webster stated: "I readily accept what is allowable under GASB rules. I'm more interested in *financial disclosure*."[234] The distinction between what is required under GASB rules and what is necessary to provide a full picture of the fiscal health of the City was a distinction that apparently eluded not only Ms. Webster and Mr. Ryan but others in City government as well.

CONFIDENTIAL

---

230 Memorandum of Interview with Richard Vortmann (Mar. 28, 2005), at 3.

231 E-mail from Terri Webster to Ed Ryan, Subject: my suggestion on Redraft of pension Sections (Jan. 7, 2002). In an interview with V&E, Ms. Webster stated that, while her phrasing on the final sentence was unfortunate, she did not mean to indicate that she and Mr. Ryan had attempted to mislead Mr. Vortmann in any way. Memorandum of Interview with Terri Webster (Feb. 1, 2005), at 14. Nor does Mr. Vortmann believe he was mislead. Memorandum of Interview with Richard Vortmann (June 8, 2004) at 5.

232 E-mail from Terri Webster to Richard Vortmann, Subject: Disclosure (Jan. 2, 2002). She agreed, however, that the Report should highlight the rising cost of healthcare. *See* E-mail from Terri Webster to Richard Vortmann, Subject: Final Report (Sept. 4, 2001).

233 As noted above, this situation will change with the implementation of GASB 45.

234 Faxed note from Richard Vortmann to Terri Webster, received-stamped January 2, 2002 (emphasis in original).

The Blue Ribbon Committee made its presentation to the Mayor and other members of the Rules Committee on February 27, 2002. In his presentation, Mr. Vortmann sounded the primary themes of his section of the report. He warned that the cost of the pension system was consuming an increasing percentage of the City's budget. He emphasized that "the City is not paying from its current budget the full cost incurred by its current year work force for their ultimate future pension and retiree health benefits."[235] According to his notes of that presentation, which he provided to V&E, Mr. Vortmann also noted the rising cost of the retiree medical benefit.[236]

Comments made by members of the Rules Committee suggest they were unfamiliar with the SDCERS funding situation. Mayor Murphy questioned how far short of full funding the City was falling. City Auditor Ed Ryan estimated the shortfall to be $6-8 million.[237] Both the Mayor and Councilmember Madaffer expressed surprise and concern at this information and requested advice from the City Manager's Office as to how to resume fully funding the system. Noting various budgetary challenges faced by the City, Mr. Madaffer stated: "now we add another 8 million dollars a year that we need to add in and its growing. I'm just extremely troubled by that and I hope Mr. Manager when you come back with the budget that you present to the Council in May, that you will address this issue and come up with a plan. This is definitely a huge hit."

Two conclusions can be drawn from the reaction to Mr. Vortmann's presentation. First, the Mayor and Council-members had not been cognizant of the extent of the underfunding or its potential effect on City finances. Nor, despite Mr. Vortmann's efforts, did they now obtain a full understanding of those issues. Although the additional $6-8 million annual expenditure cited by Mr. Ryan was, as Councilmember Madaffer stated, significant in "a tight budget year," it is small in comparison to the City's potential obligation in the event the MP1 trigger was hit, at least under the "Blum interpretation" of that mechanism. Moreover, that amount does not accurately reflect the true funding shortfall resulting from MP1. For FY 2001, that amount was $12,163,106. The cumulative shortfall to June 30, 2001, was $69,292,644. Finally, there is no warning provided to the Mayor and Council of a potential escalation in System underfunding as a result of market reversals or other factors.[238]

The second conclusion is that the Mayor and Councilmember Madaffer, like various City officials, viewed information about the funding of the pension system as implicating budget issues, not disclosure issues, even after the presentation in October 2001 by attorney Gerald

---

235 Transcription of City Council Rules Committee Meeting, February 27, 2002. This transcription was obtained by the City Attorney's Office. City Attorney Report at Exhibit 31. V&E did not independently transcribe the recording of this meeting.

236 Vortmann PowerPoint presentation with handwritten interlineations.

237 Mr. Ryan declined to speak with V&E in this matter. Therefore, we are unable to determine how he made this estimate. From an e-mail exchange between himself and Ms. Webster, Mr. Ryan seems to have believed the $6-8 million figure to be accurate. *See* E-mail exchange between Terri Webster and Ed Ryan, Re: npo (Dec. 28, 2001).

238 Transcript of City Council Rules Committee *supra* note 228.

Boltz on the due diligence responsibilities of Mayor and Council. The Evidence Available to the Investigation offers no indication that any member of the City Council considered the disclosure implications of the SDCERS funding shortfall until this issue was raised by disclosure counsel Paul Webber in late 2003.

2. The City Attorney's criticism of the Blue Ribbon Committee Report

A report issued by the Office of the City Attorney contends: "the Mayor's Blue Ribbon Committee Report on the City of San Diego Finances contained a material false statement that the San Diego City's Pension Plan's funding ratio was 97% when in fact it was 89.9% funded as of June 2001."[239] In fact, the Blue Ribbon Report provides no figure for the funded ratio as of June 30, 2001. It states that the 97% figure represents the ratio at June 30, 2000, and that the ratio for the following year is expected to be lower (reflecting poor investment returns).

Shortly before the Blue Ribbon Committee Report was published, SDCERS' actuary Rick Roeder provided the Board with a draft actuarial report.[240] It indicated, as expected, that the System's funded ratio had fallen substantially during fiscal year 2001. This report was accepted by the SDCERS Board on June 23, 2002. Mr. Aguirre contends that the Blue Ribbon Committee should have amended its report to include this updated number and suggests that this was an intentional omission, calculated to conceal the true condition of the pension system.[241] He provides no motive for Mr. Vortmann or his fellow committee members to conceal negative information about the funding of the City's pension system in a report notable for its critical comments on that System. In an interview with V&E, Mr. Vortmann stated that he could not recall whether he received and read the FY 2001 actuarial report prior to the publication date of the Blue Ribbon Committee Report but, in any event, found that it simply confirmed his view that FY 2001 would bring a further decline in funded level.[242] Thus, in Mr. Vortmann's view, it did not materially affect the overall presentation of the report. Ms. Webster told V&E that she remembered some discussion among members of the Blue Ribbon Committee about including the updated number, but believes it this was not done because, among other things, the actuary's report had not yet been accepted by the SDCERS Board.[243]

CONFIDENTIAL

CA

CA

---

239 Office of the San Diego City Attorney, "Interim Report No. 2 Regarding Possible Abuse, Illegal Acts or Fraud by City of San Diego Officials" (Feb. 9, 2005), at 2.

240 Transmittal letter from Rick Roeder to Retirement Board, SDCERS (Feb. 12, 2002), covering San Diego City Employees" Retirement System Annual Actuarial Valuation, June 30, 2001.

241 Office of the San Diego City Attorney, Report No. 2, at 14.

242 Later correspondence from Mr. Vortmann suggests that he first reviewed the report in detail some weeks later. Letter from Richard Vortmann to Frederick Pierce, IV (Feb. 18, 2002). Previously, Mr. Vortmann had expressed concern about including up-to-date figures for actual and budgeted City expenditures. E-mail from Richard Vortmann to Terri Webster, Subject: Mayor's Blue Ribbon Finance Committee (Aug. 24, 2001).

243 Memorandum of Interview with Terri Webster (Feb. 1, 2005), at 13.

Exhibit 39

BLUE RIBBON COMMITTEE REPORT
ON
CITY OF SAN DIEGO FINANCES

FEBRUARY 2002

BLUE RIBBON COMMITTEE REPORT
ON
CITY OF SAN DIEGO FINANCES
TABLE OF CONTENTS

Executive Summary **Page No.**

Background 2

Objectives 3

Findings and Recommendations 5

Conclusion 10

Summary of Recommendations 12

Major Fiscal Areas

I. General Reserves and Insurance 13

II. Long Term Debt 15

III. Retirement Benefits and Unfunded Pension Liabilities 20

IV. General Deferred Maintenance and Unfunded Procurement 24

V. Water, Wastewater, Storm Water and Multiple Species Conservation Program 28

VI. Revenues and Expenditures 36

VII. Principles of Budgeting and Finance 38

Attachments

1. City of San Diego Achievements
2. Moody's California Cities Ratings
3. Moody's The Nation's Cities Ratings
4. Long Term Debt Analysis
5. Debt Service Analysis
6. General Fund Revenue Per Capita
7. General Fund Expenditures Per Capita

III. RETIREMENT BENEFITS AND UNFUNDED PENSION LIABILITIES

All full time City employees participate in the San Diego City Employee Retirement System (SDCERS), which is the City's Defined Benefit Pension Plan. As a defined benefit plan, retirement benefits are determined primarily by a member's age at retirement, the length of membership service and the member's final compensation earnable based on the highest one-year period.

The level of retiree benefits is a policy issue. The question to be addressed by the Committee is how these benefit policies affect the fiscal health of the City. The Committee did not address the issue of how the City's pension assets are invested.

Employee retirement benefit liabilities of the City comprise two issues:

- Pension Benefits
- Retiree Health Benefits

A. PENSION BENEFITS

The Committee has two concerns regarding the Retirement Benefit Liability:

1. *Whether the City is paying out of its current year's budget the full cost being incurred by its current workforce for their future pension and retiree health benefits.*

2. *Whether the budgetary process adequately comprehends the steadily growing annual expense obligation, particularly given the uncontrollable and non-discretionary nature of this liability.*

The potential risk is that policy makers grant benefit enhancements today (to satisfy employee concerns, to negotiate trade offs with unions, etc.), but avoid recognizing the actual annual cost of such by actuarially spreading the cost over years far out in the future, long after the individuals who made the policy decisions are gone. This is particularly acute where the retiree benefit enhancements are granted "retroactively", i.e. new improved benefits, which are applied to past, as well as future, years of service for active employees. This retroactive approach is the general practice of the City.

Major pension improvements (20% increase) were implemented in Fiscal Year 1997 and benefits were increased by another 12% in Fiscal Year 2000 as a result of a litigation settlement. San Diego County is in the final stages of approving major pension improvements, exceeding San Diego City benefits. This will undoubtedly lead to pressure for further increases for City employees.

The City's annual cash contribution expense for pension was $68 million for Fiscal Year 2001. This is one of the larger items in the City's overall budget. Further, this expense line item has been growing at about a 9% per year compound rate the last five years and at a much faster rate if measured back 10 years.

binding obligation appears to be an "indirect" part of the actuarial computation to develop the annual pension cash contribution. The City's practice is in accordance with current Generally Accepted Government Accounting Principles (GAAP). However, 12 years ago GAAP was changed for private industry to require the recognition annually of the cost of future retiree health benefits being "earned" that year by the current work force. The reason for this accounting change was the growing concern over the very sizeable liabilities for future payments that were not being fully recognized.

The Committee recognizes the City has the potential for this same problem, i.e. a sizeable, growing liability for future payments. The City has a growing workforce, an early age for retirement (50 for Public Safety employees and 55 for General employees), a lengthening of life spans, and an ever increasing cost of health care. As a consequence, retiree medical costs represent a "non-discretionary" expense, which will grow faster and most probably much faster, than the current employee salary base in the City budget.

While this retiree medical cost is currently a relatively small budget item, it will most likely grow at an increasing rate, in essence for costs of prior years' employee service. It is conceivable this liability at today's present value could exceed $100 million. It is unclear how well the City policy makers appreciate this overall expense issue and how it will affect the City budget in the future.

C. FUNDING LEVEL

SDCERS is not in a fully funded position. It is currently funded at 97% (i.e. its current assets equaled 97% of the actuarially computed present value of the future Pension Plan liabilities). The absolute dollar amount of under funding hit a peak of $148 million in Fiscal Year 1999. Excellent Pension asset investment performance reduced that unfunded liability to $69 million in Fiscal Year 2000. However, investment performance in Fiscal Year 2001 was less than half of the excellent performance in Fiscal Year 2000. Investment performance in the first seven months of Fiscal Year 2002 is lower than in Fiscal Year 2001. It is expected that the forthcoming actuarial report will show an increase in the unfunded dollar amount.

San Diego City Employees' Retirement System Financial Information
For Fiscal Years 1996 – 2001
($ IN MILLIONS)

	2001	2000	1999	1998	1997	1996
Pension Fund Assets	$2,807	$2,999	$2,476	$2,272	$1,855	$1,604
City Pension Expense	$68	$61	$56	$51	$48	$44
Pension Plan & Health Benefits Paid	$155[1]	$112	$100	$85	$67	$62
Unfunded Actuarial Accrued Liability	Not available	$69	$148	$125	$117	$140
Retiree Health Benefits Expense	$7	$5	$5	$4	$5	$5

[1] includes $24 million Corbett pay out settlement.

Exhibit 40

Exhibit 41

DRAFT 7/15/2005
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
ATTORNEY WORK PRODUCT
FOR DISCUSSION PURPOSES ONLY; MAY CONTAIN ERRORS

CONFIDENTIAL

DRAFT

POTENTIAL VIOLATIONS OF THE FEDERAL SECURITIES LAWS BY THE CITY OF SAN DIEGO AND ASSOCIATED INDIVIDUALS

Paul S. Maco
Richard C. Sauer

VINSON & ELKINS L.L.P.
2005

CONFIDENTIAL

have created additional unfunded liabilities to SDCERS that were not anticipated when the City agreed to the "trigger" provisions.

> Significant improvements in benefits are contained in the City's three-year proposal to which MEA tentatively agreed. Consequently, the City's proposal contained "trigger" provisions which are to be adjusted as a condition of the City's three-year proposal. Therefore, retirement enhancements contained in the three-year proposal are contingent upon, and subject to, approval by the SDCERS Board of Administration . . . of a modification to the trigger provisions contained in the Manager's Proposal. . . .[293]

It does not appear, however, that the City offered enhanced pension benefits primarily to win support for what became MP2.[294] As Mr. Kelley stated, the unions entered the meet-and-confer process with an expectation that concessions would be made.[295] He noted that there was a trend statewide for the formula to increase to 3% at age 50 for safety members, and this created pressure on San Diego to follow suit.[296] Moreover, the City hoped to obtained a three-year agreement with each of its unions, for which it was prepared to make concessions. As City negotiator Elmer Heap stated: "the City wanted to put something else on the table to help structure a three-year deal. At the time they believed that agreeing to additional pension benefits was the best thing for the City."[297] Thus, Mr. Kelley noted, "the trigger issue was not driving the final package," a conclusion further supported by the recollections of Mr. Heap that the unions did not emphasize this issue for bargaining leverage.[298]

A link between MP2 and the Union Presidents' Resolution is not clearly established by the evidence available to us at this time. The San Diego District Attorney has charged Mr. Saathoff (and others) with a conflict of interest in voting in favor of MP2, in part due to an alleged link between that measure and the union presidents benefits.[299] The City Attorney in his

---

293 City of San Diego (City) Proposal to the Municipal Employees Association (MEA) regarding Implementation of Enhanced Retirement Benefits Amendment to the Memorandum of Understanding between the City and MEA, Article 21, Paragraph 9 (June 17, 2002).

294 *See* Bruce Herring response to questions from Richard Vortmann, attached to Memorandum from Bruce Herring, Deputy City Manager, to Lawrence B. Grissom, Retirement Administrator, Subject: City's Proposal Regarding Contribution Rates and Reserves and Response to Questions from SDCERS Trustees (July 3, 2002).

295 Memorandum of Interview with Dan Kelley (Apr. 12, 2005), at 6.

296 Memorandum from P. Lamont Ewell, Assistant City Manager, to Mayor and City Council, Re: San Diego City Employees' Retirement System Benefit Enhancements; Response to Public Comment and Correspondence on Items 50 and 51 Adoptions Agenda, Consent Items (Dec. 6, 2002), at 3. Mr. Ewell told Vinson & Elkins that this memorandum was drafted for his signature by Cathy Lexin.

297 Memorandum of Interview with Elmer Heap (Apr. 27, 2005), at 5.

298 *Id.*

299 *People of the State of California v. Lawrence Grissom, et al.*, Case No. GIC 850246 (Ca. Sup. Ct. July 6, 2005).

Report has made similar allegations.[300] The Evidence Available to the Investigation does not allow more than limited comment on this issue.[301] In interviews with V&E, neither Mr. Heap nor Mr. Kelley recalled the union presidents measure being specifically designated as contingent upon SDCERS Board approval of MP2.[302] Further the presentations made by City staff to the Mayor and Council treat them as separate matters. A slide included in the presentation to the City Council on April 16, 2002, for example, described the contingent benefits as follows:

Meet & Confer 2002
Authorization of Final Economic Bargaining Authority (Action)

Management Team Recommendation:

- Authorize removal of MVLF contingency language
- Authorize the proposed three year agreement as the City's final economic bargaining position
- Condition all retirement enhancements on removal of the "trigger" in the "Managers Proposal" regarding CERS funding ratio*
  - Retiree health
  - Increase in Pickups
  - Increase in General Member Formula

*If CERS funding ratio drops below 82.3% (currently 89.9%) City must pay full actuarial rate, ($25m more annually).

CONFIDENTIAL

The union presidents measure is not included among the contingent benefits, but rather discussed elsewhere in the presentation. Also, the proposals made by the City to its unions contained specific language as to which benefit enhancements were conditioned on Board approval of a modification to the MP1 trigger. These did not include the union presidents'

300 Office of the City Attorney, Interim Report No. 2 at 20.

301 Mr. Saathoff declined to speak with V&E in this matter. In addition, this issue is only indirectly related to questions of the adequacy of the City's financial disclosure, the focus of our investigation.

302 Mr. Heap, however, told V&E that he understands that there were conversations between Mr. Saathoff and the City's lead negotiator, Cathy Lexin, outside the formal negotiation process. Memorandum of Interview with Elmer Heap (Apr. 27, 2005), at 3.

CONFIDENTIAL

DRAFT

measure.[303] Finally, in presentations to the SDCERS Board discussing the contingent nature of the new benefits, there is no mention of the union presidents' benefits being among them. For example, the implicated benefits were described by Lawrence Grissom as "certain enhancements to retirement benefits for general member[s], changes in the amount of employee contributions paid by the City on behalf of employees and changes to the reimbursement rate for retiree health insurance."[304]

Certain other facts, however, make it impossible to positively conclude, on the basis of information presently available to V&E, that there was no connection between the union presidents measure and the adoption of MP2. Mr. Kelley told V&E that he groups all the items considered in the meet-and-confer process together and believes that, had MP2 not been approved by the SDCERS Board, and had the City indeed declined to grant the new benefits, the union presidents' measure would likely have been considered part of the same package.[305] Further, in a May 21, 2002 e-mail, Terri Webster indicated that a question existed in her mind as to whether the union presidents' agreement was contingent on passage of MP2.[306] In the same e-mail she recognized the importance of obtaining Mr. Saathoff's support for the modification of the trigger provision "since he runs the show at CERS." Thus, the Available Evidence does not foreclose the possibility that approval by the SDCERS Board of MP2 may have been instrumental in the ultimate adoption of the Union Presidents' Resolution and therefore presented an incentive to Mr. Saathoff to vote in favor of MP2.[307]

C. The Adoption of MP2

City officials treated the meet-and-confer process and the request to the SDCERS Board to amend the trigger provision as a coordinated effort. In a series of e-mails in early 2002, Terri

---

303 *See, e.g.*, City of San Diego Proposal to the Municipal Employees Association regarding Implementation of Enhanced Retirement Benefits Amendment to the Memorandum of Understanding between the City and MEA, Article 21, Paragraph 9, June 17, 2002.

304 Memorandum from Lawrence Grissom to Retirement Board, Subject: City Manager Request – Modification of the 1996 Manager's Proposal (June 13, 2002). Mr. Grissom confirmed in an interview with V&E that his understanding was that there was no linkage between the requested Board action on MP2 and the Union Presidents' Resolution. Memorandum of Interview with Lawrence Grissom (Feb. 16, 2005), at 1-2. *See also* Memorandum from Michael T. Uberagua, City Manager, to SDCERS Board of Administration, Subject: Proposal from the City of San Diego Regarding Employer Contribution Rates, Health Insurance, and Reserves (June 10, 2002), at 2.

305 Memorandum of Interview with Dan Kelley (Apr. 12, 2005), at 7-8.

306 E-mail from Terri Webster to Dan Kelley, Subject: Meet and Confer Update – changes for FY 2003/ FY 2004/ FY 2005 (May 21, 2002). In an interview with V&E, Ms. Webster pointed out that she followed her reference to the union presidents' agreement with a question mark. She stated that she was uncertain at that time whether that agreement was contingent upon Board approval of MP2 but later learned that it was not.

307 According to Mr. Heap, the City negotiators who handled the union presidents issue considered the final resolution to be overly-generous, which might be argued to have provided Mr. Saathoff with an additional incentive to see that measure approved. Memorandum of Interview with Elmer Heap (Apr. 21, 2005), at 4-6.

Exhibit 42

CONSULTING ENGAGEMENT AGREEMENT

THIS AGREEMENT is made, entered into and made effective this 12th day of October, 2004 ("Effective Date") by and between **Breakwater Security Associates, Inc. dba NTI or New Technologies ("NTI")**, a Washington corporation having its principal address at 2075 Northeast Division Street, Gresham, Oregon 97030

and

City of San Diego, California (Client").

RECITALS

Client desires to engage the services of NTI to provide computer forensic consulting services and NTI is willing to provide such services, in accordance with the terms set forth in this Agreement. NTI will be working under the direction of and reporting to members of Vinson & Elkins.

NOW, THEREFORE, the parties agree as follows:

1. **Engagement.** Client hereby engages NTI to provide computer forensic consulting services and NTI hereby accepts such engagement.

2. **Term, Termination.** The term of this Agreement shall commence upon the Effective Date and shall continue until termination by either party. This Agreement may be terminated by either party upon five (5) days written notice to the other party or immediately by mutual consent. In the event of termination, NTI shall stop work immediately upon sending or receipt of such notice and will timely submit a final bill for all services and expenses incurred prior to the date of the notice of termination.

3. **Services.** NTI shall use its best efforts in the field of forensic computer science to give guidance and direction in developing strategies relating to obtaining and analyzing the computer information, as requested by Client. NTI shall also provide Client with guidance, direction and testimony relating to forensic computer science, as necessary, in the event any matters related to this engagement are litigated. NTI may also develop specialized software tools or modify existing software tools that are the property of NTI. In such cases, any software developed or modified shall remain and/or become the sole property of NTI.

ıitials

Copyright © 1998-2004 by Breakwater Security Associates, Inc.
July 1, 2004 NTI Internal Client Contract

DOCUMENT NO. C-13074
FILED NOV 22 2004
OFFICE OF THE CITY CLERK

4. **Compensation.** As consideration for services to be provided by each NTI employee or contract consultant pursuant to this Agreement, Client agrees to pay NTI the fees listed in Exhibit "A". Any work done outside of the scope of Exhibit "A" will be done at the below rates:

1) **All Services, Excluding Expert Witness Testimony.**

Task or Employee Classification	Rate Per Hour
Expert Witness Testimony	$500
Principal	$325
Senior Consultant	$295
Consultant	$265
Paraprofessional	$100

2) **Out-of-Town Travel or Standby Time.** Travel or standby time shall be at the corresponding rate.

5. **Storage Fees.** Client agrees to pay to NTI storage fees for computer hardware and/or media stored by NTI at the rate of $50 per month.

6. **Out-Of-Pocket Expenses.** Client also agrees to pay all ordinary and necessary expenses that NTI incurs in accordance with this Agreement, including, but not limited to, airfare, hotel, car rental, computer supplies, computer equipment, computer storage media and meals. A $50 equipment usage charge will apply for each computer system allocated to a specific task.

7. **Payment for Services.** NTI shall invoice Client for its services at least on a monthly basis, and Client shall pay such invoices net 30 days following the date of invoice. **A 1% discount will be granted Client by NTI for the consulting fees listed in the invoice, if payment is made in full within 10 days of date of the invoice.** At its sole discretion, NTI shall require an initial retainer from Client before commencement of the services to be performed in paragraph 3. In such an event, NTI will draw upon this retainer as services are rendered and expenses incurred. This retainer is not intended to represent the total cost of NTI's work for Client. If, at the conclusion of NTI's work, the total cost is less than the retainer, NTI will promptly refund the difference. If, during the course of NTI's work, Client's retainer is exhausted, or appears insufficient, NTI may request that Client replenish or increase the retainer, or, in NTI's sole discretion, initially create a retainer.

.itials _____

Copyright © 1998-2004 by Breakwater Security Associates, Inc.

Client agrees that NTI has the right to stop work and withhold its work products from Client in the event that either (i) payments are not paid on a timely basis upon receipt of an invoice from NTI, or (ii) Client fails to provide to NTI a requested retainer, or a replenishment or increase of a retainer, upon NTI's request. Client also agrees to pay NTI **1.5% per month on any unpaid amounts that are in excess of 30 days old from receipt by Client of invoice from NTI.**

8. **Retainer.** Client shall remit to NTI a retainer before commencement of the Services on the initial engagement in the amount of $0. NTI reserves the right to request and obtain initial retainers on additional engagements, giving the particular circumstances of the engagement.

9. **Representations of Client.** Client hereby represents and warrants to NTI that the services which Client has requested that NTI perform pursuant to this Agreement will not violate any federal, state or local law, or any policy, practice or agreement of Client, including, without limitation, any such law, policy, practice or agreement relating to the privacy rights of Client's employees, agents, invitees, or other users of Client's computer systems, or any person who has corresponded via electronic means with any of such persons, or otherwise is wrongful with respect to any person or organization.

10. **Division of Responsibility between Client and NTI.** NTI's sole responsibility in connection with this Agreement shall be to perform the tasks specifically assigned to it under the terms of this Agreement, as detailed in the attached Statement of Work, as it may be amended and supplemented from time to time. For purposes of this Section 10 "Computer Systems" shall be defined as all stand-alone or networked computer hardware and related computer operating systems of organizations and/or persons for whom Client directs NTI to perform such services under this Agreement. The parties specifically agree that under no circumstances shall NTI be responsible for, and conversely Client shall be responsible for:

a. The modification or loss of data in the Computer Systems, unless it is shown by clear and convincing evidence that such modification or loss is a direct result of negligence on the part of NTI.

b. The interruption of service or denial of service to or from the Computer Systems, unless it is shown by clear and convincing evidence that such interruption of service or denial of service is a direct result of negligence on the part of NTI.

c. Any claim that the activities of NTI pursuant to this Agreement have violated or will violate any right of privacy or otherwise is wrongful with respect to any person or organization. In particular, although NTI is generally aware of federal laws concerning

ıitials

Copyright © 1998-2004 by Breakwater Security Associates, Inc.

privacy, NTI has no knowledge of any state or local privacy laws, and Client specifically acknowledges that NTI has no knowledge of, and has made no investigation of, and Client has not requested that NTI make any investigation of, the privacy policies, practices or agreements of Client, or how such policies, practices or agreements, if adopted or agreed to, have been implemented, and whether, under all of the facts and circumstances, such policies, practices or agreements will be held to be enforceable.

The obligations under this paragraph shall survive the termination of this Agreement.

11. **Disclaimer; Limitation of Liability.** NTI makes no representations or warranties with respect to the services to be performed pursuant to this Agreement. NTI hereby disclaims any express or implied warranties, including without limitation, the warranties of merchantability and of fitness for a particular purpose, and warranties allegedly arising through course of dealing. In no event shall NTI be liable for incidental, special, punitive, indirect, or consequential damages, business interruption, or lost profits under any contract, for (including negligence, except as specifically set forth herein) strict liability, breach of warranty, or other legal or equitable theory, even if the remedies provided for in the Agreement fail of their essential purpose and even if NTI has been advised of the possibility or probability of such damages. The liability of NTI shall in no event exceed the amounts payable by Client pursuant to this Agreement.

12. **Confidentiality and Nonuse.** NTI and Client each recognize and acknowledge that the other party's technology, know-how, practices, customer lists, product sources, products, designs, software, methods of development, names and capabilities of subcontractors and vendors, and other trade secrets are confidential and proprietary information (the "Confidential Information") and such Confidential Information is the property NTI and Client, respectively (the party disclosing the Confidential Information is the "disclosing party" and the party receiving the Confidential Information is the "receiving party"). NTI and Client both agree that, except as directed by the other party or with the other party's prior written consent, NTI and Client will not at any time, whether during or after the term of this Agreement, disclose to any person or use any Confidential Information of the other party, or permit any person to examine and/or make copies of any documents which contain or are derived from Confidential Information of the other party, whether prepared by the receiving party or otherwise coming into the receiving party's possession or control. This provision shall not apply to:

a. Information acquired by the receiving party that is readily available to the public.

ıtials

Copyright © 1998-2004 by Breakwater Security Associates, Inc.

b. Information that has been disclosed by the disclosing party for public consumption.

c. Information that is ordered to be disclosed by a court of law or other tribunal having jurisdiction in the matter.

d. Information all of which is already known to the recipient prior to its disclosure by the receiving party and such prior knowledge can be readily demonstrated.

In this connection, Client further acknowledges that NTI sometimes subcontracts certain portions of its assignments that do not relate to Computer Forensics Consulting Services to certain other firms ("Subcontractors") and that NTI, in disclosing the names and capabilities of its Subcontractors, is disclosing NTI Confidential information that Client has agreed not to disclose or to use. With respect to any particular case or assignment for which Client contracts with NTI for services, and with respect to which NTI subcontracts work to a particular Subcontractor, Client agrees that Client will not independently use the same or similar services of such Subcontractor with respect to such case or assignment without the prior written consent of NTI, and will not have any relationship with such Subcontractor regarding such case or assignment for the same or similar services except through NTI.

13. Non-Solicitation. During the term of this Agreement and for a period of one year following termination of this Agreement, the parties shall not directly recruit or otherwise solicit or induce any person who is an employee of either of the parties to terminate his or her employment with either of the parties.

14. Possession and Retention of Information. NTI agrees that, upon request by Client, NTI shall turn over to Client all materials and information in NTI's possession or under its control which may contain, or be derived from, Confidential Information, together with all documents, notes, mirror image backups, reports, or other work product ("Documents") which is connected with or derived from NTI's services to Client, whether or not such Documents are at the date hereof in NTI's possession. Except as stated below, in the event of termination of services under this Agreement, NTI shall retain Documents, unless requested by Client to be turned over to Client, for three years; and at such time Documents shall be destroyed. Mirror image backups that have been restored to other computer storage media ("Restored Backups") and information designated by NTI that is considered preliminary information shall be destroyed by NTI upon termination of services on the particular engagement under this Agreement.

15. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Washington, without regard to principles concerning the conflict of laws.

ıtials _____

Copyright © 1998-2004 by Breakwater Security Associates, Inc.

16. Dispute Resolution.

All disputes, claims, or controversies arising out of or relating to this Agreement, that are not resolved by mutual agreement shall be resolved solely and exclusively by binding arbitration to be conducted before the American Arbitration Association ("AAA") or its successor. The parties understand and agree that this arbitration provision shall apply equally to claims of fraud or fraud in the inducement. The arbitration shall be held in Seattle, Washington before a single arbitrator and shall be conducted in accordance with the rules and regulations promulgated by AAA unless specifically modified herein.

The parties agree that the arbitration shall commence within 30 days of the date on which a written demand for arbitration is filed by any party hereto. In connection with the arbitration proceeding, the arbitrator shall have the power to order the production of documents by each party and any third-party witnesses. In addition, each party may take up to 3 depositions as of right, and the arbitrator may in his or her discretion allow additional depositions upon good cause shown by the moving party. However, the arbitrator shall not have the power to order the answering of interrogatories or the response to requests for admission. In connection with any arbitration, each party shall provide to the other, no later than 14 business days before the date of the arbitration, the identity of all persons that may testify at the arbitration, a copy of all documents that may be introduced at the arbitration or considered or used by a party's witness or expert, and a summary of the expert's opinions and the basis for said opinions. The arbitrator's decision and award shall be made and delivered within 60 days of the conclusion of the arbitration. The arbitrator's decision shall set forth a reasoned basis for any award of damages or finding of liability. The arbitrator shall not have power to award damages in excess of actual compensatory damages and shall not multiply actual damages or award punitive damages or any other damages that are specifically excluded under this Agreement, and each party hereby irrevocably waives any claim to such damages.

The parties agree that they will participate in the arbitration in good faith and that they will share equally its costs, except as otherwise provided herein. The arbitrator may in his or her discretion assess costs and expenses (including the reasonable legal fees and expenses of the prevailing party) against any party to a proceeding. Any party unsuccessfully refusing to comply with an order of the arbitrators shall be liable for costs and expenses, including attorneys' fees, incurred by the other party in enforcing the award. This paragraph 15 applies equally to requests for temporary, preliminary or permanent injunctive relief, except that in the case of temporary or preliminary injunctive

tials _____

Copyright © 1998-2004 by Breakwater Security Associates, Inc.

relief any party may proceed in court without prior arbitration for the limited purpose of avoiding immediate and irreparable harm. The provisions of this paragraph 15 shall be enforceable in any court of competent jurisdiction.

Subject to the second sentence of the immediately preceding paragraph, the parties shall bear their own attorneys' fees, costs and expenses in connection with the arbitration. Each of the parties hereto irrevocably and unconditionally consents to the exclusive jurisdiction of AAA to resolve all disputes, claims or controversies arising out of or relating to this Agreement and further consents to the jurisdiction of the courts of Washington for the purposes of enforcing the arbitration provisions of paragraph 15 of this Agreement. Each party further irrevocably waives any objection to proceeding before AAA based upon lack of personal jurisdiction or to the laying of venue and further irrevocably and unconditionally waives and agrees not to make a claim in any court that arbitration before AAA has been brought in an inconvenient forum. Each of the parties hereto hereby consents to service of process by registered mail at the address to which notices are to be given. Each of the parties hereto agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the other party hereto.

17. Captions. The captions in this Agreement are for the convenience of the parties and shall in no event effect the construction of this Agreement.

18. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior written or oral communications between the parties.

19. Modifications. This Agreement may not be modified except by a written document signed on behalf of both parties. Such modifications may include a listing of tasks to be performed in the form of a Statement of Work and will become part of this Agreement when acknowledged by both parties in writing and attached hereto.

20. Notices. Unless either party notifies the other of a change of address, any notice to be given under this Agreement shall be sufficient if it is in writing and is sent by certified mail, registered mail or overnight delivery service to the receiving party at the receiving party's then current address of record.

21. Non-agency. This is a consulting agreement. No agency, partnership, joint venture or other joint relationship of any kind is created hereby and neither party shall have any authority of any kind to bind the other in any respect whatsoever.

Copyright © 1998-2004 by Breakwater Security Associates, Inc.
July 1, 2004 NTI Internal Client Contract

22. Binding Effect. This Agreement shall be binding upon the parties and their respective successors and assigns provided, however, that neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the date first written above.

for the City of San Diego

By: P. Lamont Ewell

Name: P. Lamont Ewell

Title: City Manager

for Breakwater Security Associates

By: _____

Name: _____

Title: _____

tials _____

Copyright © 1998-2004 by Breakwater Security Associates, Inc.
July 1, 2004 NTI Internal Client Contract

22. Binding Effect. This Agreement shall be binding upon the parties and their respective successors and assigns provided, however, that neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the date first written above.

for the City of San Diego

By: _____

Name: _____

Title: _____

for **Breakwater Security Associates**

By: _____

Name: Anton Litchfield

Title: Principal

Approved as to form and legality
this 18 day of Nov. 2004
CASEY GWINN, City Attorney
By _____
~~Deputy City Attorney~~
Asst.

.s _____

Copyright © 1998-2004 by Breakwater Security Associates, Inc.
July 1, 2004 NTI Internal Client Contract

EXHIBIT "A"
Statement of Work and Costs

Deliverables and Tasks:

Vinson & Elkins (V&E) requests NTI assist in the data reduction, culling and searching of active data contained on the computers image, culling the dataset down to responsive data based on search criteria. V&E may also request that NTI analyze unallocated space on the hard drives (where deleted data resides) for responsive data.

- NTI will filter all data on the hard drives removing unwanted data types (ie- executables, system files, program files, etc....).
- NTI will then search the active data on the hard drives looking for responsive data based on search criteria provided by V&E (ie- keywords, phrases, or dates).
- NTI will then copy the identified responsive data to a separate media source for production.
- If requested NTI will search the unallocated space on the hard drives identifying responsive data based on client provided search criteria.

COSTS:

The costs of the above noted deliverables and tasks will be done on a per hard drive basis:

TASK	COST PER HARD DRIVE
- Filter unwanted data types	$200
- Conduct keyword search identifying responsive data	$450
- Copy and dedupe	$125
- Search unallocated space and produce responsive data	$350

In addition to the above noted estimate, NTI will also charge client for routine expenses. Expenses may include:

- Computer media (ie- hard drives, DVD, CD).

als

Copyright © 1998-2004 by Breakwater Security Associates, Inc.

Exhibit 43

Anton Litchfield

From: Kelli Clark [Kelli.Clark@AppliedDiscovery.com]
Sent: Monday, January 10, 2005 5:44 PM
To: Lippard, Ben; Kelli Clark
Cc: Maco, Paul S.; Anton Litchfield
Subject: RE: Attachment issue

Ben,

Just prior to your contacting me about this issue I had our production team look into doc 206722 at KPMG's request. When our team looked at the pre-converted document, the links to the attachments were "dead". Hence, the attachments are not extracted and linked to the e-mail on the ORA. Additionally, when we look at doc #125481 (the number of the attachment that you provided today) there is no evidence that this document is an attachment to any other doc in the system. It appears as a loose file that did not come out of any e-mail file. The production team kicked this up to our Production Operations Manager who informed me that when NTI sent us the data, the email came in html format and the attachments came in their native format. When e-mail and attachments arrive in different formats, our system does not recognize family relationships as it does when the e-mail and attachments are both provided in their native formats.

We may be able to come up with a workaround for this issue by working with NTI or whoever collected the data to get a loadfile that we can use within the database. Please let me know if you would like to look into this option further.

Regards,
Kelli

---

om: Lippard, Ben [mailto:blippard@velaw.com]
ent: Monday, January 10, 2005 11:52 AM
o: Kelli Clark
Cc: Maco, Paul S.; Anton Litchfield
Subject: RE: Attachment issue

KPMG raised a question about not being able to look at the attachment to document number 206722. I went into the system to look at that, and could not get the attachment either. We got an email from KPMG, which stated that the attachments were not loaded into the system, because they were not provided by NTI Breakwater. It seemed from the email that this is something they heard from you guys.

I asked Anton about this, and he said that they would have provided all documents attached to any document responsive to the keyword search, so that they would have sent it to you. As a result, I went back into the original Groupwise CDs that we have, and found the attachments. Then I searched on the online review application to see if they were on the system, and they were there, with the document numbers I provided. I believe that they are the attachments, because that is the only place I found them located on the original Groupwise cds. (While this is not definitive, to me it seems the most likely case.)

I sent those documents to KPMG because those are the attachement to the documents they asked for, based on my review of the original Groupwise mailbox.

That is basically where we are, as I understand it. The open issues are as follows:

1. Why can't we open the attachments by clicking on the links in document 206722? I had thought this was something that could be done in the system, but may be wrong, in any event, there is no indication on document 206722 that there are attachments on the system, but there are attachments in the original data. We are trying to understand why this is the case.

2. Per the email we recieved from KPMG, it sounded to me like you told them that the attachments to this ocument were never sent to Applied Discovery. NTI Breakwater thinks that they would have been. This is an ssue that we need to get to the bottom of, so that we can make sure that everything that should be on the system , there.

I'm sure there is a perfectly reasonable explanation for all of this, but we need to run the issue down so that we can make sure we have gotten everything handled properly, especially in light of the concerns raised on this issue recently.

Any thoughts appreciated. Thanks!

-----Original Message-----
From: Kelli Clark [mailto:Kelli.Clark@AppliedDiscovery.com]
Sent: Monday, January 10, 2005 1:54 PM
To: Lippard, Ben
Subject: Attachment Issue

Ben,
I left you a voicemail, but I wanted to follow up with an e-mail as well . . .
I am looking at the doc ID numbers you provided, and I'm not sure I understand your questions/concerns.
Please give me a call at your earliest convenience so that I can move forward with investigating this issue.

Thanks,

Kelli Clark, Esq. | Account Manager, Client Solutions

LexisNexis™ Applied Discovery®
13427 NE 16th Street, Ste. 200
Bellevue, WA 98005
425.467.4523 Direct
425.260.8561 Mobile
425.467.3010 Fax
877.613.3010 Toll Free
www.lexisnexis.com/applieddiscovery

This communication (including any attachments) is intended for the use of the intended recipient(s) only and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

Exhibit 44

-----Original Message-----
From: Lippard, Ben
Sent: Tuesday, February 08, 2005 6:31 PM
To: Maco, Paul S.
Cc: Sauer, Richard C. (Rick); Lawler, William E.
Subject: Update on SEC call

There was only one issue of real importance on the call today -- the SEC was concerned about the fact that from the applied discovery database you can't tell which file attachments belong to which emails. I have instructed Kelli to consult with Anton about a technical fix to this issue, which it seems likely they will insist on. I'll update you when I know more.

Exhibit 45

-----Original Message-----
From: Kelli Clark [mailto:Kelli.Clark@AppliedDiscovery.com]
Sent: Monday, May 02, 2005 5:38 PM
To: Lippard, Ben; Kelli Clark
Subject: RE: Transfer of data to a new database for the SEC

Ok. FYI - I just got word from our tech team that the family groups work is
complete now. Whenever you give the go ahead, we are ready to begin the transfer. The transfer should take about 3-5 business days.

Thanks Ben!

Kelli Clark, Esq. | Senior Account Manager, Client Solutions

Exhibit 46

THE CITY OF SAN DIEGO

September 8, 2005

Paul S. Maco, Esq.
Vinson & Elkins
The Willard Office Building
1455 Pennsylvania Avenue NW, Suite 600
Washington, DC 20004-1008

Dear Mr. Maco:

As you know, the City retained your law firm to assist in the completion of a comprehensive investigation into potential wrongdoing in matters of concern to our independent auditing firm, KPMG. A critical component of the investigation included the review of several thousand electronic files. I have just learned that approximately 57,000 files of the approximately 160,000 files identified as potentially relevant by NTI Breakwater's ("NTI") forensic analysis of select City of San Diego GroupWise email accounts were not uploaded to the Applied Discovery database ("ADI") and, as a result these 57,000 files were not reviewed by Vinson & Elkins ("V&E") as part of its work for the City.

As I understand it, San Diego Data Processing ("SDDPC") provided email boxes for City employees identified by V&E to NTI. NTI searched the email boxes using a list of search terms provided by V&E, which V&E had discussed with KPMG ("Search Terms"). NTI forwarded the results of its searches to ADI. When uploading the information received from NTI to its database, ADI used the Search Terms to search the information received from NTI again. Apparently, ADI should not have searched the data received from NTI a second time when uploading the information to its database.

ADI has stated that a technical issue likely caused the exclusion of files that NTI had identified as responsive to the Search Terms from the information that was uploaded to ADI's database. At some point the link between an email and its related attachment(s) was broken. Apparently when ADI applied the Search Terms, only files actually containing the terms were noted as responsive. Therefore, if an email contained a Search Term, but its related attachment did not, ADI uploaded only the email to its database.

Office of the City Manager
202 C Street, MS 9A • San Diego, CA 92101-3869
Tel (619) 236-6363 Fax (619) 236-6067

The failure to include these files on the database has delayed the City's production of documents to the SEC and the United States Attorney's office. In addition, this error has caused the City to incur significant costs in having the missing files restored, and costs associated with a complete review of emails required by the Audit Committee, in addition to the attorneys' fees and expenses associated with creating and reviewing the original database.

It is my belief that V&E was responsible for providing instructions to and supervising the work of ADI as part of its investigation and report to the City on disclosure related matters. We are currently assessing the total number of hours you expended in this review to determine costs charged to the City for services not received. Until we are able to resolve this matter, I will be retaining $1 Million of final billings from V&E until all matters are properly resolved. We will attempt to expedite this review and trust that we will be able to rely on your continued cooperation.

Sincerely,

P. Lamont Ewell
City Manager

PLE/js

Exhibit 47

LexisNexis
Applied Discovery

COPY
SEP 13 2005
Anita

File: Mike
Copy to:
Audit Committee
City Attorney
9/14/05

FAX TRANSMISSION COVER SHEET

Date: September 9, 2005 Total Number of Pages: 2 (including cover)

TO:

Name: Mr. P. Lamont Ewell
Phone: 619.236.6363
Fax: 619.236.6067

FROM:

Name: Scott S. Nagel
Phone: 425.467.3000
Fax: 425.467.3010

☒ Confidential ☐ Urgent ☐ Please Reply ☐ For Your Information

MESSAGE:

Attached is a letter in response to Mr. Ewell's letter of September 8th, 2005.

Confidentiality Note: Unless otherwise indicated, the information contained in this transmittal is legal privileged and confidential information, intended only for the use of the individual or entity named above. If you are neither the intended recipient nor a person responsible for delivering this transmittal to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this transmittal is prohibited. If you have received this transmission in error, please immediately notify us by telephone, and return the original transmittal to us at our expense at the address above via the United States Postal Service. Thank you.

Applied Discovery, Inc.
13427 NE 16th Street, Ste. 200 • Bellevue, WA 98005
www.lexisnexis.com/applieddiscovery

LexisNexis™
Applied Discovery™

September 9, 2005

By Facsimile & Regular Mail

P. Lamont Ewell
City Manager
City of San Diego
202 C Street, MS 9A
San Diego, CA 92101-3869

Dear Mr. Ewell:

Thank you for your letter of September 8, 2005. This will confirm that Applied Discovery, Inc. ("ADI") has and will continue to work with the City of San Diego (City) and its' agents to amicably and expeditiously resolve the issue discussed in your letter. Toward that end, ADI will reprocess the GroupWise data at issue from the existing database for no charge. Any additional data the City requests to be processed to this new database above and beyond the page count of the GroupWise data on the existing system would be charged at the normal per page rate as set forth in the contract.

In addition, ADI wishes to clarify certain points raised in your letter. What the parties have referred to alternatively as the "broken link" and "broken family group" issues were caused by the delivery of certain email data to ADI that was not in the format specified by ADI for processing. As a result, the data (emails in HTML format, with "native" file attachments) could not be properly and fully uploaded to the database created by ADI for the City. Upon discovery of this issue in January, ADI offered to resolve the issue. At the time, ADI was told that the resolution it offered was unnecessary for purposes of the review work being performed.

Later, in the April/May timeframe, ADI was asked to resolve part of the issue that had been created (i.e., repairing links between documents already on the database) for purposes of preparing a production database for the City. ADI did so, and also offered to resolve the remainder of the issue (i.e., ensuring that all family members of relevant documents were also included in the database) by re-running searches on the City's behalf. ADI was not told to re-run the searches.

When this issue was raised yet again in June, ADI fully explained the situation to the City's investigators and discussed alternatives to meet the City's needs. Those good faith discussions led to the parties' amicable decision to create a separate database, as referenced above.

ADI prides itself on striving to meet its customers' needs and working closely with its customers to resolve any problems and address any changed circumstances that arise. ADI believes it has done so in this matter and hopes that this latest solution fully resolves this matter for the City.

Very truly yours,

Scott S. Nagel
Vice Presicent, Client Services

Applied Discovery, Inc.
10437 NE 11th Street, Ste. 200 • Bellevue, WA 98005
www.lexisnexis.com/applieddiscovery

Exhibit 48

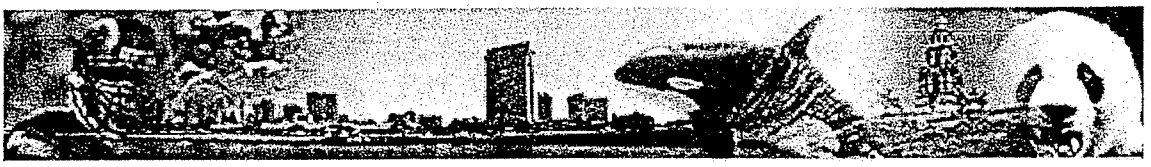
SAN DIEGO CITY

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

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 49

From: plane
Sent: Monday, March 18, 2002 2:11 PM
Subject: Fwd: FY 2001 acturial valuation

Larry:

City Bond Counsel is asking FM (Mary Vattimo) to answer the following questions. I need some help on this issue. Can you make sense of the questions and respond in the context of the current ballpark bond issue.

Thanks for the help,

Patrick

My email address has changed to Plane@sandiego.gov

Patrick S. Lane
SDCERS Chief Financial Officer
619-533-4663 (phone)
619-234-5314 (fax)

FY 2001 acturial valuation

Exhibit 1

Exhibit 50

MEMORANDUM

TO Paul S. Maco

FROM Tim J. Deithloff

DATE June 11, 2004

RE *City of San Diego;* Interview of Paul Webber

This memorandum summaries the interview of Paul Webber of Orrick, Herrington & Sutcliffe ("Orrick"). This memorandum does not contain a verbatim or a near-verbatim transcription of this interview, but rather is a general summary of my thoughts and mental impressions regarding our discussions. Significantly, it is organized to summarize issues thematically, and does not necessarily reproduce the order in which the interview actually occurred. There was no stenographer present at this interview, and given the nature of summarizing this type of discussion after the fact, it does not attempt to describe every statement or exchange and it is possible that there are errors in this account. It also assumes familiarity with the facts of this case, and does not provide context or explanation of every factual reference. Nor does it address issues of credibility or attempt to reconcile any differences in the accounts of other individuals.

This memorandum is subject to the attorney-client and the work product privileges, as it was prepared in connection with our providing legal advice to the city of San Diego (the "City") in connection with a potential SEC and U.S. Attorney investigation regarding some of the matters discussed in this memorandum.

Note: This memorandum is currently in draft form and has not yet been reviewed by Paul Maco. This draft should be treated as provisional and may contain errors.

Mr. Maco began by explaining the informational purpose of and the protocol for the interview and informed Mr. Webber that the information gathered would be used by Vinson & Elkins in its internal investigation into various matters related to errors in the City's financial statements and bond disclosures. Mr. Maco further explained that the eventual report created in the investigation would likely be given to the Securities and Exchange Commission as well as to the Department of Justice, and Mr. Maco explained the City's limited waiver of its attorney-client privilege for purposes of such report. Mr. Webber was told that he would be provided with a copy of this memorandum for review and comment. Also present during the interview and representing Mr. Webber was W. Reece Bader, a litigation partner at Orrick.

General overview of interview. Paul Maco and I met with Mr. Webber at the Los Angeles office of Orrick for approximately seven and one-half hours on Tuesday, June 1, 2004. Mr. Webber was very helpful and willing to provide answers responsive to the questions asked. Mr. Webber began with a discussion of his firm's role as disclosure counsel to the City and his own personal involvement with respect to bond issuances of the City. Next, he answered several specific questions regarding his own personal involvement and knowledge with respect to certain bond issuances.

Particular Bond Issuances. For purposes of this memorandum, the following bond issuances are discussed herein and are assigned the defined terms set forth below:

1998 Convention Project	$205,000,000 Convention Center Expansion Financing Authority Lease Revenue Bonds, Series 1998A (City of San Diego, California, as Lessee) (OS dated as of 9/1/98)
Ballpark Project:	$169,685,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (OS dated as of 2/14/02)

History of Orrick's involvement with the City. Orrick began its attorney-client relationship with the City back in the late 1980's at the time of the first wastewater financing of the City. Orrick has served as both disclosure counsel ("DC") and bond counsel ("BC") for particular bond issuances of the City since that time. Mr. Webber was the first attorney at Orrick to become involved in such matters, and Mr. Webber has been the principal attorney with respect to the City's offerings from 1996 to present. Such relationship has been memorialized in various contracts between Orrick and the City.

Contracts for legal services. Mr. Maco then asked Mr. Webber to review the following contracts for legal services between the City and Orrick:

(i) Original Contract dated as of July 7, 2000 (First Amendment as of September 15, 2001; Second Amendment as of December 18, 2001; Third Amendment as of May 28, 2002) – Mr. Webber was familiar with these contracts.

(ii) Original Contract dated as of September 14, 1999 (First Amendment as of August 15, 2000 and Second Amendment as of June 5, 2002) – Mr. Webber was familiar with these contracts as well.

Both series of contracts listed in (i) and (ii) above also list the law firm of Webster & Anderson. Mr. Webber confirmed that the above sets of contracts form the framework for Orrick's relationship with the City for the Ballpark Project, and the description of DC services in such contracts was typical of the DC services that Orrick provided to the City. Mr. Webber also reviewed and indicated that he was familiar with a contract for legal services with the City dated as of

March 24, 2003, which was the original contract for the Ballpark refunding transaction that never closed.

Role of Orrick as DC. From 1996 to present, Orrick worked on enterprise fund financings (water and wastewater), three general fund financings (the Ballpark Project, the 1998 Convention Project and the 2003 Ballpark refunding transaction that never closed) and one tax anticipation note financing. The methodology and approach undertaken by Orrick as DC depended upon whether the financing involved an enterprise fund or the general fund.

Enterprise Fund. For enterprise fund financings, Orrick worked closely with Ted Bromfield from the City Attorneys Office ("CAO") on litigation and regulatory matters relating to either water or wastewater, and they worked closely with the operations people of those two departments at the City on the nuts and bolts of disclosures, such as statistical data and the project description, with oversight from the Financial Services department of the City. Typically, in each of the official statements ("OS") for these transactions, there would be the basic OS, containing information, narrative and financial and statistical information regarding the enterprise involved, including financial projections and an Appendix A, which for enterprise fund deals generally only contained demographic information about the City; Appendix A for these deals did not have the same level of detail regarding the general fund as it did for general fund transactions. The data for Appendix A used in enterprise fund deals was provided by Lakshmi Kommi in Financing Services. The aforementioned sources of information would give Orrick the information, and Orrick would assemble the data for only the front part of the OS. Mr. Webber believed the resources for such information to be reliable because they were within the departments to which the information pertained. Mr. Webber felt that Ted Bromfield in the CAO was very good to work with because Mr. Webber knew him to be a good litigator and he was very knowledgeable about the regulatory and litigation issues of the enterprise funds. To the extent that generic information was needed (such as information relating to the City's pension plan), it came from Financing Services or the City Auditor/Controller's office. Mr. Webber did not recall which particular person may have provided such generic information, but Ray Day, from the City Treasurer's office, provided investment information. Pension information probably came from Lakshmi Kommi. The information would be obtained during a series of due diligence sessions, in person, or by telephone, each of which may have lasted up to two or three hours. Financing Services also gave Orrick the Projections section of the OS, to show how, based on a number of assumptions (which Orrick tested for reasonableness through discussions with the City), the enterprise fund was projected to perform in terms of revenues. There were certain sections of the OS that Orrick would draft based on a template from a previous, similar transaction, such as the summary of installment purchase agreements, because the covenants in such agreements did not change much from deal to deal. The last two enterprise fund transactions that Mr. Webber recalled were in the summer and fall of 2002.

General Fund. With respect to financings impacting the general fund of the City, Mr. Webber recalled that the Ballpark Project was the last of such financings to close. The City

Auditor/Controller's office and Financing Services department played a much larger role in such financings in comparison to enterprise fund transactions. In the Ballpark Project OS, the basic OS contained detailed information regarding the project, the transactions, the contracts for the project and a description of material litigation, including material litigation relating to the Ballpark Project. Appendix A was a much more meaningful document for these types of deals because it generally had all of the financial information relating to the general fund in it, rather than in the basic part of the OS. The keeper of Appendix A has historically been Financing Services, particularly Lakshmi Kommi, under the supervision of Mary Vattimo; Mr. Webber believed that Mary Vattimo had delegated much of her responsibilities regarding Appendix A to Lakshmi Kommi. One of the challenges that Orrick had in working with Appendix A was getting changes made, because it had been used in other financings, such as tax anticipation notes, in which Orrick was not involved. The City resisted making some of Orrick's suggested changes because they wanted to keep Appendix A as consistent as possible and because the outside counsels to the City for other financings had not requested similar changes. In these types of situations, Orrick's comments to Appendix A would usually be worked out with the City and they would come to an accord. For example, in the 1998 Convention Project, which was a general fund financing, the City was responsible for paying debt service through lease payments, but the City wanted to make it clear that it was going to create enough TOT (transit and occupancy tax) such that the debt service on ballpark was not going to be a detriment to the City's general fund for the convention center. As a result, Orrick and the City had several discussions about what type of projects would be constructed on certain property and the likelihood of new hotels being built. These issues were resolved through discussions involving Orrick, Mary Vattimo, Financing Services and representatives from the convention center. [This was basic OS information.]

In terms of putting the documents together for general fund financings, such process was a product of meetings in person or by telephone with Financing Services and the City Auditor/ Controller's office – Mary Vattimo, Elizabeth Kelly, Jeff Witt and/or Lakshmi Kommi were all involved. The Ballpark Project involved more of a concern over project completion, so Orrick's focus dealt more with contract issues getting financial information for funding sources, such as the Padres baseball organization, and litigation against the project. The financial information with respect to the City was primarily contained in Appendix A.

For the Ballpark Project, Orrick performed the majority of their due diligence activities on land acquisition, contracts, insurance and litigation issues. For the Ballpark Project, Orrick delivered a written analysis of litigation affecting the project and attached it to the OS. The Ballpark Project was the first financing that Mr. Webber recalled having to disclose on the cover of the OS that their opinion was qualified due to pending litigation that could affect the validity of the bonds. In preparing the litigation disclosure, Orrick worked closely with Les Girard and the City's outside counsel handling these matters; the City did not object to any of the disclosures suggested by Orrick for this litigation.

The City's main involvement in completing the financings was with Appendix A and the narratives relating to the projects and the fund involved and how the project would be paid for, that needed to be disclosed in the OS. The aforementioned information generally describes how Orrick worked on disclosure documents for enterprise and general fund financings. The main difference between the two were the people that Mr. Webber worked with at the City – mainly operating people for the enterprise fund and financial employees from Financial Services for general fund financings.

Orrick's DC role in general. Mr. Webber did not recall any working group or due diligence discussions that raised any disclosure issues other than those raised by Orrick. The key areas that Orrick would ask about with respect to in its due diligence process were litigation affecting the general fund, MD&A and the disclosure relating to investment pools. Mr. Webber did not recall any due diligence related questions ever being raised by the City's financial advisors. The underwriter and underwriter's counsel would play a role in the due diligence process as well, primarily in the 1998 Convention Project and the Ballpark Project; in the Ballpark Project, the underwriter played a major role in the due diligence process because of the nature of the pending litigation.

In determining what was material or not, Mr. Webber did not recall anyone from the City ever asking him if a particular matter was material enough for disclosure. Mr. Webber believed that if information was important to the City, such as Appendix A, they would not rely on Mr. Webber. The dynamic was one in which Mr. Webber was presented with information to disclose, and Mr. Webber would ask questions about the information and would respond to any questions from the City. Orrick's role as DC for the City developed when, some time prior to the time of the 1998 Convention Project, Mr. Webber informed the City, through discussions that he had with Curtis Fitzpatrick, that the law firm then responsible for disclosure documents was the underwriter's counsel, which he thought was odd because the governing body of the City was ultimately responsible for the OS. Mr. Webber believed that it made more sense to a have a law firm representing the City be responsible for the disclosure documents and to provide the Rule 10b-5 opinion to look out for the City's interests. Curtis Fitzpatrick was the one who hired Mr. Webber.

Mr. Webber did not recall relying on Kelly Salt from the CAO for anything other than setting him up with the right people in the City to answer his questions. Mr. Webber did note that Ms. Salt had some internal disclosure responsibility for the City. Mr. Webber also did not recall any point in which he deferred to Ms. Salt on any disclosure point.

During the Voluntary Disclosure project, Mr. Webber became aware that Lakshmi Kommi was making value judgments. During the periods when Orrick worked on the Ballpark Project and the 1998 Convention Project, Mr. Webber wasn't aware of this. The big push was to talk about tideland trust property, Campbell property, and there were some options people had to build hotels. They had some give and take on this issue that City was pushing hard because of what they told the rating agencies about availability of hotel rooms (generating TOT). But Webber didn't have the sense at the time that affirmative information was being withheld. He thinks people at City made

this judgment call on pension matters during the Voluntary Disclosure process and decided not to tell him certain information, unless he somehow discovered it himself.

Historical evolution of Appendix A in general fund financings. Mr. Webber recalls two principal evolutionary changes to Appendix A for general fund financings: (1) the scope of disclosures for investment pools (at Orrick's direction, to which they did not receive much resistance from the City), and (2) more MD&A type discussion before GASB required it, which was accomplished through Orrick's dealing with the City Auditor/Controller's office. Mr. Webber believed that at the time of the 1998 Convention Project, the City was quite cooperative in providing information, and he does not recall any discussions of any need to expand pension disclosures during this time.

Those within the City that worked on Appendix A were Lakshmi Kommi (primarily) from Financial Services and Terri Webster from the City Auditor/Controller's office (who provided financial statements and financial data). Mr. Webber's primary contact during the 1998 Convention Project was Elizabeth Kelly of the Department of Finance, and, Ms. Kelly and Jeff Witt for Ballpark, Terri Webster who would provide him with raw data, such as the information to update a five-year income statement and the corresponding footnotes. Mr. Webber would discuss Appendix A only to the extent of whether the numbers totaled properly, and he would sometimes challenge the wording of certain footnotes. Mr. Webber would sometimes speak with Ms. Kommi, who might in turn refer him to Ms. Webster. Kelly Salt would be involved to a lesser extent, who would provide Mr. Webber with comments to the bond documents.

Drafting of offering documents. Mr. Webber described the process of how certain sections of the OS were drafted, using the 1998 Convention Project as an example (which Orrick began working on in 1996). Orrick begins by drafting the front-part of the OS in skeletal form using a prior deal with a similar structure if possible and distributes it to the City and the underwriter, if applicable. Thus, Orrick would be responsible for certain sections such as description of the bonds, validity of proceedings, security and sources of payment and plan of finance. Orrick would put in placeholders for sections such as bond insurance and other sections that Orrick would later develop with the assistance from the City, such as a description of its leased property. Mr. Webber recalls working with Theresa McAteer, who gave Mr. Webber the majority of the information to complete the section regarding expansion of the project. The risk factors section would be put together by Orrick using information from prior bond deals, which sometimes contained cross-references to Appendix A. The operations people at the convention center provided Mr. Webber with the section describing the convention center. With respect to the information about hotels, Mr. Webber recalled that there was a great deal of give and take on this issue with the City. Mr. Webber wanted the disclosure to point out that when the convention center expansion was completed, an additional headquarter hotel would be needed to be able to accommodate concurrent major conventions in order to efficiently run conventions so to in turn generate TOT to pay debt service on the bonds although the bonds were backed by leases which were general fund obligations. This description also described the City's financial arrangements with the Port District; such District was having difficulty giving these

commitments to make annual payments. In resolving these give and take issues, Mr. Webber recalled that Casey Quinn, Les Girard and Kelly Salt aided to some extent.

Appendix A. Mr. Webber's first exposure to Appendix A was on bond financings that impacted the enterprise fund. Mr. Webber recalled recommending for those deals that the City remove the information with respect to the general fund because it wasn't relevant. Mr. Webber recalled that most of his suggested edits for the demographics information involved structuring it so that the readers would better understand the relevance of the information; the City was generally accepting of his suggestions. Mr. Webber's impression as to why the information in Appendix A was not more understandable was generally due to the City just not thinking about it, as opposed to anyone at the City having any bad intentions.

For the 1998 Convention Project, Mr. Webber recalled that this financing was the first instance in which he convinced the City to disclose one-time revenues and major tax categories. The main challenge for this financing was disclosing a ticket guarantee arrangement that the City had with the Chargers football organization (which was a 99% guarantee). Mr. Webber believed that the City was reluctant to make the disclosure about the ticket guarantee because the City didn't tell the rating agencies about it. (They did disclose it in the Convention Center OS.) Mr. Webber recalled telling the City that such arrangement was material and that Mary Vattimo didn't think it was material. Mr. Webber believed that Ms. Vattimo's belief was based in part on her experience that other DCs had not requested that they disclose it. Mr. Webber did not recall any other rationale for why Ms. Vattimo believed such disclosure to be immaterial, and he did not know of any reason why Mary Vattimo would be regarded as being an expert on materiality. Mr. Webber believed that the rationale for objecting to his suggested disclosure about the ticket guarantee was that the City didn't want the information to get out, as opposed to merely taking a conservative approach to disclosures. Mr. Webber was not willing to guess at why the City would not want such information to get out because he would just be speculating. When the Ballpark Project financing started, Mary Vattimo decided that she wanted the underwriter's counsel to draft the OS, but she wanted a 10b-5 opinion from both the underwriter's counsel and Orrick as DC.

Mr. Webber believed that the employees of the City that were primarily responsible for Appendix A were Mary Vattimo and Ed Ryan. For purely financial information, Mr. Webber understood such information to be the responsibility of the City Auditor/Controller's office; Mr. Webber's primary contact in such office was Terri Webster. Ms. Kommi was responsible for the balance of Appendix A, and was always the keeper of Appendix A and was responsible for obtaining information from other City departments to complete the document. Ed Ryan, the Auditor and Controller, would provide information for the MD&A section of Appendix A. Mr. Webber mentioned that he enjoyed seeing what Ms. Kommi changed in Appendix A from deal to deal because the City was generally not willing to approve any changes to it. Appendix A was initially distributed to Orrick from Ms. Kommi, and there would be very little discussion about it on group conference calls or due diligence meetings. Mr. Webber recalled asking questions about and

suggesting changes to the MD&A section through Ms. Kommi. If Ms. Kommi did not agree with Mr. Webber's comments, he would receive a call from Mary Vattimo and he would talk to her about it. Mr. Webber recalled having difficult conversations with Ms. Vattimo with respect to the 1998 Convention Project and the ticket guarantee issue.

Prior to when the OS went to the printer, Appendix A would be approved by Ms. Kommi and a representative from the City Auditor/Controller's office, but Mr. Webber did not recall the form of such approval other than possibly a verbal "ok", and he did not recall any document that was signed to evidence such approval. Orrick would physically assemble the OS to be given to the printer. Orrick also received a "deemed final" representation from the City manager in one of the closing documents for each transaction.

At the time of the 1998 Convention Project and up to the time just prior to the summer of 2003, Mr. Webber did not recall anyone on any working group discussing the pension plan disclosure in Appendix A of the OS. Mr. Webber recalled being told that the numbers for this section came from a report and did not recall paying any attention to it; it was never a topic of discussion or controversy since the funding level was quite high. During the time period prior to the summer of 2003, Mr. Webber also did not recall attempting to independently verify these numbers. Mr. Webber also did not know if Ms. Kommi verified such numbers either.

Mr. Maco then asked Mr. Webber about the following statement contained under the pension plan heading of Appendix A: "State legislation requires the City to contribute to CERS at rates determined by actuarial valuations." Mr. Webber said that it appears that this language may have come from a similar disclosure involving a public employee retirement system. Mr. Webber was not aware of any such state legislation. During his work on the City's Voluntary Disclosure filing of January 27, 2004, Mr. Webber recalled asking whether anyone knew of such a state law, and noone was able to respond. As a result, Mr. Webber revised this language to read as "obligated by law..." for the January 27, 2004 voluntary filing.

CAFR. Most of the City's offerings payable for by the general fund contained the City's Comprehensive Annual Financial Report ("CAFR") in whole or in part as Appendix B, which Orrick received electronically from Terri Webster to assemble in the final OS. Mr. Webber recalled that the CAFR was received by the working group prior to mailing the OS, but it was relatively late in the timeline for each financing. Although the CAFR was normally received late in the process, members of the working group could access the CAFR by other means if it had already been released by the City and their outside auditor, such as on the City's website. Mr. Webber did not recall ever comparing Appendix A to Appendix B, except for comparing certain financial statements and numeric tables on a test basis.

Mr. Maco then explained that Appendix B in both the 1998 Convention Project and the Ballpark Project contained the outside auditor's opinion. Mr. Webber did not believe that anyone

needed the consent of the outside auditor to include their opinion in an offering document. Mr. Webber did not recall seeking such consent for either the 1998 Convention Project or the Ballpark Project, but that he could check to see if that was factually correct. Mr. Webber then stated that he did not believe that such consent was obtained because the OS would have mentioned obtaining such consent if they did. Mr. Maco noted that Section 5.d.(xxxvii) of the Contract for Purchase, dated February 14, 2002, for the Ballpark Project required obtaining such consent f the outside auditor. Mr. Webber recalled that he did not review the City's contract with its outside auditor, and Mr. Webber did not recall any due diligence or bring down procedures performed by the City's outside auditor.

Mr. Webber did not recall anyone on a working group gaining any level of comfort from the fact that the financial statements attached to an OS were audited, but Mr. Webber believed that someone might have raised a question if the financial statements were unaudited.

With respect to the City's outside auditor, Calderon, Jaham & Osborn (or the later entity into which such accounting firm merged), Mr. Webber did not recall any events surrounding the City's selection of such outside auditor, other than hearing recent gossip that they were selected by the City Manager even though they reported to City Council.

With respect to the footnote in the City's CAFR for fiscal years 1997 and 2001 discussing pension plans, Mr. Webber recalled that he did not review this footnote during any financing in which he was involved that used these CAFRs in the OSs, and he did not recall any discussion about it or anyone from any working group discussing it either. Mr. Webber did not recall Terri Webster, Ed Ryan or anyone else involved in the 1998 Convention Project or the Ballpark Project seeking his advice in the preparation of this footnote.

City's obligation to pension plan. Mr. Webber's first recollection of ever hearing about Manager's I was during the summer of 2003. Mr. Webber also said that it would be fair to say that prior to the ballpark refunding that never closed in 2003, there was little focus, if any, of the City's obligation to fund its pension plans, even after the stock market decline that occurred in April of 2000. Mr. Maco then explained that due to the timing of the creation of Manager's I, one of the first possible disclosures of such document would have been in the 1997 CAFR of the City. Mr. Webber did not know of any information or cross-reference contained in the OS for the 1998 Convention Project or the Ballpark Project that would tell a reader of either OS how to determine the manner in which the City's pension plan was funded (i.e., the City's financial obligation to fund its pension plans). During 2003, at the time of the *Gleason* case, was the first time that Orrick reviewed the sections of the City's municipal code governing the City's contribution obligations to the pension plan.

Ballpark Project. Mr. Webber mentioned that he recalled seeing a newspaper article about one of the owners of the Padres baseball organization allegedly providing gifts and stock tips to a member of City Council. Mr. Webber believed that the City had, previously received a letter from a writer of

a newspaper informing them of the allegation and that the City should look into it. Mr. Webber did not believe that the City did anything about it. The CAO provided Mr. Webber with the letter, and the City didn't tell Mr. Webber why they didn't act on it. Mr. Webber didn't ask for the letter or for an explanation.

Mr. Maco allowed Mr. Webber to review Orrick's legal opinion with respect to the OS for the Ballpark Project. Such opinion excluded Appendix A, as did the opinion from the counsel to the underwriter, O'Melveny & Myers. Mr. Webber was not aware of any comfort that any party gave on Appendix A, but he said the City should have signed a certificate containing a Rule 10b-5 certification. Mr. Maco then showed Mr. Webber that the Purchase Contract for the Ballpark Project contains a Rule 10b-5 warranty of the City and requires bring-down certificate for the warranty from the City on the closing date. Mr. Webber did not recall the City asking him if they could sign either the Purchase Contract or a bring-down certificate, or of any other source of legal comfort with respect to Rule 10b-5 issues on this deal. Mr. Maco showed Mr. Webber that both the Purchase Contract and the bring-down certificate of the City were signed by the deputy city manager, Patricia Frazier. Mr. Webber did not recall Ms. Frazier's basis for being able to make such certifications.

Mr. Webber did not recall if he attended the City Council meeting that approved the Resolution for this transaction (which approved the distribution of the POS), but he believes that he probably did because of the concern over the litigation disclosure. Mr. Webber recalled that noone from City Council questioned him regarding whether the City could make these Rule 10b-5 certifications in the Purchase Contract because the City had a separate, special DC on this transaction, which was Jerry Boltz. Mr. Webber did not recall any other financing on which the City retained special DC. Mr. Webber also did not recall any discussions held with City Council about the City's funding of its pension plans.

Mr. Webber recalled asking Les Girard for information pertaining to the Padres baseball organization, and it was Mr. Girard who told Mr. Webber that the City did not have any of the information he was requesting. Later during the financing, Mr. Webber discovered that the Padres had in fact given information to the City (unaudited financial statements of one of the owners), and Mr. Webber recalled expressing his frustration about this to Mr. Girard. Mr. Webber eventually received such financial information with the assistance of Les Girard.

Mr. Maco showed Mr. Webber a copy of an email sent to him dated January 4, 2002 from Robert Blum and an email dated February 6, 2002 from Les Girard that Mr. Webber was copied on. Mr. Webber knows Robert Blum as being a former partner of Orrick, who is currently with Hanson Bridgett in San Francisco. Mr. Webber recalled such emails referring to Section 503(b) of the Internal Revenue Code of 1986, which dealt with the issue of whether the City's pension fund could purchase bonds of the Ballpark Project.

Involvement with City Council. Except for the Ballpark Project, Mr. Webber did not recall ever providing any advice to City Council or City staff with respect to their approval of disclosure documents generally. For the Ballpark Project, Mr. Webber recalled expressing his concerns to City staff that the City Council should perform a good review of the offering document because he believed that there was a risk that it would end up on the desk of the SEC because of the known opponents to the transaction that had filed the litigation affecting the validity of the bonds. Mr. Webber was concerned about the adequacy of the disclosures for conflicts of interest and consequences of that, and he was also concerned about whether the City Council understood the risk of the bonds being invalid – even though the bonds were insured, there would be litigation if the bonds were held to be invalid. Mr. Webber discussed the aforementioned concerns with Les Girard, and Mr. Webber recommended to Mr. Girard that the City Council obtain separate representation from Jerry Boltz. Other than this particular financing in which the City Council obtained separate, special DC, Mr. Webber was not aware of any general procedures in place, outside advisor or particular employee of the City that the City Council had in place or had employed to bring disclosure issues to their attention, and Mr. Webber was never asked to provide the City Council with such advice.

[Deletion - see prior page]

Mr. Webber brought to Mr. Maco's attention that for the ballpark refunding transaction that never closed in 2003, Mr. Webber attended a closed session meeting of the City Council that Mr. Maco also attended, Mr. Webber also recalled hearing from Jeff Witt (but not at the closed session) that the attachments to the offering document (e.g. Appendix A and the financial statements) the City Council was going to be asked to approve were not included in their package of materials to review in preparation for their meeting at which a resolution approving the distribution of the POS was to considered. It was Mr. Webber's impression from his conversation with Jeff Witt that it was normally the case that such attachments to offering documents were excluded from the materials presented to City Council when they were asked to approve a resolution authorizing the distribution of such offering documents.

Blue Ribbon Commission; newspapers and outside sources. The Blue Ribbon Commission was appointed by the Mayor's office to identify potential funding options for the finances of the City. Mr. Webber stated that the summer of 2003 was the first time that he had heard of such commission, which was when he was copied on an email from someone at the City that contained an email from Diann Shipione. Once he received this email, Mr. Webber found and reviewed the report of the Blue Ribbon Commission. Prior to this time, Mr. Webber did not review any newspaper articles.

Mr. Webber did not recall there being any guidance available with respect to pension disclosures from the rating agencies, the GFOA or GASB (other than GASB statements), but he did recall there being a conference sponsored by *The Bond Buyer* conference in 2003 in San Diego on this subject which he attended. At the conference, Mr. Webber recalled speaking to a friend of his at

Moody's and asking him what Moody's emphasis was on pensions. His response was that they didn't place much emphasis on it from a lack of understanding it.

When asked about any interest of any rating agency in a government's pension obligations, Mr. Webber did not recall any such interest during the period from January 1, 1996 to September 1, 2003. Mr. Webber also did not recall any such interest of any bond insurer either.

Annual Reports. Mr. Webber did not, nor did anyone at Orrick, prepare any annual disclosure filing for the City, but he did review certain information one time at the request of the City during the spring of 2003 with respect to the Ballpark Project, and he reviewed certain information for the 1998 Convention Project for two annual reports with respect to information about hotel space, construction and current booking information. Mr. Webber was only sent the relevant sections in such instances rather than the entire disclosure document. Mr. Webber did not recall the City ever asking him for disclosure advice on their obligation to fund the pension plans during these times.

Gleason case. Mr. Webber recalled speaking with the law firm of Luce Forward in June 2003 to discuss the City's pension plans with respect to its wastewater financings. Mr. Webber showed them certain litigation materials, and Mr. Webber prepared a draft of the *Gleason* case disclosure based on the work of Luce Forward. The City's general fund and wastewater offering documents disclosed the *Gleason* case. Mr. Webber believed that the *Gleason* case was material for general fund financings, but there was at least an argument that it was not material for wastewater offerings, but it was disclosed nonetheless.

Events leading to January 27, 2004 Voluntary Disclosure filing. Mr. Webber first became aware of concerns over the City's pension obligations by emails that he was copied on from City personnel containing an email from Diann Shipione. At the time when Orrick was working on the ballpark refunding that never closed (mid-August to mid-September 2003), Mr. Webber had heard that the City's pension plan had a funding ratio in the 70th percentile range, and he learned about Manager's I and Manager's II at that time as well.

Mr. Maco showed Mr. Webber the following series of emails dated September 5, 2003 which originated from Diann Shipione: one from Mr. Webber to Daniel Deaton, one from Pat Frazier to Dennis Kahlie, and the original email from Ms. Shipione to Lawrence Grissom (copied to Dick Murphy, Rick Roeder and Fred Pierce). Mr. Webber recalled that these emails were the first emails that he received from Ms. Shipione that indicated that there might be something wrong with the City's pension footnote in its financial statements. Mr. Webber recalled talking to Ms. Webster on the Saturday or Monday following those emails because they were trying to price the securities that next week. Mr. Webber then spoke with Ms. Webster and Mr. Roeder on Monday and Tuesday, and Mr. Roeder identified several other errors in addition to those raised in Ms. Shipione's original email. Mr. Webber told them to review the entire pension footnote to locate any additional errors.

When the City discovered additional errors, Orrick decided not to go forward with the financing until the errors were straightened out and disclosure of the errors occurred.

Mr. Webber believed that even if Diann Shipione hadn't come along, he would have discovered the City's pension situation (both retirement benefits and post-retirement health care benefits) to be material because, if one were to look at the prospective amounts the City was paying in relation to their budget, there was no way the City could make 100% of the required payments. The projections that he eventually saw showed that it may be difficult for the City to make the required payments unless City services were cut.

Mr. Maco allowed Mr. Webber to review an email exchange between Ms. Kommi and Kelly Salt dated June 26, 2003. Mr. Webber recalled telling Ms. Kommi that their proposed disclosure of pending litigation was inadequate, and that Ms. Kommi told him that they had to be careful in what they disclosed in order to be consistent with the disclosures made in prior general fund financings. Mr. Webber did not recall having any direct discussions with Ms. Salt about these matters.

Mr. Webber recalled there being some contentiousness about the description of Manager's I and Manager's II in the proposed Voluntary Disclosures because one of Mr. Webber's drafts contained information that Mary Vattimo told him was inaccurate, and Ms. Vattimo instructed Mr. Webber to speak with their outside litigation counsel. Their outside litigation counsel told Mr. Webber this his suggested language could be viewed as a possible admission to be used in ongoing litigation or could hamper ongoing settlement negotiations. Consequently, Mr. Webber removed from his draft disclosure the two statements that could be viewed as admissions, which referred to the City beginning to negotiate the amount of its deferrals. Mr. Webber was surprised at their position because he believes that his suggested language was supported by the minutes that he had read. The earliest point in time that Mr. Webber could recall anyone from the City raising disclosure concerns on the basis that it could affect the *Gleason* case was January 2004. Mr. Webber recalled that the only two reasons that the City gave when they didn't want to disclose something with respect to *Gleason* were (1) it differs from other disclosures made in the past, and (2) it jeopardizes our position to settle the case.

Mr. Maco then showed Mr. Webber an email dated September 8, 2003 from Mr. Roeder to Daniel Deaton, on which Mr. Webber was copied. This email contains comments of Mr. Roeder to the pension plan footnote in the City's 2002 CAFR. Mr. Webber recalled that Mr. Roeder told him the he had been trying for years to get the City to remove the sentence regarding the actuary believing that the corridor funding method was an excellent method and would be superior to the PUC funding method, but that Mr. Roeder eventually stopped pushing it with the City. Mr. Webber recalled asking Mr. Roeder if he had seen the footnotes, and Mr. Roeder's response was no, he hadn't seen the footnotes for years. Mr. Webber's impression was that Mr. Roeder was upset about the disclosure of the actuary's belief regarding the City's accounting for its pensions, but that Mr. Roeder tried to get such statement removed at one time.

Mr. Webber also recalled that there was a constant discussion between him and the City of the City not wanting to disclose projections of the City's required contributions to the pension plan, not because of *Gleason*, but because noone else discloses such projections. Mr. Webber believed that the City should be disclosing their pension obligation in the amount that they should be paying (as opposed to what they were paying) because it looks like a lease obligation. Mr. Webber recalled talking through this point with Mary Vattimo and trying to draw an analogy to the City's prior disclosure experience with respect to investment pools, at which time, Ms. Vattimo made the comment that she was hoping the City would be able to get through another year without having to disclose such projections to the market. An area in which Mr. Webber and the City had differences involved the use of projections in the Voluntary Disclosure. Through a series of e-mails, Mr. Webber said that he had raised the prospects of using projection, giving some examples and that Ms. Vattimo indicated that was awfully expensive to do that. Mr. Webber also recalled Mary Vattimo sending him an email about wanting to discuss the stress tests privately and not wanting to make a mountain out of mole hill. Mr. Webber recalled telling Ms. Vattimo during the conversation that followed this email that he believed that the market didn't understand that the City was underfunding its pensions. Through the course of telephone conversations between Ms. Vattimo and Mr. Webber, Ms. Vattimo indicated she would check with Lakshmi Kommi to see if there were any projections. Subsequently, some time in early October 2003, Ms. Kommi provided Mr. Webber with some projections which she had said the City had just had for "just a short time." When Mr. Webber asked if she had provided these projections to the rating agency, she answered no because they were private. Ms. Vattimo, on the other hand, told Mr. Webber that such projections had been shared with the rating agencies, but Mr. Webber's impression was that Ms. Vattimo didn't want the rating agencies to know about it.

Mr. Webber recalled that at the time Ms. Vattimo made the comment to him about hoping to get another year out of it before having to disclose projections, that he asked her, wouldn't that belief you just expressed tell yourself that such information would be material to the market. Ms. Vattimo's response was that she guessed Mr. Webber was right. Mr. Webber believed that such conversation with Ms. Vattimo occurred in December 2003 or January 2004. Mr. Maco then asked Mr. Webber what he thought Ms. Vattimo thought she meant when she said "one more year." Mr. Webber believed that a number of inferences could be drawn from such statement. Ms. Vattimo is responsible for all of the debt financings of the City, so it was going to make her life more difficult. Mr. Maco then asked Mr. Webber whether her comments were referring to both retirement benefits and post-retirement health benefits, and Mr. Webber didn't know, but he understood her previous comment to mean that she hoped it would be a year or two before the rating agencies took action on the City's pension situation.

Mr. Webber recalled a discussion he had with certain City employees regarding their projections of City contributions to the pension fund. He recalled Ms. Kommi telling him that Mr. Roeder had prepared the table of projections, even though Mr. Roeder initially denied having prepared such table. Mr. Webber recalled Mr. Roeder telling him that he was glad that Mr. Webber

stood by his position and wished he had done the same years ago. Mr. Webber found Mr. Roeder difficult to understand in responding to Mr. Webber's questions regarding accounting for pensions. Mr. Webber also believed that Mr. Roeder possessed a sense of importance of disclosure in terms of certain aspects of the pension plan needing to be explained, but not in the sense of there being a Rule 10b-5 requirement.

Mr. Maco then questioned Mr. Webber regarding an email to him from Ms. Kommi dated as of October 1, 2003. Mr. Webber confirmed that the projections attached to such email were the projections that he had discussed with Mr. Roeder and Ms. Kommi. Mr. Webber recalled receiving several other projections subsequent to those, all based on the UAAL calculated for 2002, and then eventually received updated projections based on the 2003 UAAL. Mr. Webber recalled that the City was sent projections in March or April of 2003, along with a letter from PFM, which gave the City different pension funding scenarios using pension obligation bonds and sensitivity analysis. He recalled that the scenarios and letters from PFM were first received by the City in March 2003, with the most recent one dated as of a date in July 2003, each marked with "draft." He also recalled Ms. Kommi telling him that none of the scenarios had been finalized because a pension reform committee had been formed in July 2003 and that no other projections had been prepared. Mr. Webber first received the aforementioned projections from the City in October 2003. He recalled that the projections he was shown that were dated prior to October 2003 on PFM letterhead as not deviating substantially from those he received in October 2003. When Mr. Webber was made aware of and shown those projections dated back to March 2003, he had a concern of credibility issues with the City and that previous disclosure errors may have been made. The City had two general fund financings going on at the time that the initial projections were available although Orrick was not DC or otherwise involved.

Mr. Webber recalled one telephone call he had with Les Girard, Pat Frazier and Terri Webster, during which no one volunteered to personally sign off on any part of the Voluntary Disclosure filing. Mr. Webber later memorialized this conversation in a letter he wrote to the City, to which no one has yet responded. Mr. Webber believed that noone had a personal interest in the disclosures of the City and that they didn't want the information to get into the market. Ms. Frazier eventually signed the Voluntary Disclosure filing on behalf of the City, but Mr. Webber believed that if she knew she might be taking personal responsibility for it that she would not have signed it. Her signing it was not a result of his telephone call with them; Ms. Frazier had been signing the previously filed annual disclosures of the City for some time.

Mr. Webber indicated that he had also asked that the Voluntary Disclosure be sent to the plan administrator for his sign off, the actuary for his sign off and Robert Blum, for a particular description of his law firm's opinion before filing. Mr. Webber said he was then authorized by the City to contact Mr. Blum and he did so by e-mail. Mr. Blum responded that given the then existing circumstances involving the pending litigation he did not think that he should make any comments

regarding the disclosure that Mr. Webber pointed out the section that he wished him to review and indicated that he was welcome to comment if he wished to. But he did not respond.

Mr. Webber recalled having conversations with Leslie Finertie, a forensic actuary for the City in the *Gleason* case. Mr. Webber recalled having a much easier time understanding her explanations of pensions in comparison to his prior conversations with Mr. Roeder. At Mr. Webber's request, Ms. Finertie prepared a table, from which a narrative was prepared explaining reasons for the increase in UAAL between '97 and 2002. The table showed, among other things, that UAAL increased due to the City's underfunding of the pension fund additional benefits and the decline in the stock market. Mr. Webber believed that the City spoke to Ms. Finertie a few times with respect to obtaining numbers for the *Gleason* case disclosure. Mr. Webber recalled hearing that the increase in the UAAL was primarily due to the decline in the stock market.

When asked about his knowledge of Ed Ryan's views with respect to the City's disclosure obligations, Mr. Webber said that his only dealings with Mr. Ryan prior to Mr. Webber's discovery of the errors was in preparation of MD&A & projections for the enterprise funds. When Mr. Webber discovered the errors in the pension footnote, Mr. Ryan wanted to pass them off as typographical errors, and Mr. Ryan told Mr. Webber (around September 10, 2003) how disappointed he was in Mr. Webber's desire to disclose such errors. Mr. Ryan asked Mr. Webber what the City's options were with respect to the errors, Mr. Webber identified three and Mr. Ryan ultimately selected the option of disclosing a review using its existing outside auditor. Mr. Webber recalled a second time when Mr. Ryan told him that he was disappointed in him when Mr. Webber was on the phone with him, Ms. Frazier and Mr. Girard. Mr. Webber did not recall anyone on that call having any reaction to Mr. Ryan's statement about being disappointed in him. Mr. Webber did not recall that Mr. Ryan ever expressed to him the reason for such statement. Mr. Webber didn't know if Mr. Ryan's comment had anything to do with the City's ability to obtain another award from the GFOA, but it crossed Mr. Webber's mind. Mr. Webber recalled having previously noticed these awards being disclosed in the City's CAFRs. Mr. Webber did not recall any previous instances in which the City placed emphasis on or provided resistance to disclosure matters to obtain the GFOA award.

Mr. Maco then asked Mr. Webber if he had any impression as to Mr. Ryan's, Ms. Webster's or Ms. Vattimo's own views with respect to the City's responsibilities or boundaries for its disclosure documents, and Mr. Webber said no. Mr. Webber also did not recollect having had any discussions with Mr. Ryan about the City's process for approval of disclosures, through Mr. Ryan's position with the Public Facilities Financing Authority.

Mr. Maco then showed Mr. Webber an email to him from Terri Webster dated August 14, 2003, which related to a wastewater financing. After reading the email, Mr. Webber did not recollect any conversations he may have had with respect to the issues raised in such email, but he did recall that based on the comments of Ms. Webster in such email, that she did not understand the pension system amortization difference between the actuaries' determination of the actuarially

required contribution (using a 30-year fixed amortization) and the City's use of a 40-year rolling amortization in the pension plan footnote tables relating to ARC & NPO. Mr. Webber also believed this because he recalls Ms. Webster not understanding his discussions with her that the NPO and ARC were being amortized over different periods.

Mr. Maco then questioned Mr. Webber about an email that he was copied on from Terri Webster to Pat Frazier and others, dated September 7, 2003, in which she referred to Mr. Webber's questions with respect to meeting the funding level threshold set forth in Manager's II as being the "manager domain." Mr. Webber assumed that she used the term "manager domain" because it was Pat Frazier's group at the City that was involved in getting Manager's II passed, and they should therefore be the ones who should respond to Mr. Webber's questions about interpreting it.

Mr. Maco then showed Mr. Webber an email exchange dated November 10, 2003 among Mr. Webber, Dan Deaton and Ed Ryan. Mr. Webber said that Mr. Ryan didn't want anything in the 2003 CAFR about the discovered errors; he thought that all the City needed to do was to disclose the errors in a separate, stand-alone document. Mr. Webber was not aware of any legal basis to support Mr. Ryan's suggestion. Mr. Webber recalled Mr. Ryan suggesting a link on the City's website to such narrative description of errors, but Mr. Webber pointed out to Mr. Ryan that he did not believe that an electronic link would be adequate because the CAFR was not exclusively in electronic form. Mr. Webber sent an email to Les Girard about this. The City refused to put the narrative discussion of errors in MD&A, but agreed to attach it as an appendix to the CAFR. Mr. Webber did not recall this series of emails as being the basis for Mr. Ryan's earlier comment about being disappointed in Mr. Webber.

Mr. Maco then showed Mr. Webber an email from him to Ms. Vattimo dated October 20, 2003 in which Mr. Webber requested that Ms. Vattimo call him without talking to Terri Webster first. Mr. Webber said this because he wanted to explain to Ms. Vattimo why he thought Ms. Webster was incorrect, and by using the numbers she used, it didn't show that the City fully funded wastewater's pension fund as they had disclosed. Mr. Webber recalled giving this information to Pat Frazier as well.

Mr. Maco then showed Mr. Webber an email dated October 8, 2003 from him to Ms. Kommi, which Mr. Webber explained as being a polite way of saying that Mr. Webber didn't understand Mr. Roeder's explanation for an aspect of the Voluntary Disclosure involving the ten-year rate of return (which was contained in a footnote that Mr. Webber was trying to verify).

When asked what role Pat Frazier played in the preparation of disclosure documents, Mr. Webber believed she did not play any role, even though she signed closing certificates and annual disclosure filings on behalf of the City. Mr. Webber recalled that one dinner meeting, he heard her say that she hoped the Voluntary Disclosure wouldn't hurt the city, which Mr. Webber interpreted to mean that she would have been happy to let well enough alone. Mr. Webber believed that Ms.

Frazier's comment was not one that exemplified a cynical sense of humor, but rather, it exemplified an attitude of one must do right by the City or do the least damage you can to the City. Mr. Webber believed such comment to be inappropriate because he additionally believed that in her mind there was nothing wrong with the City's current disclosures. All of that being said, Mr. Webber didn't get the impression that she wouldn't follow his legal advice on the subject. Mr. Webber also recalled Les Girard asking him on more than one occasion that he was asked to ask Mr. Webber if Mr. Webber would resign if the City didn't follow his advice; this question arose three to four times when Mr. Girard would show City Council members a draft of the Voluntary Disclosures.

Template for disclosure. During the period that Mr. Webber was working on the pension disclosures in 2003, which eventually became the Voluntary Disclosure filing in January 2004, Mr. Webber was in search of a template to use for disclosing the City's pension situation because he felt that the pension footnote in the financial statements was inadequate. The closest analog that Mr. Webber found was pension obligation bonds because they resemble a home refinancing by converting an obligation to pay actuarially required amounts into another obligation on which one has to pay debt service. Rating agencies generally have rules of thumb in evaluating a governmental entity's debt, and noone thought of having to rate the UAAL. Under California law, the obligation to pay benefits is an obligation by law to pay benefits. The significance of that obligation is that it's exempt from the voter-approved debt requirement. The questions that Mr. Webber was trying to answer in formulating a disclosure template were how do to tell the market about the City's annual pension obligation and what was the duty of the City with respect to such obligation. Mr. Webber believed that the answers were: (1) the City's currently required payment amounts, (b) the amount that the City is paying for its employees' share of their currently required payments, per collective bargaining agreements, (3) the amount of supplemental benefits paid from Plan Assets thus increasing the UAAL. Other information that should be conveyed are methodologies used in calculating UAAL such as amortization periods, and key assumptions, such as investment returns. Finally, information about responsibility of payment for health care benefits and how they are being funded. The obligation to pay these different amounts is similar to the obligation to pay a debt and while future debt payments are typically sums certain, and projections regarding the categories described above are not, certainly "order of magnitude" disclosures can be made to give the prospective investor a general sense of the obligations of the City to make pension plan payments and related health care payments. Mr. Webber believed that the City had a duty to disclose its anticipated payments due over a future reasonable period of time, similar to a five-year lease payment schedule. This was the closest that Mr. Webber came to formulating a template.

Suggested improvements. Mr. Webber believes that the City should establish a central group of people within the City with disclosure responsibility who should obtain the education necessary to undertake such responsibility. Mr. Webber has the distinct impression that the City staff that currently possess such responsibility are at too low a level to be reasonably expected to be held accountable for disclosure documents. He was not saying that such individuals are not educated enough, but rather that they are too young to have the requisite experience. For example, Ms.

Kommi shouldn't be making materiality judgments by herself without checking with other city officials or without some additional education on the subject. There's too much of an attitude of performing the work in a manner that just gets it done with the least amount of "hair" rather than doing a good disclosure job. Mr. Webber also believes that some of the outside professionals employed by the City (such as financial advisors and other law firms) were all willing to sign anything just to keep the financings going. For example, Mr. Webber recalled that one particular financial advisor did not agree that the City's January 27, 2004 Voluntary Disclosure even needed to be made.

If Mr. Webber could influence the actions by the City in this regard, he would start at the top at the City Council level and explain to them their responsibilities for the accuracy of the City's offering documents. He believes that the responsibility should be at the top, rather than information getting into each offering document and approved in a piece-meal fashion. They should be made aware of their responsibility and that Ed Ryan was attempting to pull the wool over their eyes with respect to the materiality of errors found in the financial statements. The presentation of each offering document to City Council should be done differently.

Mr. Webber would recommend that orientations be held not only for City Council members, but also for City staff members in Financing Services and key people involved in the enterprise fund financings (water and wastewater). Mr. Webber would also establish clear lines of authority for who is able to tell the City Council that the City has completed its due diligence process. Someone must be responsible and there is currently just not anyone. There must be someone in a supervisory role that is accountable. At the present time, there are a number of people within the City that make independent materiality decisions at different levels – Ms. Kommi, Ms. Webster and Ms. Vattimo are the ones he's aware of.

Additional thoughts of Mr. Webber. Mr. Webber did not recall anyone from the City, during the disclosure process in the fall of 2003, telling him that their outside accountants were responsible for drafting the footnotes to the financial statements. Mr. Webber did recall the underwriter saying that they were ready to go to market on the wastewater financing without any financial statements. Mr. Webber also did not believe that the City was on the level with the rating agencies, even though Ms. Vattimo told Mr. Webber that they knew about the City underfunding its pension system. Mr. Webber also recalled asking the City's financial advisors what the City was doing about the situation with respect to the City's existing bond insurers, and the financial advisors told him it was being taken care of. The best Mr. Webber could tell was that noone was doing anything with respect to the bond insurers.

Mr. Webber did not believe that the City understood Orrick's role as DC. Part of not understanding it was the climate in which their BC role developed. BC was viewed by the City as a do everything role. Many BCs and DCs do the work without securities law training. Mr. Webber also did not believe that the City understands the qualifications/carve-outs contained in his opinion.

(The operations people were shocked to hear that they carved out financial data in their opinions.) Mr. Webber described the process of his office trying to get the Voluntary Disclosures right was like pulling teeth.

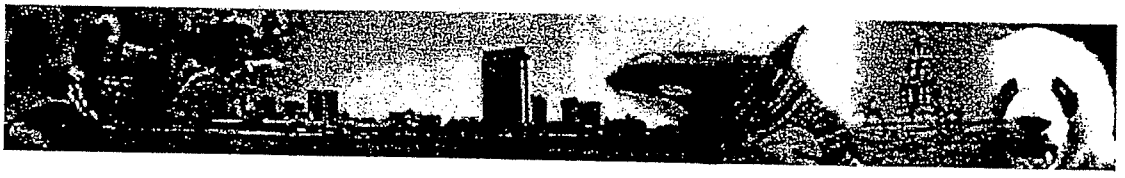
Mr. Webber agreed with Mr. Maco's assertion that back in the mid-1990's when the City had some budget constraints and had a fairly conservative debt policy, that it was possible for someone within City management to figure out that they could run-up the UAAL for awhile to deal with the budget and employee union demands for increased compensation. Mr. Webber added that the city manager at that time understood what he was doing by deferring pension contributions. The problem with it is that they didn't tell the market and didn't consider the consequences (which is that they would eventually have to pay the debt). Mr. Webber did not recall talking to anyone at the City about the aforementioned comments. If the stock market was kind to them, they might never had to pay the deferred contributions, which did not look like a bad bet back in 1996.

Mr. Webber explained that the mechanics for the payment for health care benefits was that the City gives money to the pension fund, and then money is transferred from the reserve fund to an asset balance that in turn reduces the obligation – the end result is that health care benefits are paid from a reserve fund within the Pension Plan which has been funded by diverting plan assets.

Mr. Maco ended the interview by thanking Mr. Webber for his time, and requested that they reconvene at a later date for Mr. Webber to walk through the Voluntary Disclosure filing to explain the foundation for the information it contained.

Exhibit 51

SAN DIEGO CITY
EMPLOYEES' RETIREMENT SYSTEM
ANNUAL ACTUARIAL VALUATION
June 30, 2002



Submitted to
THE RETIREMENT BOARD
San Diego City Employees' Retirement System
San Diego, California

Exhibit 13

COMMENT I: As in recent years, we continue to work with Retirement Staff to help resolve certain data issues. We appreciate the clear improvements this year. To date, 994 General members purchased 4,601 years of "permissive" service. The total average years of service for the General group increased from 10.2 to 10.8 due to this data refinement. 192 Safety members purchased 618 years of service. The total average years of service for the Safety Group increased from 12.4 to 12.6 due to this data refinement.

The added liabilities associated with the service purchase was $77.7 million. This data improvement produced a 2% reduction in the funded ratio and resulted in a computed rate increase of 1.00%.

COMMENT J: 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: We have been requested to complete an Entry Age Normal valuation annually. This year's Entry Age rate is 23.16%.

COMMENT L: Overall, the financial condition of the retirement system is in adequate condition in accordance with actuarial principles of level-cost financing. However, all parties should be acutely aware that the current practice of paying less than the computed rate of contribution will help foster an environment of additional declines in the funding ratios in absence of healthy investment returns.

Exhibit 52

MEMORANDUM

TO	Paul S. Maco Richard Sauer
FROM	Benjamin S. Lippard
DATE	March 8, 2004
RE	*City of San Diego;* Interview of Paul Webber

This memorandum summarizes the interview of Paul Webber. Richard Sauer and I met with Mr. Webber and Reece Bader, his colleague at Orrick, Herrington & Sutcliffe, for approximately four hours on March 5, 2004. This memorandum does not contain a verbatim or a near-verbatim transcription of this interview, but rather is a general summary of my thoughts and mental impressions regarding our discussions. Significantly, it is organized to summarize issues thematically, and does not reproduce the order in which the interview actually occurred. There was no stenographer present at this interview, and given the nature of summarizing this type of discussion after the fact, it does not attempt to describe every statement or exchange and it is possible that there are errors in this account. It also assumes familiarity with the facts of this case, and does not provide context or explanation of every factual reference. Nor does it address issues of credibility or attempt to reconcile any differences in the accounts of other individuals.

This memorandum is subject to the attorney client and the attorney work product privileges, as it was prepared in connection with our providing legal advice to the City of San Diego (the "City") in connection with a potential SEC and U.S. Attorney investigation regarding some of the matters discussed in this memorandum.

At the beginning of this interview, Mr. Sauer explained to Mr. Webber that we represented the City in connection with both an internal investigation regarding various matters related to errors in the City's financial statements and bond disclosures as well as an SEC and U.S. Attorney investigation touching on those same matters. Mr. Sauer also advised him that our conversation was not privileged. Mr. Webber was very helpful and willing to answer the questions we asked.

Discovery of 2002 footnote errors. We began by asking Mr. Webber to describe how he became aware of the situation regarding the FY 2002 financial statements and footnotes. Mr. Webber explained that he kept a "cheat sheet" containing a timeline to which he needed to refer to for particular dates, and he referred to it during the interview. Mr. Bader explained that this timeline was privileged, as it had been prepared for him.

Mr. Webber explained that in the Spring of 2003, he had been working on a financing for the City involving the wastewater bond offering. In that financing, the credit is the Wastewater Enterprise fund, which is distinct from the City's General Fund (the general obligations of the City). He started this work in March or April of 2003. At about the same time, the City decided that it wanted to refinance the bonds associated with its Ballpark project. (The ballpark bonds are backed by the General Fund of the City.) The original bonds had been financed at a high interest rate, because when they were issued the tax-exempt status of the bonds was in question due to pending litigation. As a result, Orrick, Herrington & Sutcliffe had issued a qualified opinion. The bonds had been insured, so credit was not an issue, but there was a risk that the bonds would be taxable and thus the market insisted on a higher interest rate. This litigation had ultimately been resolved, so the City had the opportunity to refinance at a lower rate.

In June or July of 2003, Mr. Webber heard from the City that Diann Shipione, a trustee on the Pension Board, was concerned about the pension plan. The City personnel Mr. Webber spoke to characterized Ms. Shipione as a gadfly. Ms. Shipione had claimed that the City's pension plan was underfunded and that the City had not disclosed this fact. When he became aware of Ms. Shipione's concerns, Mr. Webber asked the City to provide him the amount of the UAAL. At the time, he had only seen the 2002 Valuation Report, which indicated a UAAL of about $700 million. Mr. Webber was concerned with was how much of that amount was associated with the Wastewater enterprise fund, for purposes of his work on that offering.

The City explained to Mr. Webber that it had an agreement to pay less than the actuarially required contribution, and Mr. Webber was provided with copies of the 1996 and 2002 agreements regarding this issue. Mr. Webber's primary concern at this time was the status of the Wastewater Enterprise Fund, and he was informed by Terri Webster of the City Auditor's office that as of 2003, all pension-related shortfalls associated with the Wastewater and Water enterprise funds and resulting from payments in accordance with the 1996 and 2002 Agreements had been made good and the enterprise funds were paying at their respective actuarially required contributions ("ARC"), so there was no issue regarding underfunded pension liability. ARC is determined by the City's actuary during his annual valuation report, which sets a rate for contribution as a percentage of payroll. The City then establishes a rate for the enterprise funds using the actuary's calculations. However, for financial reporting purposes of the "actuarially required contribution" ("ARC") and the "net pension obligation" ("NPO") contained in the pension plan footnote, to establish the ARC and the NPO, the City utilized a 40-year rolling amortization period, whereas the pension plan, in calculating actuarially required contributions (based upon the actuarial report) used a 30-year fixed amortization period which began July 1, 1991. Hence the full shortfall was not recaptured. The distinction described above was not disclosed in the pension plan footnote. Consequently, when Mr. Webber assisted the City in revising the Pension Plan footnotes for the 2003 financial statements, he changed the narrative so that it was clear that the City was not utilizing the same amortization period as was the pension plan for calculating actuarially required contributions ARC and NPO for financial

reporting purposes. [This came later, well after the errors were, in fact, discovered in September.] The OS for the Wastewater offering was published on August 26, 2003.

Mr. Webber also explained that the enterprise funds face a different issue than the City's General Fund in that GASB requires that the enterprise funds accrue for income statement and balance sheet purposes any underfunding of pension liability. The City's General Fund need not do so, as GASB only requires that it disclose Net Pension Obligation (NPO) in the footnotes to the financial statement and show a trending.

On September 5, Ms. Shipione sent an email to the City, the underwriters, and others addressing financial statement issues, followed up by several others. In three separate emails, Ms. Shipione made there separate allegations.

- The first allegation was that the sentence in the footnotes to the wastewater financial statements regarding the actuary's description of the "Corridor" funding method was inaccurate. At the time, Mr. Webber was working off of the 2002 financial statement, and a footnote to that statement said that the Corridor method of funding was considered by the actuary to be "excellent." Ms. Shipione alleged that the sentence was not accurate. (This issue is explained in more detail below.)

- The second issue, raised in an email dated September 8, 2003, was that there was no reflection in the financial statements of an approximately $1.2 billion liability for post-retirement health benefits. (This issue is explained in more detail below.)

- The third allegation was that the 2002 Agreement regarding pension contributions had not been disclosed. Mr. Webber stated that he did not know about the agreement until he heard of Ms. Shipione's allegations, and the outside auditors at C&L did not know either. The 1996 Agreement had been disclosed, however. That agreement provided that if the CERS funding ratio fell below 82.3%, the City would be required to make up that shortfall. The City's position is that it would not have to cure the shortfall immediately, but rather that it would only have to begin contributing to CERS at the actuarially required rate. (This issue is explained in more detail below.)

Mr. Webber discussed these issues in a September 8, 2003 conference call with Rick Roeder, the City's actuary, and Terri Webster. According to Mr. Webber, Mr. Roeder claimed that he had never seen the pension footnote before. The City claimed that he had. The footnote language regarding the Corridor method had been taken from a 1997 or 1998 letter from Mr. Roeder. Mr. Roeder also claimed that there were other errors in the financial statements. According to Mr. Webber, per Roeder & Webster, there were a number of errors in footnote 6 of the notes to the Wastewater financial statements, in the paragraphs describing the three-year trend of NPO. Mr. Roeder had explained that there was an error because the contribution numbers included the amounts

contributed for the DROP program, which should not have been included. Additionally, in paragraphs d. and e. of footnote 6 to the Wastewater financial statement, there were discrepancies between the ARC and APC (Annual Pension Cost) numbers. It appeared to Mr. Webber that the error involved picking up the wrong numbers in various financial reports. Some of these errors were also contained in Footnote 12 of the CAFR which should have been the same as footnote 6 of Wastewater but in fact did not track the same errors. Mr. Webber stated that there was no General Fund balance sheet impact from the UAAL, but that there is for the NPO number in the statements of the enterprise funds.

In September 2003, the wastewater financing was close to closing, and Mr. Webber told the City and Mr. Roeder to review footnote 6 and find out what all of the errors were. He was not willing to allow the closing to occur until all of the errors in the footnote were known. Mr. Webber also read footnote 6 and noted a statement claiming that there was a reserve for the pension liability to the extent of the NPO. Terri Webster explained to him that this reserve was at CERS, not at the City, and that Mr. Roeder had said that there had to be a reserve in the pension plan, but in fact there was never a "real" reserve which set aside assets of the pension plan away from basic assets used to pay pension benefits. While there was something that was denominated as a reserve, when the reserve was eliminated there was no impact whatsoever on the amount of basic assets to pay basic pension plan benefits and this is disclosed in the Voluntary Disclosures under Financial Statement Errors.

At the same time, Mr. Webber consulted with his partners regarding the issue of the financial statement errors. While the underwriters believed that the problems were not material, Orrick, Herrington & Sutcliffe did not agree. The underwriters' views were contingent on Orrick issuing an opinion, which they were unwilling to do without a full disclosure of the existing errors in the financials, at a minimum. Mr. Webber provided the City with three potential alternatives on how to proceed: (1) disclose the known errors in the financials, state that they had not been corrected, and that no review had been undertaken; (2) review the financial statements in conjunction with the outside auditors, and report on errors to the City Manager and describe them in the Wastewater disclosure document; or (3) perform a complete reaudit of the 2002 financial statements with disclosure of the discovered errors. The City initially chose the third option, on or about September 12, 2003 indicating that the City would use the successor auditing firm to the original auditor. By this time, the City had pulled the OS for the Wastewater offering.

During the late September-December 2003 time frame, the City was supposed to be reviewing its financials and reporting back to Mr. Webber. At the end of September, Ms. Webster was beginning to talk about more comprehensive due diligence review of the City's financial statements rather than a re-audit, and this was the path the City then chose. Mr. Webber did not know Ms. Shipione, but her position on the Pension Board made him take her concerns seriously. Mr. Webber obtained a copy of the 2002 Agreement and reviewed the minutes of the pension board meetings during the period when the 2002 Agreement was being considered, May 2002-November

2002. Ms. Webster was the City Auditor & Controller's proxy and delegate at the pension board meetings, and it appeared to Mr. Webber as if the City was seeking some relief from payment obligations in part out of concern over the consequences under the 1996 Agreement of the funded rates falling below 82.3% and in part because it was seeking to defer paying the actuarially required rates. Mr. Webber declined to characterize the exchanges at the Pension Board meetings off the top of his head, but suggested that the minutes of those meetings would be a good source of information as would Bruce Herring. These minutes are public and reflect negotiations on this issue.

During the September to December 2002 period, Mr. Webber also worked on the refinancing of the Ballpark bonds, which involved the City's General Fund, and in this effort looked at the City's pension disclosures as they related to the general fund. The City was also engaged in a review of this issue, and Mr. Webber identified Terri Webster, Mary Vittano, Lakshmi Kommi, and Rick Roeder as being involved in this effort. He obtained some projections related to the UAAL from Ms. Kommi.

Additional errors in the financial statements. The result of the September-December, 2002 period due diligence efforts by the City and its outside auditor was that additional errors were discovered in the Wastewater Fund financial statements and the CAFR. According to Mr. Webber, what began as an investigation regarding Ms. Shipione's allegations regarding pension issues ultimately revealed more errors in the financial statements, primarily in the footnotes, according to the City. For instance, the CAFR footnote discussing future liability for operating leases contained errors. This made Mr. Webber concerned regarding how such errors could make it past the outside auditors. In response to this concern, the auditors at Caporicci and Larson, the successor firm, explained to him that the 2002 audit had been done by a different firm to which the current auditing firm was the successor, and the successor had installed different procedures for reviewing financial statements. (Mr. Webber understood that the person who was the audit partner for the prior firm which, in fact, did the audit for the 2002 financial statements also is the audit partner for the City at the successor firm.) Moreover, the internal and external auditors believed that the errors that were discussed were not material. Mr. Webber stated that he did not want to debate issues of materiality with the auditors since the auditors said they were applying an auditing standard of materiality. The fact that such errors occurred was enough to disturb him about the process and he believed this information should be made available to the market. Ed Ryan, the City Auditor & Controller, who announced his retirement shortly before the Voluntary Disclosures of January 27, 2004, were released, believed that no disclosure was necessary; Mr. Ryan and Mr. Webber agreed to disagree about this issue.

There were a number of other errors in the financials. For example, the CAFR omitted certain debts related to capital appreciation bonds of the Redevelopment Agency, a $14 million error. Mr. Webber believed that the errors made in the financials were just mental lapses or clerical errors, and that there was no pattern to the errors that suggested to him that there had been an effort to conceal anything.

In terms of correcting these errors, Mr. Webber has no personal knowledge regarding whether the City has taken the steps described in the January 2004 Voluntary Disclosures, nor did he have sufficient expertise to address the professional standards that might govern these types of issues. Given this, he had significant reservations about going forward with the same set of auditors. Mr. Webber did not state that the auditors were necessarily to be blamed for these errors – there had to be internal breakdowns in control to allow such errors to occur – but suggested that the auditors could be expected to catch such errors and the fact that they did not has diminished his confidence in them. This was particularly due to the fact that after the Voluntary Disclosures were published on January 27, 2004, additional errors had been found in the CAFR. In February, a $6 million understatement of assets in the Redevelopment Agency financials was found. This error may not yet have been disclosed, since the revised Wastewater OS has not been published.

Role of auditors in drafting footnotes. Mr. Webber stated that he only learned that the outside auditors had prepared the footnotes to the financial statements in the last several weeks. Mr. Webber was not surprised, however, to learn that the outside auditors had drafted the City's footnotes. He was not aware of anything that forbade this, and suggested that so long as the data, such as general ledger entries, had come from the City that there was not an independence issue.

Post-retirement health benefits. Ms. Shipione had also claimed that the City was not being forthcoming about information related to post-retirement health care benefits [Mr. Webber indicated that Terri Webster reported these benefits were not being paid by the relevant enterprise funds but rather by the General Fund to a limited degree, although primarily from the plan assets which were diverted from paying basic benefits.] A February 2003 report to the City Council had indicated that the ultimate liability associated with this issue was approximately $1.1 billion, but Mr. Webber characterized that as a rough estimate, not an actuarial calculation. On September 26, 2003, the City ran an op-ed piece addressing the issues related to the City's ability to pay pension plan liabilities. Also in September 2003 the Mayor appointed the Pension Review Committee.

The February 2003 report had been issued by a "blue ribbon" committee investigating the issue of pension funding needs. Mr. Webber described the post retirement health care cost estimates provided by Mr. Roeder as a wild guess, not an actuarial calculation, and Mr. Webber noted that the numbers had more recently been revised downward by Mr. Roeder from approximately $1.1 billion to $700 million. Given this uncertainty, Mr. Webber included a range in the January 2004 Voluntary Disclosures.

On the issue of post-retirement health benefits, Mr. Webber noted that he had reviewed the report of the blue ribbon commission on that issue, and that Kathy Lexin of the City Human Resources Department had explained the benefits to him and how the payments were made. Mr. Webber did not have knowledge regarding whether or not the City is required to pay those benefits, an issue that should be looked at going forward. Mr. Webber believed that there was outside counsel looking into the issue as to whether those benefits were required for current retirees. Mr. Webber

also noted that the GASB exposure draft on this issue [requiring an actuarial analysis of the exposure, similar to pension plan liability] had been withdrawn and was expected to be reissued soon. Mr. Webber thought that even if this issue was not required for disclosure in the financial statement itself, that it probably should be disclosed in the footnotes or elsewhere in a disclosure document.

Actuarial issues. Mr. Webber discussed the general role of the actuary. Both future assets and future liabilities are based on estimates and projections of the future. Mr. Webber noted that the City's forensic accountant in a litigation matter had provided a chart breaking down the changes in the UAAL form 1996 to 2002 in an effort to determine the causes of the increase. Mr. Webber had asked for a copy of this chart, the results of which are referenced in the January 2004 Voluntary Disclosures. According to Mr. Webber, the increases in UAAL were attributable to a number of factors, including increased benefits due to the settlement of litigation as well as to market losses. According to Mr. Webber, the actuarial approach smoothes out the gains and losses in the value of Plan Assets, to mute the effect of spikes in gains or losses. The forensic actuary's chart shows investment losses beginning in 2001 and increases in UAAL. The chart does not, however, include increases in liability due to the benefit increases in 2002.

The required annual contribution towards funding UAAL depends on the amortization period used by the actuary. Currently, there is a 30-year fixed amortization period that began in 1991. To amortize, one multiplies the UAAL by the fraction 1/n where n is the number of years left in the period. Mr. Webber did not know why the 30 year period had been established in 1991. In the January 2004 Voluntary Disclosures, a footnote to the projection table regarding the amortization period described a different amortization approach, which changed to a rolling 15 year period in 2008. This amortization is not currently in use, which Mr. Webber said the footnote makes clear, but said that Mr. Roeder was planning to recommend this approach to the Plan and therefore Mr. Webber did not require another projection table using the 30-year fixed period.

The 1996 and 2002 Agreements. One of the principal issues to Mr. Webber was disclosure of the 2002 Agreement, which was not referenced in the footnotes to the 2002 financial statements, although the 1996 Agreement had been. According to Mr. Webber, the outside auditor had provided a due diligence letter stating that they had not been aware of the 2002 Agreement either. This may be due, in part, to the timing of these events. The 2002 Agreement was approved by the City Council and the Pension Plan in mid-November 2002, and the audit report was issued in late November. And the 2002 Agreement may not have been final until January 2003. Had the 2002 Agreement not been made, however, the City's required contribution would have been higher.

According to Mr. Webber, the 1996 Agreement is the subject of some dispute regarding the City's funding duty if the funded ratio fell below 82.3%. One construction of this agreement is that the City would be obliged to make good promptly any shortfall below the 82.3% level. The City's view is that falling below the 82.3% level only triggers an obligation to make payments at the

actuarially required contribution level. [These alternative constructions were disclosed in the Voluntary Reports;] The City did not have the 2002 Valuation Report until January of 2003, and the meaning of the 1996 Agreement was not an issue before this because there had been no such shortfall. The 2002 Agreement clarified the City's obligations under the 1996 Agreement, but it changed this agreement as well, giving the City until 2008 to correct any shortfalls. There was no disclosure of the 2002 Agreement in the audited financial statements of the City issued for 2002. Newspaper articles began picking up the story in 2003.

Mr. Webber did not give a lot of weight to allegations that certain members of the Pension Board benefited personally from the 2002 Agreement, but stated that the potential for self-dealing raises the issue of the plan's entitlement to a tax exemption, an issue that should be investigated by fiduciary counsel. Mr. Webber stated that there was no balance sheet impact from the UAAL, but that there is for the NPO number and for the statements of the enterprise funds.

Questions raised by the SEC. Mr. Webber also addressed some of the questions that the SEC had raised:

- Have there been any actuarial calculations of the present value of post-retirement health benefit liability? No, Mr. Roeder's estimates were guesses, not actuarial calculations.

- Does the statement of the UAAL account for the lost 8% return assumed by the actuary? Mr. Webber suggested that Mr. Roeder should be consulted, but believed that the UAAL accounts for this factor.

- Why does the City use the 30 year amortization period? Mr. Webber did not know, but suggested Mr. Roeder would.

- Why isn't smoothing used in the 2004/2005 **[not sure what calculation this refers to]**? Mr. Webber believes that smoothing is not used in the net asset value calculation, according to Mr. Roeder.

- Why is the health care benefit paid out of the pension plan? Mr. Webber referred to page 15 of the January 2004 Voluntary Disclosures.

- Why is there no disclosure of the difference between the PUC and EAN methods of funding? Mr. Webber stated that they are both acceptable methods.

- Why are the costs of the DROP program not disclosed? According to Mr. Webber, there are no actuarial costs to this program, since pension liability does not accrue during the DROP period. The only cost is the 8% return paid by the City on DROP money, which happens whether or not the funds actually return 8% and that is disclosed in its Voluntary Reports.

- Does the funding ratio exclude some obligations or artificially reduce liability? The funding ratio projections do not include post-retirement health care benefits, employee pension contribution requirements actually made by the City, or other supplemental benefits paid by the Plan Assets. According to Mr. Webber, these exclusions are described in the Voluntary Disclosures, following the projection table.

Market re-entry issues. Mr. Webber repeated that Orrick, Harrison & Sutcliffe was not prepared to go forward as bond counsel without either a re-audit or a cold comfort letter from a major accounting firm. According to him, the rating agencies had reacted very strongly to the errors in the financial statements and the pension accounting issues. He mentioned Gary Kitahada, a financial advisor to the City, and Jeff Witt, who works for Mary Vattimo, as individuals that might be knowledgeable about this issue.

Additional statements. Mr. Webber made a number of other statements potentially of interest:

- Mr. Webber believes that the January 2004 Voluntary Disclosures were both timely and appropriate. Two years ago, the City was 89% funded. It issued new benefits and had bad investment results in the market, creating an issue and making the disclosure necessary. As the chart in the Voluntary Disclosures shows, by 2011, the City's required contribution will be in excess of $300 million, which is 40% of the 2004 budget.

- Mr. Webber also observed that the bond rating agencies may not really understand municipal pension liability, and that this might, in part, explain their strong reaction to recent events.

Post Script: ***On Saturday, March 6, Mr. Sauer and Mr. Webber ran into each other in a shopping mall in Santa Monica, CA, and (over coffee) Mr. Webber volunteered and freely answered a number of questions regarding the errors in the City's financial statement (Mr. Sauer paid for the coffee.) Mr. Sauer pointed out that since Mr. Bader was not present, perhaps Mr. Webber would not be comfortable discussing the matter but Mr. Webber said he would do so nonetheless.***

Exhibit 53

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.

description of the Manager's proposals.[349] City Treasurer Mary Vattimo commented in an e-mail to Deputy City Manager Pat Frazier:

> I think we need a conference call with Cathy, Terri, etc., because I don't think that he [Mr. Webber] fully understands the agreements (or maybe I don't understand what he is communicating.) In addition, this disclosure is OVERKILL and I would like to confidentially submit this to FA on Ballpark (Gary) and Paul Maco (through Elizabeth and Lakshmi) to get their view on the necessity of this.[350]

The relationship between Mr. Webber and City officials became progressively more strained over time. Mr. Webber felt that City officials did not appreciate the seriousness of the disclosure issues. In an interview with Vinson & Elkins, he alleged that City Auditor Ed Ryan attempted to pass off the financial statement errors as typographical errors "to pull the wool over the eyes" of the City Council. Late in the process, Mr. Webber complained in an e-mail to member of the City's legal staff:

> I could see no upside to us to having to recommend that the City make the disclosures, and have sensed from the outset a growing anger as the disclosures grew as we found out more information. The angst and anger, I believe, has grown as disclosure day has approached. Terri [Webster]'s last email to me exemplifies that anger. ("Onto the public flogging . . . I can't wait.") Mary [Vattimo]'s response was "much ado about nothing all you had to do was ask." Well I did ask, and I also asked why no one had bothered sharing that with me. So far that has not been answered, and I don't imagine will be.[351]

The issue referred to in this e-mail, and a source of distrust between the City and bond counsel, was Mr. Webber's belief that projections of the City's pension-related liabilities had been withheld from him. As noted earlier, the City staff had commissioned PFM to provide projections of its future liability to its retirement system as a basis for recommended actions to contain that liability. In September 2003, Mr. Webber asked the City to have the SDCERS actuary perform a series of "stress tests" that would explore various funding scenarios.[352] Rather than commission additional, potentially expensive, work from Mr. Roeder, the City's Financing

---

[349] E-mail from Cathy Smith, Orrick, to Pat Frazier Re: Paul Webber's Transmission of Pension Plan Disclosure (Sept. 12, 2003).

[350] E-mail from Mary Vattimo to Pat Frazier, re: Fwd: Paul Webber's Transmission of Pension Plan Disclosure (Sept. 15, 2003). Mr. Maco, a Vinson & Elkins partner who is also an author of this Report, had, prior to this time, provided Securities law advice to the City on a matter unrelated to the matters at issue here. He was asked by the City to also serve as a "sounding board" as the City prepared its pension disclosure and asked as to whether the expansive disclosure advocated by Mr. Webber was appropriate. He concurred with Mr. Webber's judgment.

[351] E-mail from Paul Webber to Kelly Salt , Office of the City Attorney, (Jan. 26, 2004).

[352] E-mail from Paul Webber to Mary Vattimo re: Stress Tests (Sept. 25, 2003).

Exhibit 54

Ed Ryan - Incorrect Pension Materials In Bond Solicitation Circular

From: "Diann Shipione Shea" <diann@san.rr.com>
To: "Lawrence Grissom" <LGrissom@sandiego.gov>
Date: 9/5/2003 4:02 PM
Subject: Incorrect Pension Materials In Bond Solicitation Circular
CC: <dick.murphy@sandiego.gov>, "Rick Roeder" <rickro@grsnet.com>, "Fred Pierce" <Fpierce@foundation.sdsu.edu>

September 5, 2003

Mr. Larry Grissom
Administrator
San Diego City Employees Retirement System
410 B Street – Suite 400
San Diego, CA 92101

Re: Incorrect Pension Materials in Bond Solicitation Circular

Dear Larry,

It has been brought to my attention from several individuals that information regarding the San Diego City Employees Retirement System is being circulated by the Public Facilities Financing Authority of the City of San Diego regarding the soon to be sold Subordinated Sewer Revenue Bonds. The Pension materials are apparently included in the addendum. These materials appear intentionally dated and substantively incorrect, including, by example, the following:

"The actuary believes the Corridor funding method is an excellent method for the City and that it will be superior to the PUC funding method. The actuary is in the process of requesting the GASB to adopt the Corridor funding method as an approved expending method which would then eliminate any reported NPO."

The independent SDCERS Actuary indicates that these comments are, in fact, dated and taken out of context. He apparently was not asked to opine as to his current thoughts on the "Corridor funding method" which he views in a very different light than that being represented to the purchasers of these securities. Other aspects of the circulated information are likewise incorrect.

From my own reading, the materials do not provide any of the material deficit concerns even at the levels described by our staff.

As a SDCERS Trustee it is my responsibility to bring this to your attention so it can be appropriately addressed so the pension fund will not in anyway be responsible or at risk. Please provide me with written confirmation of such at your earliest convenience.

If you have any questions please contact me at 619-261-3618.

Thank you.

Sincerely,

Diann Shipione
SDCERS Trustee

EXHIBIT # 73