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

to - l 1/27/04

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

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

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

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

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

Other Obligated Person's Name (if any):

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

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

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

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

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

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

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

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

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

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

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

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

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

Issuer Contact:

Name: PATRICIA T. FRAZIER Title: DEPUTY CITY MANAGER

Employer: CITY OF SAN DIEGO

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

Obligor Contact, if any:

Name PATRICIA T. FRAZIER Title: DEPUTY CITY MANAGER

Employer: CITY OF SAN DIEGO

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

Investor and Credit Relations Contact:

Name: LAKSHMI KOMMI Title: DEPUTY DIRECTOR, FINANCING SERVICES

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

Press Contact:

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

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

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

RELATING TO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE CITY OF SAN DIEGO, CALIFORNIA (OBLIGOR, PURSUANT TO CERTIFICATES OF UNDIVIDED INTEREST 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.

Thank 11/21/07

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

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

_____

_____

_____

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

_____ _____ _____

_____ _____ _____

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

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

Other Obligated Person's Name (if any):

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

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

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

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

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

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

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

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

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

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

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

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

---

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

Issuer Contact:

Name PATRICIA T. FRAZIER Title: DEPUTY CITY MANAGER

Employer: CITY OF SAN DIEGO

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

Obligor Contact, if any:

Name PATRICIA T. FRAZIER Title: DEPUTY CITY MANAGER

Employer: CITY OF SAN DIEGO

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

Investor and Credit Relations Contact:

Name: LAKSHMI KOMMI Title: DEPUTY DIRECTOR, FINANCING SERVICES

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

Press Contact:

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

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

VOLUNTARY REPORT OF INFORMATION
DATED JANUARY 27, 2004

RELATING TO

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

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

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

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

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

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

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

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

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

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

EXHIBIT 3

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

February 18, 2004

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

Dear Mr. Gwinn:

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

Client

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

Scope of Engagement

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

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

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

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

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

Cooperation

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

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

Fees

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

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

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

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

Other Charges

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

Investment Disclosures

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

Withdrawal or Termination

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

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

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

Other

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

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

Very truly yours,

VINSON & ELKINS L.L.P.

By _____
Paul S. Maco

Enclosure

AGREED TO AND ACCEPTED:

The City of San Diego

By: _____
Leslie J. Girard
Assistant City Attorney

VINSON & ELKINS L.L.P.

Standard Terms of Engagement for Legal Services

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

The Scope of Our Work

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

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

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

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

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

Who Will Provide the Legal Services

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

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

How Our Fees Will Be Set

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

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

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

Additional Charges

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

Duplicating

The Firm charges $.15 per page.

Courier Services

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

Computer Aided Legal Research (CALR)

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

Telefax

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

Telephone

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

Travel-Related Expenses

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

All Other Costs

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

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

Billing Arrangements and Terms

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

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

Confidentiality

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

Client and Firm Documents

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

EXHIBIT 4

April 13, 2004

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

Dear Ms. Irvine:

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

Objectives and limitations of services

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

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

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

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

Our responsibility to communicate with the City Council

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

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

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

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

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

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

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

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

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

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

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

Management responsibilities

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

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

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

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

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

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

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

Offering documents

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

Other engagement matters

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

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

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

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

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

Work paper access by regulators and others

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

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

Additional reports

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

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

Other *Government Auditing Standards* matters

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

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

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

Timing

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

Compensation

Our fees will be based on the following hourly rates:

Partner	$400
Senior Manager	$350
Senior Associate	$200

Associate	$150
Clerical	$ 60

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

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

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

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

Very truly yours,

KPMG LLP

Steven D. DeVetter

Steven DeVetter
Partner

EXHIBIT 5

KPMG LLP
Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

August 9, 2004

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

Re: Investigation

Dear Mr. Girard:

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

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

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

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

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

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

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 6

AU Section 317

Illegal Acts by Clients

(Supersedes section 328)

Source: SAS No. 54.

See section 9317 for interpretations of this section.

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

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

Definition of Illegal Acts

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

Dependence on Legal Judgment

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

Relation to Financial Statements

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

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

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

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

The Auditor's Consideration of the Possibility of Illegal Acts

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

Audit Procedures in the Absence of Evidence Concerning Possible Illegal Acts

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

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

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

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

Specific Information Concerning Possible Illegal Acts

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

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

Audit Procedures in Response to Possible Illegal Acts

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

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

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

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

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

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

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

c. Determine whether the transaction has been properly authorized.

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

The Auditor's Response to Detected Illegal Acts

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

The Auditor's Consideration of Financial Statement Effect

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

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

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

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Implications for Audit

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

Communication With the Audit Committee

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

Effect on the Auditor's Report

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

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

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

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

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

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

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

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

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

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

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

c. In response to a subpoena

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

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

Responsibilities in Other Circumstances

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

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

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

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

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

Effective Date

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

[The next page is 315.]

EXHIBIT 7

Report on Investigation

The City of San Diego, California's

Disclosures of Obligation to Fund the

San Diego City Employees' Retirement System

and Related Disclosure Practices

1996-2004

with

Recommended Procedures and Changes to the Municipal Code

September 16, 2004

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

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

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

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

EXHIBIT 8

KPMG LLP
Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

October 11, 2004

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

RE: CITY OF SAN DIEGO FISCAL YEAR 2003 AUDIT

Dear Mr. Girard:

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

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

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

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BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OVERVIEW OF RELEVANT AUDITING AND ACCOUNTING REQUIREMENTS

AICPA State and Local Audit and Accounting Guide § 4.44.

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

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

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

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

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

(2) Illegal Acts With Indirect Effects on Financial Statements

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

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

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

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

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

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

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

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

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

INFORMATION AND REOCRDS REQUESTED, NOT YET PROVIDED

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

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

ITEMS REQUIRING RESOLUTION BY THE CITY

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

[4] Id. at § 4.46

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

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

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

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

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

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

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

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

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

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

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

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

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

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

KPMG's Question 1

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

City's Comment on Question 1

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

Response to City's Comment on Question 1

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

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

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

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

KPMG's Questions 2

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

City's Comment on Question 2

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

Response to City's Comment on Question 2

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

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

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

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

KPMG's Questions 3

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

City's Comment on Question 3

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

Response to the City's Comment on Question 3

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

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

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

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

KPMG's Question 4

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

City's Comment on Question 4

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

Response to City's Comment on Question 4

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

KPMG's Question 5

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

City's Comment on Question 5

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

Response to City's Comment on Question 5

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

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

KPMG's Question 6

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

City's Comment on Question 6

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

Response to City's Comment on Question 6

Please see our comments above regarding these items.

KPMG's Question 7

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

City's Comment on Question 7

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

Response to City's Comment on Question 7

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

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

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

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

EXHIBIT 9

Vinson&Elkins
ATTORNEYS AT LAW

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

a 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]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

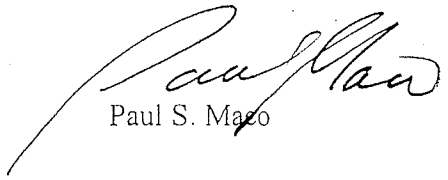
Moreover, should the SEC determine the City has violated any provisions of the federal securities laws, we believe it would consider the following facts in determining what remedies are appropriate:

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

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

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

Very truly yours,



Paul S. Mazo

EXHIBIT 10

Three Embarcadero Center
San Francisco, CA 94111

Telephone 415 951 0100

October 29, 2004

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

Gentlemen:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

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

EXHIBIT 11

San Diego City Attorney
MICHAEL J. AGUIRRE

NEWS RELEASE

FOR IMMEDIATE RELEASE: December 9, 2004

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

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

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

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

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

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

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

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EXHIBIT 12

INTERIM REPORT NO. 1

REGARDING POSSIBLE ABUSE,

FRAUD, AND ILLEGAL ACTS BY

SAN DIEGO CITY OFFICIALS AND EMPLOYEES

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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

14 JANUARY 2005

EXHIBIT 13

INTERIM REPORT NO. 2

REGARDING POSSIBLE ABUSE,

ILLEGAL ACTS OR FRAUD BY

CITY OF SAN DIEGO OFFICIALS

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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

9 FEBRUARY 2005

EXHIBIT 14

Kroll

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

www.krollworldwide.com

February 10, 2005

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

Re: Independent Services for the City of San Diego

Dear Mr. Mayor & Council Members:

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

Background

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

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

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

Scope of Project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

Troy Dahlberg

Mr. Troy Dahlberg
Managing Director
Kroll Associates, Inc.

Kroll

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

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

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

EXHIBIT 15

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

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

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

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

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

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

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

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

CITY MANAGER SUPPORTING INFORMATION:

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

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

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

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

Ewell

FILE LOCATION: MEET

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

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

EXHIBIT 16

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

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

EWELL:
HE WILL LOOK AT ALL REQUESTS.

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

FRYE:
THIS ONE IS VERY SPECIAL.

[LAUGHTER]

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

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

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

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

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

EXHIBIT 17

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

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

(Citywide)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

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

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

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

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

FILE LOCATION: Subitems A & B: MEET

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

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

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

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

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

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

FILE LOCATION: MINUTES

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

(R-2005-933)

RESOLUTION NUMBER R- 300203

ADOPTED ON MAR 0 8 2005

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

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

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

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

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

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

WHEREAS, the SEC is continuing its investigation; and

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

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

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

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

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Leslie J. Girard
Assistant City Attorney

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

[Letterhead of the City of San Diego]

March 7, 2005

An Open Letter to the Citizens of San Diego:

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

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

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

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

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

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

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

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

Sincerely,

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

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

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

AUTHENTICATED BY:

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

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

(Seal)

By Maxwell E. Ketterman, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-300203 Adopted MAR 0 8 2005

EXHIBIT 18

FILE COPY

WILLKIE FARR & GALLAGHER LLP

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

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

April 19, 2005

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

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

Members of the Audit Committee:

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

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

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

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

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

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

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

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

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

Very truly yours,

Michael R. Young

2831280.2

AGREED:

Troy Dahlberg

For the Audit Committee of the City of San Diego

ACKNOWLEDGED:

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

EXHIBIT 19

Kroll

660 South Figueroa, 8th 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.

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- 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

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[illegible] that is to be followed by independent auditors in performing [illegible] 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

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
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 20

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 21

From: Mayor and City Manager

To: All City Employees, City Council, and San Diego City Retirement System

As you know, we have received a number of subpoenas from law enforcement authorities requiring production of a broad range of documents related to matters under investigation. Additional investigative activity is now also being undertaken by the City's Audit Committee.

We recently have discovered that documents called for by these subpoenas were not timely identified and made available to us for production to the authorities. We are therefore circulating the attached lists of documents and advising all personnel that each employee is to study the lists carefully, search their electronic and non-electronic files, and immediately identify and make available all responsive documents.

Should you have any questions concerning what documents must be produced, you may consult the requests contained in the subpoenas, which are also attached to this memorandum. If upon a diligent search of your files you conclude that you have documents responsive to a subpoena, you are to identify and make the documents available as above. A statement that you have diligently searched your files and have made available all responsive documents, as provided in the attached form, should be provided to Jeffrey Klein of Kroll, Inc, for transmittal to the appropriate City officials and the authorities. You should indicate on the statement all categories of documents that are responsive to a subpoena, and whether

they were previously provided to the City Attorney. Please fax the completed form to Mr. Klein at (619) 923-0099 by no later than June 30, 2005. Mr. Klein or one of his colleagues will then contact you with further instructions concerning the documents. Mr. Klein may be reached by phone at (619) 961-7869.

In reviewing the attached list of requested documents, you should interpret the term "documents" broadly. The term "documents" includes, but is not limited to, all memos, letters, reports, emails, drafts, notes, graphic matters, recordings, and spreadsheets in any format, including handwritten, typewritten, printed, photocopied, or otherwise mechanically or electronically produced or reproduced.

You must review the attached list, perform a diligent search, and return the attached statement *even if you have received similar requests and/or completed similar forms previously.*

You are hereby advised that a failure to make available all responsive documents will be viewed as a violation of the legal obligation to comply with the foregoing subpoenas, which can have severe consequences.

DOCUMENTS REQUESTED

1. All documents that relate in any way to the offer and/or sale of any bonds, such as general obligation, revenue, tax anticipation, certificates of participation, and lease revenue bonds, by the City of San Diego from January 1, 1996 to February 18, 2004. Please also include all documents that were created as part of the offering, such as transcripts of closing documents, as well as notes of meetings and correspondence files concerning these offerings.

2. All documents that relate in any way to public disclosure of information made in connection with the offer and/or sale of any bonds, such as general obligation, revenue, tax anticipation, certificates of participation, and lease revenue bonds, by the City of San Diego. Please also include all documents that relate in any manner to the City of San Diego Municipal Securities Secondary Market Disclosure Information Report dated January 27, 2004.

3. All documents concerning San Diego City Council action, discussion, and review of bond offerings and disclosure.

4. All documents that relate in any manner to necessary pension payments by the City of San Diego to the San Diego City Employees' Retirement System ("SDCERS"), the required percentage of the City of San Diego's budget such costs represent, and the under-funded status of SDCERS. Please include all documents that reflect:

a. the cost and projected cost of the pension obligations, Deferred Retirement Option Program and post-retirement health care benefits;

b. documents that benchmark the pension obligations, Deferred Retirement Option Program, and post-retirement health care obligations of the City of San Diego against other government agencies and against private industry norms;

c. actuarial reports, valuations, assumptions, estimates, alternatives and recommendations concerning the SDCERS;

d. documents that analyze and report on the causes of the under-funded status of the SDCERS;

e. documents concerning audits and reviews by outside persons and entities, including independent auditors, of amounts of money that the City of San Diego may have to pay for pension, Deferred Retirement Option Program, and post-retirement health care benefits;

f. documents concerning City of San Diego bond ratings and changes in bond ratings as a result of amounts of money that the City of San Diego may be obligated to pay for pension, Deferred Retirement Option Program, post-retirement health care and other benefits; documents that model on an actuarial basis the necessary annual funding of pension obligations, Deferred Retirement Option Program, post retirement health care and other benefits;

g. documents concerning any Unfunded Actuarially Accrued Liability; and

h. documents concerning advice from the City Attorney or other counsel concerning amounts of money that the City of San Diego may be obligated to pay for pension, Deferred Retirement Option Program, post-retirement health care and other benefits.

5. All documents that relate in any way to public disclosure of information concerning actual and potential pension obligations, Deferred Retirement Option Program, and post-retirement health care obligations of the City of San Diego. Please include documents that reflect

a. review by any counsel, financial advisor, underwriter or actuary of any disclosure made concerning actual and potential pension obligations, Deferred Retirement Option Program, and post-retirement health care obligations;

b. communications concerning and materials presented to rating agencies from January 1, 2000 to February 11, 2005, including the names of persons attending presentations, concerning the amount of money that the City of San Diego may be obliged to pay for pension, Deferred Retirement Option Program, post retirement health care and other benefits;

c. documents concerning disclosure in the City of San Diego's 2001 and 2002 audited financial statements of amounts of money that the City of

San Diego may be obligated to pay for pension, Deferred Retirement Option Program, post-retirement health care and other benefits;

d. documents concerning the disclosure obligations of municipal securities issuers and documents concerning the responsibilities of local government officials who authorize the issuance of municipal securities and related disclosure documents.

6. All documents that relate in any way to possible conflicts of interest by members of the board of the SDCERS concerning pension, Deferred Retirement Option Program, and post-retirement health care obligations of the City of San Diego.

7. All documents that relate in any way to possible conflicts of interest of persons reviewing and approving bond offerings and bond disclosure documents for the City of San Diego.

8. All documents that relate in any way to agreements, understandings, resolutions, and ordinances relating to the 1996 Manager's Proposal 1 and 2002 Manager's Proposal 2, and all documents reflecting summaries of benefits and retirement enhancements related to Manager's Proposal 2.

9. All documents that relate in any way to the City of San Diego's labor and benefit negotiations, including any documents concerning Meet and Confer meetings, any documents reflecting the voting my members of the board of SDCERS who participated in Meet and Confer meetings, and any documents

concerning the City of San Diego Strategic Planning meetings concerning labor negotiations.

10. All documents concerning the location and value of SDCERS' assets and liabilities.

11. All emails sent or received by the following people regarding the subject matter of the preceding requests: Mike Carrier, Jeanne Cole, Valerie DanDeweghe, Rick Duvernay, P. Lamont Ewell, Patricia T. Frazier, Leslie J. Girard, D. Cruz Gonzalez, Rudy Graciano, Bruce Herring, Elizabeth Kelly, Lakshmi Kommi, Cathy Lexin, Jacqueline Lindsay, Tracy McCraner, Jack McGrory, Darlene Morrow-Truver, Jyothi Panthulu, Cecilia San Pedro, Mike Phillips, Phil Phillips, Tom Rhodes, Ed Ryan, Ron Saathoff, Kelly Salt, Michael Uberuaga, Mary Vattimo, Terri Webster, Jeff Witt, Ed Wochaski, members of the city council, and the mayor.

12. All documents that relate in any way to the removal, destruction, or "cleaning" of documents belonging to the City of San Diego from January 1, 2004 to January 21, 2005.

13. All emails to, from, and otherwise concerning Dennis Gibson from January 1, 2000 to February 11, 2005 and all documents that relate in any way to such emails.

14. All documents that relate in any way to the Government Finance Officers Association Certificate Program for the City of San Diego.

15. All documents that were once in the possession of Gloria Chavez.

16. All documents that relate in any way to the Blue Ribbon Committee on the City of San Diego's Finances.

17. All email communications and attachments thereto sent and received on behalf of Michael Uberuaga by his administrative assistants from January 1, 2001 to his retirement in 2004.

18. All documents distributed during closed sessions of the City Council between October 1, 2001 and February 1, 2004; all video and audio tapes of City Council meetings during the same period, and all video and audio tapes of City Council meetings prior to that period in which Managers' Proposal 1 was discussed; all video and audio tapes of the Rules Committee between October 1, 2001 and February 1, 2004; and all documents provided to City Council members or staff in support of

a. 2002 Fire & Safety Bonds,

b. 2002-03 TANS,

c. 2003 Balboa Park/Mission Bay Bonds,

d. 2003 Light Rail Bonds, and

e. 2003-04 TANS.

CERTIFICATION

Name:_____

Address:

Phone Number:

I have reviewed the attached Memorandum, including the "Documents Requested" section, requesting that I identify and provide access to certain documents and materials to Jeffrey Klein. I have searched my hard copy and electronic files, including email files and folders and hard copy files and folders that were stored off-site, and I confirm that the descriptions in the attached "Document Descriptions" identify the documents of mine that are covered by the "Documents Requested" section and their current storage location.

I confirm that I have/have not [CIRCLE ONE] created or received documents on my own home or portable computer, other than documents that are copied in my City computer and electronic files, that relate to subjects covered by the "Documents Requested" section.

I confirm that I have/have not [CIRCLE ONE] had an administrative assistant or secretary who might have maintained hard copy files or electronic files or documents for me on subjects covered by the "Documents Requested" section that would not be found with my files. The names of these assistants or secretaries, if applicable, are:

I confirm that I have/have not [CIRCLE ONE] had an administrative assistant or secretary who received or sent email on my behalf that might not be included in the email files or folders under my name. The names of these assistants or secretaries, if applicable, are:

[Name of responding person]

_____

Date:_____

Document Descriptions

Description of Documents	Did you previously provide the document to the City Attorney?
1.	
2.	
3.	
4.	
5.	

[continue as necessary]

EXHIBIT 22

DEVELOPMENTS, INCLUDING THE RECENT IDENTIFICATION ON A BACK UP TAPE THAT HAS YIELDED OVER 60,000 ELECTRONIC DOCUMENTS THAT HAS REQUIRED THE REVIEW, CLASSIFICATION AND ANALYSIS OF THESE DOCUMENTS, WHICH WE HAVE ALMOST COMPLETED. WE ARE ONLY A FEW DOCUMENTS I SHOULD SAY A FEW THOUSAND DOCUMENTS AWAY FROM THAT. TO SUM UP, THE FACT BASED ANALYSIS THAT WILL BE EMERGING FROM THIS PROCESS WILL BE THE PRODUCT OF 124 INTERVIEWS, OF 79 INDIVIDUALS, AND THE EVALUATION OF OVER 350,000 ELECTRONIC DOCUMENTS, AS WELL AS 260 PLUS BOXES OF PAPER DOCUMENTS, IN THE CONTEXT OF EIGHT YEARS OF CITY DISCLOSURE AND FINANCIAL REPORTING. PLUS EIGHT PLUS YEARS OF PUBLIC RECORDS. I'D SAY EIGHT PLUS YEARS BECAUSE YOU RECALL OUR EXAMINATION OF THE CITY'S PENSION ISSUES GO ALL THE WAY BACK TO 1980, 1981 WHERE WE IDENTIFIED THE BEGINNING OF THE USE OF SURPLUS EARNINGS AS ONE OF THE PROBLEMS BEHIND THE CITY'S PENSION DIFFICULTIES. AND OF COURSE, STILL TO COME, WHATEVER DOCUMENTS WE WILL RECEIVE FROM THE PENSION BOARD SHOULD THEY WAIVE THE PRIVILEGE. THE LAST SLIDE, PLEASE. AS CALLED FOR UNDER OUR AGREEMENT WITH YOU, THIS FACT-BASED ANALYSIS LEADING TO CONCLUSIONS IN MORE THAN A DOZEN ISSUE CATEGORIES WITH MULTIPLE SUBCATEGORIES IS NOW BEING SUBMITTED TO THE AUDIT COMMITTEE AS PART OF THE PROCESS OF THE AUDIT COMMITTEE'S ULTIMATELY DELIVERING CONCLUSIONS TO KPMG AND AS WELL PROVIDED TO THE CITY COUNCIL.

THANK YOU VERY MUCH.

MAYOR MURPHY:

LET ME HEAR FROM I WANNA HEAR FROM THE AUDIT COMMITTEE, THEN WE'LL TAKE QUESTIONS FROM EVERYBODY.

MR. LEVITT:

MR. MAYOR, MEMBERS OF THE COUNCIL, I AM ARTHUR LEVITT, A MEMBER OF THE AUDIT COMMITTEE. AND I WOULD EXPRESS TO YOU MY FEELINGS OF HUMILITY AND HONOR AT BEING ABLE TO WORK WITH ALL OF YOU ON WHAT APPEARS TO BE AN AWESOME PROJECT. THE CITY OF SAN DIEGO IS A JEWELL, ONE OF THE FINEST CITIES IN THE UNITED STATES, WITH A CULTURAL HERITAGE SECOND TO NONE, A REVIVED REVITALIZED BUSINESS COMMUNITY THAT IS THE ENVY OF THE NATION. AND YOU FACE A PROBLEM TODAY RESULTING FROM A COMBINATION OF UNFORTUNATE CIRCUMSTANCES. I WOULD SAY TO YOU THAT THIS IS AN UNDERTAKING THAT I PERSONALLY WOULD NOT HAVE EMBARKED UPON UNLESS I FELT THAT THE CHANCES OF SUCCESS [I WITH SAY TO YOU] WERE VERY SIGNIFICANT.

I FEEL THAT EVEN MORE STRONGLY TODAY, HAVING BEEN INVOLVED IN THIS PROJECT FOR A LITTLE MORE THAN A MONTH UP TO NOW. THERE ARE A NUMBER OF SIGNIFICANT IMPEDIMENTS TO COMPLETION OF THIS PROCESS. I KNOW YOU ARE WELL AWARE OF THEM, BUT I CANNOT EMPHASIZE STRONGLY ENOUGH MY FEELING THAT THE GOAL OF THIS PROJECT IS TO GET KPMG TO COMPLETE THEIR AUDIT, TO ALLOW THE CITY TO RETURN TO BEING ABLE TO BORROW, AND THAT CANNOT BE DONE IN THE ABSENCE OF HAVING A WAIVER FROM YOUR PENSION BOARD, A WAIVER OF PRIVILEGE. I MENTION THAT FIRST AND FOREMOST IN MY REMARKS BECAUSE I CONSIDER IT CRITICALLY IMPORTANT. IMPORTANT IN TERMS OF TIMING. YOU SIMPLY CAN ILL AFFORD TO WASTE TIME ON THIS ISSUE. OR ON THE ISSUE OF THE REPLACEMENT OF THE ACTUARY. I AM SATISFIED, THE COMMITTEE IS SATISFIED THAT THE AUDITOR WILL NOT SIGN OFF ON THIS AUDIT WITHOUT BEING ASSURED OF THE RELIABILITY OF THE NUMBERS, AND THAT REQUIRES AN ACTUARY TO SUPPLY THAT CERTAINTY THAT THE PRESENT ACTUARY HAS SIMPLY NOT BEEN ABLE TO ACCOMPLISH. THE AUDITOR WILL NOT SIGN OFF ON THIS AUDIT UNLESS AND UNTIL WE ARE ABLE TO GAIN ACCESS TO PRIVILEGED DOCUMENTS FROM THE BOARD. WHAT WE HAVE BEEN DOING OVER THE COURSE OF RECENT WEEKS HAS BEEN TO WORK WITH VINSON AND ELKINS IN PREPARING BINDERS OF MATERIALS WITH GRAPHS OF THEIR FINDINGS PROCEDURE AND CONCLUSIONS WITH ALL APPLICABLE SUPPORTING EVIDENCIAL MATTER. WE HAVE BEEN COORDINATING WITH KPMG. I CAN SAY TO YOU WITHOUT REPRESENTING WHAT THEY HAVE SAID, BUT MY BELIEF, MY STRONG BELIEF THAT THEY FEEL THAT WE HAVE ACCOMPLISHED A GREAT DEAL AND ARE ON THE RIGHT TRACK. WE HAVE ASKED FOR AND RECEIVED COOPERATION FROM THE CITY ATTORNEY WITH RESPECT TO SUBMISSION OF SUBPOENAS THAT HAVE BEEN TURNED OVER TO US. WE STILL WOULD REQUEST ADDITIONAL MATERIAL, WHICH I THINK YOU ARE AWARE OF THAT WE NEED IN TERMS OF RELATING SUPPORTING DOCUMENTATION. WE HAVE PREPARED CORRESPONDENCE TO THE PENSION BOARD ADDRESSING PRIVILEGED DOCUMENTS. I BELIEVE YOU HAVE GOTTEN COPIES OF THIS. THE AUDIT COMMITTEE LETTER OF MAY 19TH RELATING TO THE WAIVER OF ATTORNEY CLIENT PRIVILEGE, OUR LETTER OF JUNE THE 7TH DISCUSSING THE ACTUARY. WE HAVE MET WITH THE BOARD REPRESENTATIVES, THE BOARD'S OUTSIDE COUNSEL. WE HAVE ATTENDED ONE BOARD MEETING TO DISCUSS THE ACTUARY AND THE WAIVER OF ATTORNEY CLIENT PRIVILEGE, AND WE INTEND TO RETURN HERE FRIDAY BECAUSE WE FEEL SO COMPELLINGLY ABOUT THE IMPORTANCE OF THIS WAIVER ISSUE BEING RESOLVED AND ALLOWING ALL OF US TO GET ON WITH THE PROJECT. WE ARE IN THE PROCESS OF INVESTIGATING NEW ALLEGATIONS, INCLUDING ISSUES IDENTIFIED BY THE CITY ATTORNEY. WE HAVE HAD NUMEROUS COMMUNICATIONS WITH LAW ENFORCEMENT AGENCIES, INCLUDING THE DEPARTMENT

OF JUSTICE AND THE SEC. DISCUSSIONS RELATED TO THE CITY COMPLETING COMPREHENSIVE DOCUMENT PRODUCTION. AND WE ARE DEVELOPING A REMEDIATION PLAN AS PART OF THE ONGOING INVESTIGATION. THE AUDIT COMMITTEE HAS INSTITUTED AND TAKEN RESPONSIBILITY FOR REVISED DOCUMENT PRODUCTION PROCESS. YOU HAVE ALL SEEN A COPY OF A LETTER THAT WENT OUT TO 5,000 CITY EMPLOYEES. AND WE WILL BE WORKING WITH THE SUBMISSION OF THOSE DOCUMENTS AND TRYING TO USE THEM AND ORGANIZE THEM IN AS PRODUCTIVE A WAY AS POSSIBLE. WE ARE DEVELOPING, CREATING AND WILL WORK WITH YOU ON A PLAN OF REMEDIATION. IF I WERE SITTING WHERE YOU WERE SITTING, AND LISTENING TO WHAT YOU HAVE BEEN LISTENING TO, NOT JUST TODAY, BUT FOR SEVERAL YEARS, I'D BE SAYING TO MYSELF, MY GOD, WHEN IS THIS GOING TO END. [LAUGHTER]
I HAVE SEEN THIS IN OTHER COMMUNITIES. I HAVE BEEN PART OF IT IN OTHER COMMUNITIES. EVEN THOUGH YOU MAY NOT EXPRESS IT, I SENSE YOUR FRUSTRATION. I KNOW THAT VERY OFTEN IN THE HEIGHTS OF FRUSTRATION AND THE PROCESS SUCH AS THIS, SOMETIMES EASY ANSWERS ARE LOOKED FOR. MAYBE WE SHOULD JUST DECLARE BANKRUPTCY AND GET ON WITH THE PROCESS. I THINK THAT YOU CANNOT ELIMINATE THAT POSSIBILITY RESPONSIBLY, BUT I CAN SAY TO YOU THAT I THINK IT WOULD BE A VERY SAD DAY FOR THIS GLORIOUS COMMUNITY TO TAKE THAT ROAD. THE ASSETS OF THIS COMMUNITY ARE TOO GREAT. THE FINANCES ARE TOO SOUND. AND JUST GOING BY FITCHS LATEST RATING, THIS IS NOT AN ECONOMIC PROBLEM IN MY JUDGMENT. IT'S A POLITICAL PROBLEM, A PROBLEM OF WILL, A PROBLEM OF MOBILIZING THE ASSETS OF THE COMMUNITY TO COME TO A SOLUTION. I CAN TELL YOU WITH CONVICTION THAT I BELIEVE THAT THERE IS AN ANSWER TO THIS AND I DO SEE THE LIGHT AT THE END OF THE TUNNEL. NOW, AGAIN, IF I WERE SITTING WHERE YOU WERE SITTING, I'D SAY, WHERE? WHEN? HOW LONG? HOW MUCH? I CANT GIVE YOU A PRECISE ANSWER, BUT I CAN JUST GIVE YOU A PERSONAL ANSWER WHICH MY COLLEAGUES WILL PROBABLY STRING ME UP FOR DOING, BECAUSE THEY'RE LAWYERS AND I'M NOT. I THINK WE'LL HAVE A MUCH CLEARER PICTURE WITHIN THE NEXT THREE MONTHS. AND I'D BE VERY DISAPPOINTED IF I WASN'T OUT OF HERE BY THE END OF THIS YEAR. NOW, HOW MUCH? THAT'S A LEGITIMATE QUESTION THAT YOU SHOULD BE ANSWERING, AND IT IS A QUESTION VERY OFTEN THAT LAWYERS DONT ANSWER. BUT AS I SAID BEFORE, I'M NOT A LAWYER. I'LL GIVE YOU MY BEST FEEL FOR IT. THE COMBINED FEES OF OUR COUNSEL AND OURSELVES ARE RUNNING AROUND $800,000 A MONTH. MY BEST GUESS IS THAT THOSE FEES WILL REMAIN IN THAT AREA FOR THE NEXT TWO OR THREE MONTHS GIVE OR TAKE, BUT THEY SHOULD AVERAGE AT ABOUT THAT LEVEL. SO I AM HERE, AND MY COLLEAGUES ARE HERE TO TRY TO ANSWER QUESTIONS. I THINK YOU ALL KNOW THAT I THINK A PART OF THIS PROCESS, AS I DESCRIBED IT AS A POLITICAL, AND NOT

ECONOMIC PROCESS, IS TO TRY TO REACH OUT, REACH OUT TO YOU IN THE FIRST INSTANCE, REACH OUT TO THE BUSINESS COMMUNITY WHICH I WILL DO IN A SERIES OF MEETINGS WITH AS MANY MEMBERS OF THAT COMMUNITY AS CARE TO MEET WITH ME REACH OUT TO YOUR OWN EMPLOYEES AND THEIR LABOR REPRESENTATIVES TO ANSWER THEIR QUESTIONS, AND DEFINE THE PROBLEM FROM A DOLLAR AND CENTS POINT OF VIEW, AND DEFINE THE GOALS AND OBJECTIVES AS WE SEE THEM AND TO TRY TO HELP MOVE THE PROCESS TOWARD THE POINT WHERE YOU CAN BRING ABOUT A SOLUTION. OUR JOB IS TO GET YOU THE AUDIT, TO RESTORE YOU TO THE FINANCIAL MARKETS. OUR JOB IS TO GIVE DEFINITION TO THE NUMBERS, AND THEN YOUR JOB AND THE COMMUNITY JOB IS TO COME UP WITH THE SOLUTION THAT I THINK IS AVAILABLE BECAUSE THE CITY HAS FAR MORE GOING FOR IT THAN CITIES THAT HAVE COME OUT OF MORE DIFFICULT PROBLEMS WITH LESS GOING FOR IT THAN YOU DO.

CITY ATTORNEY MIKE AGUIRRE:
COULD I ASK MR. MAYCO IF HE'D COME BACK. MR. MAYCO, I WONDER IF YOU COULD HELP CLARIFY SOMETHING FOR US. YOU WERE RETAINED IN CONNECTION WITH THIS MATTER SOME TIME IN ABOUT FEBRUARY OF 2004. IS THAT TRUE?

MR. MACO:
WE WERE ASKED TO REPRESENT THE CITY WE WERE ASKED TO CONDUCT AN INQUIRY INTO THE CITY'S DISCLOSURE PRACTICES IN THE EARLY PART OF FEBRUARY, FEBRUARY 11TH TO BE PRECISE. IT WAS ANNOUNCED BY A PRESS RELEASE, JOINT PRESS RELEASE OF THE CITY ATTORNEY AND THE MAYOR ON FEBRUARY 12TH.

CITY ATTORNEY MIKE AGUIRRE
AND SOME TIME THEREAFTER, YOU LEARNED OF A SEC INVESTIGATION?

MR. MACO:
THE 13TH, THE SEC INITIATED AN INVESTIGATION. THEY ASKED THE QUESTION, WAS THE CITY GOING TO FULLY COOPERATE. THE MAYOR, AS I UNDERSTAND IT AND AS I UNDERSTAND HAS BEEN REPORTED ON IN THE PRESS, HELD A PRESS CONFERENCE THE FOLLOWING DAY, SATURDAY MORNING, I BELIEVE THAT WAS THE 14TH OF FEBRUARY, ANNOUNCING THE CITY'S COOPERATION. WE WERE ALSO ASKED, WOULD WE ALSO REPRESENT THE CITY, AND ONLY THE CITY, IN THE SEC INQUIRY. AND BECAUSE THE CITY'S POSITION WAS THAT IT WAS GOING TO FULLY COOPERATE WITH THE SEC INVESTIGATION, WE SAID WE COULD DO THAT. AND WE SIGNED AN AGREEMENT WITH THE CITY DATED FEBRUARY 18TH TO THAT EFFECT, THAT WE WOULD BOTH REPRESENT

EXHIBIT 23

THE CITY OF SAN DIEGO

June 23, 2005

Mr. Lynn Turner
Audit Committee Member

Dear Mr. Turner

As indicated in the City Manager's e-mail of this morning, there is a great deal of confusion surrounding the June 10, 2005 memo. The core issue relates to how to do the searches properly, especially for electronic files and e-mail. We take the June 10th memo request very seriously and share the Audit Committee's goal of conducting a successful effort; however, the lack of a defined, consistent set of instructions has resulted in anxiety throughout the organization. Based on the questions arising from City employees, unless we take the time to provide clear direction to staff, the outcome will not be a consistent, comprehensive response that will meet the needs of the Audit Committee, KPMG and the law enforcement agencies.

Concerns

Despite the recent FAQ memo, we are still receiving questions from the organization. The questions generally surround the specific process to be used to conduct a search of electronic files and e-mail, whether search terms will be provided, why every City employee regardless of how far removed they may be from any of the issues needs to respond, and various questions specific to some departments' unique circumstances. As a result, the employees are concerned with signing a document when they feel they do not have the tools necessary to locate all responsive documents they may have in their possession. Though most of the questions outlined above need to be addressed globally, answers to questions specific to departments' unique circumstance are being captured through the telephone hotline and in targeted meetings with Mr. Jeffrey Klein and Mr. Paul Horan for consideration and response.

A number of hurdles have been identified through discussions with staff and as a result of lessons learned from our recent experience coordinating responses to U.S. Attorney's Office subpoenas in March 2005. The varied range of staff roles, complexity of the subject matter, varying levels of expertise about the subject matter, varying levels of familiarity with the use of technology, number of people expected to respond, and short timeframe combined with the lack of clear, concise, consistent direction are hurdles to completing a successful document search and production process with quality results.

Our recommendations described in the following sections focus on three areas: establishing search procedures, identifying target respondents, and timing.

Recommendations

Establishing Search Procedures

Given the lack of consistent, clear instructions, I am concerned about conducting an effort that results in missed documents of importance, potential criticism after trying to comply, or having to immediately re-conduct the process. The topics covered in the June 10th memo are lengthy and complex; employees are unsure where to begin. In our experience, it is most effective to provide search terms and specific procedures to employees to ensure responsive documents are produced. Hands-on technical assistance is also beneficial for those with limited technical knowledge. Without direction and assistance, individuals may default to procedures used previously, which may not be appropriate to the current request or otherwise fall short of meeting the requirements. Another possible outcome is that respondents may provide an excessive quantity of non-responsive documents in an effort to fully comply.

Issues pointing to the need for consistent procedures with search terms and specific technical direction include the following:

- City employees work on numerous projects and subjects at any given time; individuals cannot remember over the course of multiple years all documents that have been developed and retained. Search terms help locate the documents.
- Search terms assist in keeping an individual on track when reviewing boxes and drawers of hard copy files, a process which in some cases can take many days.
- Some departments rotate assignments frequently and staff persons move into new offices and take over the responsibilities, documents and files of former occupants.
- There are employees who may have documents, but who are unfamiliar with the subject matter and would not necessarily know what to search for without search terms. An example would be a clerical assistant or executive secretary that typed and maintained documents for a supervisor.
- Tapping into those with the subject matter expertise allows for development of search terms that would pick up documents that employees on the fringe of an issue and unfamiliar with all of the terminology may have in their possession.
- Many employees lack the technical expertise to do an effective search of their electronic files – they may only be familiar with basic e-mail and word processing features. As an example, many managers rely on others for technical assistance and would require that assistance for such a large and important effort.
- Search procedures prepared by the technical experts who understand the capabilities of the computer systems provide consistent results.
- Without specific direction, employees may not segregate electronic documents located during a search and therefore may not be able to get back to the exact list of documents identified when document production is required in the future.

Recommendation: Develop consistent procedures, including relevant search terms approved by the requesting authorities, for searching e-mail and electronic files.

Search terms would be proposed by City subject matter experts to provide an optimum list of terms that can be used consistently by respondents. These search terms would be a starting point for employees with direction to them to use their own knowledge and expertise to go beyond the list to conduct a thorough review of all documents.

In addition, it is recommended that specific step-by-step technical procedures for searching, segregating and saving e-mail and electronic documents for future production be developed and distributed to all respondents. Technical assistance is necessary for those lacking the technical skills. It is recommended that those with technical knowledge be available to assist employees needing help. Search terms, procedures and technical assistance will help to ensure a thorough and responsive result to this process and instill confidence regarding the process in requesting authorities.

Identifying Target Respondents

The target group currently includes all City employees. While understanding the need to cast a broad net to ensure all relevant documents are identified, informing every single City employee on the subject, having them conduct a search then sign a certification is a formidable task and unlikely to produce responsive documents beyond a certain point. There are approximately 12,000 total employees within the City. It is estimated that only 10% to 20% of these employees will have responsive documents, due to the nature of their positions and responsibilities with the City.

City staff includes not only financial professionals and managers, but also part time positions such as lifeguards and recreation leaders; blue-collar employees such as mowers, painters, refuse collection drivers, and mechanics; and public safety employees such as police officers and fire fighters. Many of these could be eliminated from the list of potential respondents based upon the nature of their jobs having no involvement whatsoever to the topics of the document requests. Many City employees do not work on, nor are expected to have communications related to the various topics of interest addressed in the June 10th memo. Employees such as line-managerial and blue-collar workers are typically involved in the direct delivery of public services to citizens on a daily basis.

Reaching all employees to have them certify they have no responsive documents is extremely challenging. Gathering those staff who are mobile, such as truck drivers, maintenance workers, and police officers; or who work multi-day shifts and are stationed throughout the City, such as fire fighters takes coordination and time to plan and execute.

Additionally, there are issues associated with conveying the information to the blue-collar employees. Many of these employees are not only unfamiliar with the issues addressed in the June 10th memo, but are so far removed from complex topics, an office environment, and legal language that they are afraid to sign their name to something they do not understand. Even when the document is explained in detail by an administrator more familiar with the subject matter, some employees do not have the background to comprehend the issues and do not want to sign a

document they view as intimidating, as the language on page 2 of the June 10th memo regarding "severe consequences" is perceived.

Recommendation: Use a three-tier approach to identify employees required to conduct searches and respond to the June 10th memo: (1) all employees in specific "core" departments, (2) all unclassified employees and specific position classifications throughout the City, and (3) any employee not otherwise included who may have had involvement in any of the subject matter.

1. Core departments recommended for response include Treasurer (including Financing Services), Financial Management, Human Resources (including Labor Relations), Personnel, Auditor and Comptroller, City Manager, City Attorney, and the Offices of the Mayor and City Council. These were selected because of the nature of their assignments and responsibilities in the context of the June 10th memo.

2. In order to be conservative, a number of general classifications throughout the City with the potential for having involvement with any of the subject matter will be required to conduct a search. Attached is a proposed list of all City employee classifications with those recommended for inclusion marked by an "x".

3. Finally, all department directors would be directed to identify those exceptions where City employees not employed in the core departments or identified classifications but who have or had special assignments, roles or positions related to the topics addressed in the June 10th memo; these identified employees will be directed to respond. Examples include a field engineer providing project status information for continuing disclosure requirements, or an employee who had served on the City's Retirement Board or on the board of a labor union.

Timing

If you concur with the proposed recommendations outlined above, additional time will be required for us to propose procedures and search terms, and refine the target employee population for your consideration and approval. We should continue searching for paper documents but suspend searching for e-mail and electronic documents until the procedures can be distributed.

In any case, an extension of the June 30, 2005 deadline is needed based on the significant logistical hurdles in getting all employees to execute the search and certification as identified earlier.

Recommendation: Extend the due date for the certification forms to a date to be determined based upon approval of procedures described above, and consideration of the time required to execute the searches.

Summary

Our recent experience has shown that a consistent and documented process is necessary for the best results. The recommendations offered are designed to provide consistent, timely, thorough, responsive, and documented results that will meet the requirements of the Audit Committee, KPMG, and law enforcement agencies.

Your consideration of these recommendations is greatly appreciated.

Respectfully,

Rey Arellano
Deputy City Manager & Chief Information Officer

Enclosure

Cc: Benito Romano, Audit Committee Counsel
P. Lamont Ewell, City Manager
Anita Noone, Deputy City Attorney
Jeffrey Klein
Paul Horan

Proposed List of Target Employee Classifications

Number of employees in each class as of payperiod ending 6/3/2005

755 = Employees included
12129 = Total employees

Class Title	No. in Class	Classifications to include
ACCOUNT AUDIT CLERK	10	x
ACCOUNTANT I	6	x
ACCOUNTANT II	21	x
ACCOUNTANT III	22	x
ACCOUNTANT IV	10	x
ASSISTANT CITY ATTORNEY	7	x
ASSISTANT CITY AUDITOR & COMPT	1	x
ASSISTANT CITY CLERK	1	x
ASSISTANT CITY LIBRARIAN	1	x
ASSISTANT DEPARTMENT DIRECTOR	2	x
ASSISTANT DEPUTY DIRECTOR	17	x
ASSISTANT ENVIRONMENTAL SVCS DIR	2	x
ASSISTANT EXECUTIVE SERVICES DIR	1	x
ASSISTANT FIRE CHIEF	3	x
ASSISTANT GOVERNMENTAL REL DIRECTOR	2	x
ASSISTANT INVESTMENT OFFICER	3	x
ASSISTANT METRO WASTEWATER DIRECTOR	1	x
ASSISTANT PERSONNEL DIRECTOR	1	x
ASSISTANT POLICE CHIEF	4	x
ASSISTANT RETIREMENT ADMINISTRATOR	1	x
ASSISTANT RETIREMENT GENERL COUNSEL	1	x
ASSISTANT TO FIRE CHIEF	2	x
ASSISTANT TO PARK & RECREATION DIR	1	x
ASSISTANT TO POLICE CHIEF/CIVILIAN	1	x
ASSISTANT TO THE DIRECTOR	3	x
ASSOCIATE COUNSEL	1	x
ASSOCIATE ECONOMIST	4	x
ASSOCIATE PERSONNEL ANALYST	14	x
ASST TO THE ENGNRNG & CAP PRJ DIR	1	x
BENEFITS REPRESENTATIVE I	2	x
BENEFITS REPRESENTATIVE II	6	x
BUILDING INSPECTION SUPV	2	x
CITY ATTORNEY	1	x
CITY AUDITOR & COMPTROLLER	1	x
CITY CLERK	1	x
CITY LIBRARIAN	1	x
CITY MANAGER	1	x
CLAIMS AND INSURANCE MANAGER	4	x
COMMITTEE CONSULTANTS SECRETARY	1	x
CONF SECRETARY TO CITY ATTY	1	x
CONF SECRETARY TO CITY MANAGER	1	x
CONF SECRETARY TO MAYOR	1	x
CONF SECRETARY TO POLICE CHIEF	1	x
COUNCIL ASSISTANT	7	x
COUNCIL COMMITTEE CONSULTANT	3	x
COUNCIL MEMBER	8	x
COUNCIL REP IIA	8	x
COUNCIL REPRESENTATIVE I	53	x
COUNCIL REPRESENTATIVE II B	22	x
CRIME LABORATORY MANAGER	1	x
DEPARTMENT DIRECTOR	4	x
DEPUTY CITY ATTORNEY.	139	x
DEPUTY CITY MANAGER	5	x
DEPUTY DIRECTOR	45	x

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
DEPUTY DIRECTOR, ELECTNS & REC MGMT	1	x
DEPUTY DIRECTOR, LEGISLATIVE SERV	1	x
DEPUTY FIRE CHIEF	6	x
DEPUTY LIBRARY DIRECTOR	3	x
DEPUTY PERSONNEL DIRECTOR	2	x
DEVELOPMENT SERVICES DIRECTOR	1	x
DISABILITY SERVICES COORDINATOR	1	x
EMPLOYEE BENEFITS SPECIALIST I	2	x
EMPLOYEE BENEFITS SPECIALIST II	1	x
ENDOWMENT OFFICER	1	x
ENGINEERING AND CAPITAL PROJ DIR	1	x
ENVIRONMENTAL SERVICES DIRECTOR	1	x
EQUAL EMPLOYMENT INVESTIGATIONS MGR	1	x
EXECUTIVE ASSISTANT POLICE CHIEF	1	x
EXECUTIVE DIRECTOR	4	x
EXECUTIVE SECRETARY	37	x
EXECUTIVE SERVICES DIRECTOR	1	x
FACILITY MANAGER	1	x
FINANCIAL MANAGEMENT DIRECTOR	2	x
FINANCIAL OPERATIONS MANAGER	4	x
FIRE CHIEF	1	x
FIRE SHIFT COMMANDER	3	x
GOLF COURSE OPERATIONS MANAGER	1	x
GOVERNMENTAL RELATIONS DIRECTOR	1	x
GRANTS COORDINATOR	1	x
HOMELESS SERVICES COORDINATOR	1	x
INFORMATION SYSTEMS ADMINISTRATOR	6	x
INFORMATION SYSTEMS ANALYST IV	19	x
INFORMATION SYSTEMS MANAGER	1	x
INVESTMENT OFFICER	2	x
LABOR RELATIONS MANAGER	1	x
LIFEGUARD CHIEF	1	x
MANAGEMENT ASSISTANT TO CITY MGR	3	x
MAYOR	1	x
MEDICAL REVIEW OFFICER	1	x
METROPOLITAN WASTEWATER DIRECTOR	1	x
NEIGHBORHOOD CODE COMPLIANCE DIR	1	x
NEIGHBORHOOD SERVICES COORDINATOR	8	x
PARAMEDIC COORDINATOR	1	x
PARK AND RECREATION DIRECTOR	2	x
PAYROLL AUDIT SPECIALIST I	9	x
PAYROLL AUDIT SPECIALIST II	5	x
PAYROLL AUDIT SUPERVISOR-AUDITOR	1	x
PAYROLL AUDIT SUPERVISOR-PERSONNEL	2	x
PAYROLL SUPERVISOR	3	x
PERSONNEL DIRECTOR	1	x
PLANNING DIRECTOR	1	x
POLICE ADMINISTRATIVE SERVICES DIR	1	x
POLICE CHIEF	1	x
PRINCIPAL ACCOUNTANT	11	x
PRINCIPAL ASSISTANT TO CITY ATTY	1	x
PROGRAM COORDINATOR	3	x
PROGRAM MANAGER	47	x
QUALITY MANAGEMENT COORDINATOR	3	x
REAL ESTATE ASSETS DIRECTOR	1	x
REGIONAL URBAN INFO SYSTEM ADMIN	1	x
RESOURCE DEVELOPMENT OFFICER	3	x

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
RETIREMENT ADMINISTRATOR	1	x
RETIREMENT GENERAL COUNSEL	1	x
RISK MANAGEMENT DIRECTOR	1	x
SENIOR PERSONNEL ANALYST	7	x
SUPERVISING CLAIMS REPRESENTATIVE	5	x
SUPERVISING ECONOMIST	4	x
SUPERVISING MANAGEMENT ANALYST	41	x
SUPERVISING PERSONNEL ANALYST	6	x
TRANSPORTATION DIRECTOR	1	x
TREASURER	2	x
WATER DEPARTMENT DIRECTOR	1	x
ACCOUNT CLERK	62	
ACCOUNTANT TRAINEE	8	
ADMINISTRATIVE AIDE I	24	
ADMINISTRATIVE AIDE II	83	
AIRPORT MANAGER	2	
AIRPORT NOISE ABATEMENT OFFICER	1	
AIRPORT OPERATIONS ASSISTANT	3	
APPLICATIONS PROGRAMMER II	2	
APPRENTICE I-COMMS TECHNICIAN	3	
APPRENTICE II-COMMS TECHNICIAN	2	
APPRENTICE I-WELDER	1	
AQUATICS TECHNICIAN I	3	
AQUATICS TECHNICIAN II	3	
AQUATICS TECHNICIAN SUPERVISOR	1	
AREA MANAGER II	25	
AREA REFUSE COLLECTION SUPERVISOR	14	
ASBESTOS PROGRAM MANAGER	1	
ASSISTANT CHEMIST	56	
ASSISTANT ENGINEER-CIVIL	228	
ASSISTANT ENGINEER-ELECTRICAL	8	
ASSISTANT ENGINEER-MECHANICAL	1	
ASSISTANT ENGINEER-TRAFFIC	29	
ASSISTANT FIRE MARSHAL	1	
ASSISTANT LABORATORY TECHNICIAN	3	
ASSISTANT PLANNER	10	
ASSISTANT RECREATION CENTER DIR	25	
ASSISTANT RESERVOIR KEEPER	8	
ASSOCIATE CHEMIST	16	
ASSOCIATE COMMUNICATIONS ENGINEER	3	
ASSOCIATE ENGINEER-CIVIL	161	
ASSOCIATE ENGINEER-CORROSION	3	
ASSOCIATE ENGINEER-ELECTRICAL	8	
ASSOCIATE ENGINEER-MECHANICAL	9	
ASSOCIATE ENGINEER-TRAFFIC	33	
ASSOCIATE MANAGEMENT ANALYST	162	
ASSOCIATE PLANNER	44	
ASSOCIATE PROPERTY AGENT	14	
AUTO MESSENGER I	11	
AUTO MESSENGER II	10	
BINDERY WORKER II	4	
BINDERY WORKER III	2	
BIOLOGIST I	1	
BIOLOGIST II	17	
BIOLOGIST III	11	
BODY AND FENDER MECHANIC	6	
BUILDING MAINTENANCE SUPERVISOR	11	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
BUILDING SERVICE TECHNICIAN	32	
BUILDING SERVICES SUPERVISOR	4	
BUILDING SUPERVISOR	6	
BUYER'S AIDE II	1	
CAL-ID TECHNICIAN	13	
CARPENTER	22	
CARPENTER SUPERVISOR	1	
CASHIER	7	
CEMENT FINISHER	16	
CEMETERY MANAGER	1	
CITY ATTORNEY INVESTIGATOR	19	
CLAIMS AIDE	11	
CLAIMS CLERK	12	
CLAIMS REPRESENTATIVE II	18	
CLERICAL ASSISTANT I	25	
CLERICAL ASSISTANT II	297	
CODE COMPLIANCE OFFICER	40	
CODE COMPLIANCE SUPERVISOR	4	
COLLECTIONS INVESTIGATOR I	24	
COLLECTIONS INVESTIGATOR II	4	
COLLECTIONS INVESTIGATOR III	4	
COLLECTIONS INVESTIGATOR TRAINEE	2	
COLLECTIONS MANAGER	1	
COMBINATION INSPECTOR I	14	
COMBINATION INSPECTOR II	37	
COMMUNICATIONS TECHNICIAN	21	
COMMUNICATIONS TECHNICIAN SUPV	6	
COMMUNITY DEVELOPMENT COORDINATOR	6	
COMMUNITY DEVELOPMENT SPEC II	13	
COMMUNITY DEVELOPMENT SPEC III	1	
COMMUNITY DEVELOPMENT SPEC IV	19	
COMMUNITY SERVICE OFFICER I	6	
COMMUNITY SERVICE OFFICER II	42	
CONSTRUCTION ESTIMATOR	7	
COURT SUPPORT CLERK I	11	
COURT SUPPORT CLERK II	10	
CRIMINALIST II	24	
CUSTODIAN I	6	
CUSTODIAN II	70	
CUSTODIAN III	9	
CUSTOMER SERVICES REPRESENTATIVE	34	
CUSTOMER SERVICES SUPERVISOR	5	
DATA ENTRY OPERATOR	11	
DATA ENTRY SUPERVISOR	1	
DEPUTY CITY CLERK I	12	
DEPUTY CITY CLERK II	3	
DEVELOPMENT PROJECT MANAGER I	12	
DEVELOPMENT PROJECT MANAGER II	15	
DEVELOPMENT PROJECT MANAGER III	9	
DISPATCHER I	8	
DISPATCHER II	91	
DISPOSAL SITE REPRESENTATIVE	14	
DISPOSAL SITE SUPERVISOR	4	
DISPUTE RESOLUTION OFFICER	1	
DISTRICT MANAGER	17	
DISTRICT REFUSE COLLECTION SUPV	2	
DOCUMENTS EXAMINER III	2	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
DOCUMENTS INPUT CLERK (TERMINAL)	3	
ELECTRICAL INSPECTOR II	8	
ELECTRICIAN	31	
ELECTRICIAN SUPERVISOR	3	
ELECTRONIC PUBLISHING SPECIALIST	2	
ELECTRONICS TECHNICIAN	2	
EMERGENCY MEDICAL TECHNICIAN	50	
EMPLOYEE ASSISTANCE COUNSELOR	2	
EMPLOYEE ASSISTANCE PROGRAM MANAGER	1	
ENGINEERING TRAINEE	1	
EQUIPMENT MECHANIC	125	
EQUIPMENT OPERATOR I	64	
EQUIPMENT OPERATOR II	57	
EQUIPMENT OPERATOR III	5	
EQUIPMENT PAINTER	1	
EQUIPMENT REPAIR SUPERVISOR	20	
EQUIPMENT SERVICE WRITER	8	
EQUIPMENT TECHNICIAN I	48	
EQUIPMENT TECHNICIAN II	23	
EQUIPMENT TECHNICIAN III	2	
EQUIPMENT TRAINER	1	
FIELD REPRESENTATIVE	20	
FIRE BATTALION CHIEF	26	
FIRE CAPTAIN	209	
FIRE CAPTAIN - MAST	4	
FIRE DISPATCH SUPERVISOR	5	
FIRE DISPATCHER	30	
FIRE ENGINEER	192	
FIRE ENGINEER - MAST	3	
FIRE FIGHTER I	43	
FIRE FIGHTER II	380	
FIRE PREVENTION INSPECTOR I	1	
FIRE PREVENTION INSPECTOR II	25	
FIRE PREVENTION INSPECTOR II/CIV	7	
FIRE PREVENTION SUPERVISOR	6	
FIRE PREVENTION SUPERVISOR/CIVILIAN	1	
FIRE RECRUIT	2	
FLEET MAINTENANCE SUPERVISOR	2	
FLEET MANAGER	1	
FLEET PARTS BUYER	5	
FORENSIC SPECIALIST	8	
GENERAL UTILITY SUPERVISOR	1	
GENERAL WATER UTILITY SUPERVISOR	5	
GOLF COURSE MANAGER	3	
GOLF COURSE SUPERINTENDENT	2	
GOLF STARTER	21	
GRAPHIC DESIGN SUPERVISOR	2	
GRAPHIC DESIGNER	6	
GREENSKEEPER	10	
GREENSKEEPER SUPERVISOR	4	
GROUNDS MAINTENANCE MANAGER	24	
GROUNDS MAINTENANCE SUPERVISOR	11	
GROUNDS MAINTENANCE WORKER I	48	
GROUNDS MAINTENANCE WORKER II	255	
HAZARDOUS MATERIAL/PRTRTMNT TRAINEE	2	
HAZARDOUS MATERIALS INSPECTOR I	2	
HAZARDOUS MATERIALS INSPECTOR II	8	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
HAZARDOUS MATERIALS INSPECTOR III	5	
HAZARDOUS MATERIALS PROGRAM MANAGER	1	
HEAT,VENT,& AIR CONDITIONING SUPV	1	
HEATING TECHNICIAN	4	
HEAVY TRUCK DRIVER I	19	
HEAVY TRUCK DRIVER II	31	
HORTICULTURIST	5	
HYDROGRAPHY AIDE	1	
INFORMATION SYSTEMS ANALYST II	50	
INFORMATION SYSTEMS ANALYST III	24	
INFORMATION SYSTEMS TECHNICIAN	31	
INSTRUMENTATION & CONTROL SUPV	2	
INSTRUMENTATION AND CONTROL TECH	17	
INTERMEDIATE STENOGRAPHER	4	
INTERVIEW & INTERROGATION SPEC III	3	
IRRIGATION SPECIALIST	5	
JUNIOR ENGINEER-CIVIL	24	
JUNIOR ENGINEERING AIDE	6	
JUNIOR PLANNER	12	
LABORATORY TECHNICIAN	36	
LABORER	35	
LAKE AIDE I	15	
LAKE AIDE II	13	
LAKES PROGRAM MANAGER	2	
LAND SURVEYING ASSISTANT	23	
LAND SURVEYING ASSOCIATE	10	
LANDFILL EQUIPMENT OPERATOR	20	
LATENT PRINT & FORENSIC SPEC SUP	1	
LATENT PRINT EXAMINER II	11	
LEGAL ASSISTANT	21	
LEGAL INTERN	2	
LEGAL SECRETARY	32	
LEGISLATIVE RECORDER I	1	
LEGISLATIVE RECORDER II	5	
LIBRARIAN I	14	
LIBRARIAN II	66	
LIBRARIAN III	28	
LIBRARIAN IV	27	
LIBRARY AIDE	251	
LIBRARY ASSISTANT	89	
LIBRARY CLERK	129	
LIBRARY TECHNICIAN	13	
LIFEGUARD I	222	
LIFEGUARD II	63	
LIFEGUARD III	10	
LIFEGUARD SERGEANT	13	
LIGHT EQUIPMENT OPERATOR	12	
LITERACY PROGRAM ADMINISTRATOR	1	
LITHOGRAPHIC TECHNICIAN	1	
LOCKSMITH	2	
MACHINIST	7	
MANAGEMENT INTERN	58	
MANAGEMENT INTERN-MAYOR/COUNCIL	3	
MARINE BIOLOGIST II	17	
MARINE BIOLOGIST III	3	
MARINE SAFETY LIEUTENANT	4	
MECHANICAL INSPECTOR II	9	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
METAL FABRICATION SUPERVISOR	3	
METER READER	26	
MOTIVE SERVICE TECHNICIAN	29	
MOTOR SWEEPER OPERATOR	23	
MOTOR SWEEPER SUPERVISOR	1	
MULTIMEDIA PRODUCTION COORDINATOR	3	
MULTIMEDIA PRODUCTION SPECIALIST	3	
NURSERY GARDENER	4	
NURSERY SUPERVISOR	1	
OFFSET PRESS OPERATOR	1	
OFFSET PRESS SUPERVISOR	1	
ORGANIZATION EFFECTIVENESS SPEC II	15	
ORGANIZATION EFFECTIVENESS SPEC III	5	
ORGANIZATION EFFECTIVENESS SUPV	5	
PAINTER	18	
PAINTER SUPERVISOR	1	
PARAMEDIC II	13	
PARK DESIGNER	10	
PARK RANGER	21	
PARKING ENFORCEMENT OFFICER I	43	
PARKING ENFORCEMENT OFFICER II	19	
PARKING ENFORCEMENT SUPERVISOR	7	
PARKING METER SUPERVISOR	1	
PARKING METER TECHNICIAN	6	
PAYROLL SPECIALIST I	7	
PAYROLL SPECIALIST II	54	
PESTICIDE APPLICATOR	5	
PESTICIDE SUPERVISOR	1	
PLAN REVIEW SPECIALIST I	12	
PLAN REVIEW SPECIALIST II	5	
PLAN REVIEW SPECIALIST III	31	
PLAN REVIEW SPECIALIST IV	8	
PLANNING INTERN	11	
PLANT PROCESS CONTROL ELECTRICIAN	31	
PLANT PROCESS CONTROL SUPERVISOR	21	
PLANT TECHNICIAN I	15	
PLANT TECHNICIAN II	25	
PLANT TECHNICIAN III	13	
PLANT TECHNICIAN SUPERVISOR	11	
PLASTERER	1	
PLUMBER	12	
PLUMBER SUPERVISOR	1	
POLICE AGENT	13	
POLICE CAPTAIN	14	
POLICE CODE COMPLIANCE OFFICER	16	
POLICE CODE COMPLIANCE SUPERVISOR	1	
POLICE DISPATCH ADMINISTRATOR	2	
POLICE DISPATCH SUPERVISOR	12	
POLICE DISPATCHER	49	
POLICE INVESTIGATIVE AIDE II	11	
POLICE LEAD DISPATCHER	12	
POLICE LIEUTENANT	44	
POLICE OFFICER I	102	
POLICE OFFICER II	1555	
POLICE PROPERTY & EVIDENCE CLERK	14	
POLICE RECORDS CLERK	27	
POLICE RECRUIT	47	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
POLICE SERGEANT	282	
POOL GUARD I	48	
POOL GUARD II	104	
POWER PLANT OPERATOR	4	
POWER PLANT SUPERVISOR	3	
PRINCIPAL CITY ATTNY INVESTIGATOR	1	
PRINCIPAL CLERK	5	
PRINCIPAL DRAFTING AIDE	7	
PRINCIPAL ENGINEERING AIDE	81	
PRINCIPAL LEGAL ASSISTANT	1	
PRINCIPAL PLAN REVIEW SPECIALIST	1	
PRINCIPAL PLANT TECHNICIAN SUPV	3	
PRINCIPAL POLICE RECORDS CLERK	2	
PRINCIPAL PROCUREMENT SPECIALIST	3	
PRINCIPAL SURVEY AIDE	11	
PRINCIPAL TRAFFIC ENGINEERING AIDE	6	
PRINCIPAL UTILITY SUPERVISOR	2	
PRINCIPAL WATER UTILITY SUPERVISOR	3	
PRINT SHOP SUPERVISOR	1	
PROCUREMENT SPECIALIST	8	
PROGRAMMER ANALYST III	1	
PROJECT ASSISTANT	8	
PROJECT OFFICER I	15	
PROJECT OFFICER II	18	
PROPERTY AGENT	8	
PROPERTY AND EVIDENCE SUPERVISOR	3	
PUBLIC ART PROGRAM ADMINISTRATOR	1	
PUBLIC INFORMATION CLERK	73	
PUBLIC INFORMATION OFFICER	8	
PUBLIC INFORMATION SPECIALIST	16	
PUBLIC WORKS DISPATCH SUPERVISOR	1	
PUBLIC WORKS DISPATCHER	12	
PUBLIC WORKS SUPERINTENDENT	6	
PUBLIC WORKS SUPERVISOR	22	
PUMP STATION OPERATIONS SUPERVISOR	3	
PUMP STATION OPERATOR	15	
RANGER/DIVER I	3	
RANGER/DIVER II	2	
RECREATION AIDE	22	
RECREATION CENTER DIRECTOR I	14	
RECREATION CENTER DIRECTOR II	24	
RECREATION CENTER DIRECTOR III	28	
RECREATION LEADER I	244	
RECREATION LEADER II	51	
RECREATION SPECIALIST	11	
RECYCLING PROGRAM MANAGER	2	
RECYCLING SPEC I	2	
RECYCLING SPEC II	8	
RECYCLING SPECIALIST III	1	
REFRIGERATION MECHANIC	7	
REHABILITATION COORDINATOR	1	
RESERVOIR KEEPER	9	
RETIREMENT ASSISTANT	6	
ROOFER	5	
SAFETY AND TRAINING MANAGER	6	
SAFETY OFFICER	10	
SAFETY REPRESENTATIVE I	1	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
SAFETY REPRESENTATIVE II	18	
SANITATION DRIVER I	39	
SANITATION DRIVER II	135	
SANITATION DRIVER III	20	
SANITATION DRIVER TRAINEE	2	
SENIOR ACCOUNT AUDIT CLERK	4	
SENIOR ACCOUNT CLERK	12	
SENIOR AIRPORT OPERATIONS ASSISTANT	1	
SENIOR BIOLOGIST	2	
SENIOR BOAT OPERATOR	2	
SENIOR BUILDING MAINTENANCE SUPV	1	
SENIOR CASHIER	2	
SENIOR CHEMIST	4	
SENIOR CITY ATTORNEY INVESTIGATOR	6	
SENIOR CIVIL ENGINEER	55	
SENIOR CLAIMS REPRESENTATIVE	3	
SENIOR CLERK/TYPIST	76	
SENIOR CODE COMPLIANCE SUPERVISOR	1	
SENIOR COMBINATION INSPECTOR	6	
SENIOR COMMUNICATIONS ENGINEER	1	
SENIOR COMMUNICATIONS TECH	6	
SENIOR COMMUNICATIONS TECH SUPV	1	
SENIOR CUSTOMER SERVICES REP	6	
SENIOR DISPOSAL SITE REPRESENTATIVE	2	
SENIOR DRAFTING AIDE	15	
SENIOR ELECTRICAL ENGINEER	2	
SENIOR ELECTRICAL INSPECTOR	1	
SENIOR ENGINEER-FIRE PROTECTION	1	
SENIOR ENGINEERING AIDE	36	
SENIOR ENGINEERING GEOLOGIST	2	
SENIOR LAND SURVEYOR	3	
SENIOR LEGAL ASSISTANT	6	
SENIOR LEGAL SECRETARY	9	
SENIOR LEGISLATIVE RECORDER	2	
SENIOR LIBRARY TECHNICIAN	3	
SENIOR LOCKSMITH	1	
SENIOR MANAGEMENT ANALYST	77	
SENIOR MARINE BIOLOGIST	2	
SENIOR MECHANICAL ENGINEER	4	
SENIOR MECHANICAL INSPECTOR	1	
SENIOR MOTIVE SERVICE TECHNICIAN	29	
SENIOR OFFSET PRESS OPERATOR	5	
SENIOR PARK RANGER	9	
SENIOR PARKING METER TECHNICIAN	1	
SENIOR PLANNER	49	
SENIOR PLANT TECHNICIAN SUPERVISOR	10	
SENIOR POLICE RECORDS CLERK	4	
SENIOR POWER PLANT SUPERVISOR	2	
SENIOR PROCUREMENT SPECIALIST	1	
SENIOR PROPERTY AND EVIDENCE SUPV	1	
SENIOR PUBLIC INFORMATION OFFICER	9	
SENIOR REFRIGERATION MECHANIC	4	
SENIOR STABLE ATTENDANT	1	
SENIOR STADIUM GROUNDSKEEPER	1	
SENIOR STRUCTURAL INSPECTOR	2	
SENIOR SURVEY AIDE	5	
SENIOR TRAFFIC ENGINEER	11	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
SENIOR UTILITY SUPERVISOR	1	
SENIOR WASTEWATER OPERATIONS SUPV	12	
SENIOR WASTEWATER PLANT OPERATOR	4	
SENIOR WATER OPERATIONS SUPV	3	
SENIOR WATER UTILITY SUPERVISOR	14	
SENIOR ZONING INVESTIGATOR	5	
SEVEN-GANG MOWER OPERATOR	12	
SIGN PAINTER	2	
SIGN SHOP SUPERVISOR	1	
SPECIAL EVENT TRAFFIC CONTROL SUPV	2	
SPECIAL EVENT TRAFFIC CONTROLLER I	129	
SPECIAL EVENT TRAFFIC CONTROLLER II	2	
STADIUM GROUNDSKEEPER	2	
STADIUM MAINTENANCE TECHNICIAN	3	
STADIUM TURF MANAGER	1	
STOCK CLERK	28	
STOREKEEPER I	14	
STOREKEEPER II	3	
STOREKEEPER III	2	
STORES OPERATIONS SUPERVISOR	1	
STRUCTURAL ENGINEERING ASSOCIATE	25	
STRUCTURAL ENGINEERING SENIOR	10	
STRUCTURAL INSPECTOR I	3	
STRUCTURAL INSPECTOR II	11	
STUDENT ENGINEER	40	
STUDENT INTERN	28	
SUPERVISING ACADEMY INSTRUCTOR	1	
SUPERVISING CAL-ID TECHNICIAN	4	
SUPERVISING CRIMINALIST	4	
SUPERVISING CUSTODIAN	2	
SUPERVISING FIELD REPRESENTATIVE	3	
SUPERVISING HAZARDOUS MATERIAL INSP	2	
SUPERVISING LIBRARIAN	7	
SUPERVISING METER READER	2	
SUPERVISING PLAN REVIEW SPECIALIST	8	
SUPERVISING PROPERTY AGENT	5	
SUPERVISING PUBLIC INFO OFFICER	9	
SUPERVISING RECREATION SPECIALIST	7	
SUPERVISING RECYCLING SPEC	1	
SUPERVISING WSTWTER PREREATMNT INSP	2	
SWIMMING POOL MANAGER I	23	
SWIMMING POOL MANAGER II	5	
SWIMMING POOL MANAGER III	8	
TANK SERVICE TECHNICIAN I	1	
TEST ADMINISTRATION SPEC	6	
TRAFFIC SIGNAL SUPERVISOR	2	
TRAFFIC SIGNAL TECHNICIAN II	16	
TRAINING SUPERVISOR	2	
TREE MAINTENANCE CREWLEADER	4	
TREE TRIMMER	3	
UTILITY SUPERVISOR	15	
UTILITY WORKER I	182	
UTILITY WORKER II	59	
VEHICLE AND FUEL CLERK	4	
VICTIM SERVICES COORDINATOR	4	
WASTEWATER OPERATIONS SUPERVISOR	30	
WASTEWATER PLANT OPERATOR	42	

Proposed List of Target Employee Classifications

Class Title	No. in Class	Classifications to include
WASTEWATER PRETREATMENT INSP I	2	
WASTEWATER PRETREATMENT INSP II	5	
WASTEWATER PRETREATMENT INSP III	6	
WASTEWATER PRETREATMENT PGM MANAGER	1	
WASTEWATER TREATMENT SUPERINTENDENT	4	
WATER DISTRIBUTION OPERATIONS SUPV	1	
WATER DISTRIBUTION OPERATOR	5	
WATER OPERATIONS SUPERVISOR	3	
WATER PLANT OPERATOR	18	
WATER PRODUCTION SUPERINTENDENT	2	
WATER SYSTEMS DISTRICT MANAGER	6	
WATER SYSTEMS TECHNICIAN I	2	
WATER SYSTEMS TECHNICIAN II	95	
WATER SYSTEMS TECHNICIAN III	58	
WATER SYSTEMS TECHNICIAN IV	64	
WATER SYSTEMS TECHNICIAN SUPERVISOR	23	
WATER UTILITY SUPERVISOR	17	
WATER UTILITY WORKER	40	
WELDER	20	
WORD PROCESSING OPERATOR	177	
WORK SERVICE AIDE	5	
ZONING INVESTIGATOR II	15	

EXHIBIT 24

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 25

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

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EXHIBIT 26

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

August 5, 2005

Troy Dahlberg
Audit Committee
of the City of San Diego

Dear Mr. Dahlberg:

Audit Committee of the City of San Diego

In connection with the Audit Committee's continuing investigation regarding the City's 2003 Financial Statements, the Audit Committee has requested that this office provide certain documents indicated in your requests, dated May 20, 2005, and July 27, 2005 (collectively the "Audit Committee Requests").

I understand that the Audit Committee has previously received from this office copies of all subpoenas issued by the Securities and Exchange Commission and United States Attorney (to the City and City Employees) that are in the possession of the City Attorney's office (referenced in your May 20, 2005 transmittal), and it is assumed that such request is no longer outstanding. Also, it is my understanding that the law firm of Luce Forward Hamilton & Scripps was the outside counsel who provided legal advice to the City related to "Deeds of Trust" involved with the Gleason settlement.

This office has prepared the following reports, and each of said reports are supported by the documents indicated below each report heading:

(1) **Interim Report No. 1 (January 14, 2005)**, regarding possible abuse, fraud, and illegal acts by San Diego City officials and employees, the City Attorney released evidence that the 2002 final report of the Mayor's Blue Ribbon Committee Report on City of San Diego Finances vastly understated the severity of the City's pension fund liability by 318% or $215 million, such report being supported by the following documentation:

1. Abuse "involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances." General Accounting Office, Government Auditing Standards 4.19.

2. 11 October 2004 letter from Steven G. DeVetter to Les Girard, p. 8.

3. "Predication is the totality of circumstances that would lead a reasonable, professional trained, and prudent individual to believe a fraud has occurred, is occurring, or will occur. Predication is the basis upon which an examination is commenced." [2003 Association of Certified Fraud Examiners, Fraud Examiners Manual p. xxvii.]

4. "SDCERS" refers to the San Diego City Employees Retirement System.

5. 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard.

6. 18 February 2004 Retainer letter from Paul Maco to Casey Gwinn.

7. See fn 6, 18 February 2004 Retainer letter from Paul Maco to Casey Gwinn.

8. 16 September 2004 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.

9. See fn 2, 1 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard, see also fn 10, 29 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego City Mayor Dick Murphy and San Diego City Manager Lamont Ewell.

10. 29 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego City Mayor Dick Murphy and San Diego City Manager Lamont Ewell.

11. See fn 2, 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard citing to the 16 September 2004 Report pp. 170-171 which refers to "across the board failures of the City's internal disclosure processes."

12. See fn 2, 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard citing to the 16 September 2004 Report pp.114-120.

13. See fn 2, 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard.

14. See fn 2, 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard citing to the 16 September 2004 Report p. 117.

15. See fn 2, 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard.

16. See fn 2, 11 October 2004 letter from KPMG partner Steven G. DeVetter to San Diego Assistant City Attorney Leslie J. Girard.

17. 9 December 2004 San Diego City Attorney news release announcing that the San Diego City Attorney was conducting an independent investigation into the matter.

18. Blue Ribbon Committee Report on City of San Diego Finances, Table of Contents, pp. 20-21.

19. City of San Diego Mayor's Blue Ribbon Advisory Committee Announcement.

20. 16 September 2004 Report p. 45.

21. 23 July 1996 Cathy Lexin (City of San Diego Labor Relations Office) Memorandum re: City Manager's Retirement Proposal.

22. Under § 144 of the San City Charter the City Auditor sits on the pension board. During 2002 Ms. Webster was the auditor representative on the pension board.

23. 16 September 2004 Report p. 79.

24. Ms. Sally Zumwalt, former pension plan administrator, explained in a statement given on 11 January 2004 that it was her practice to distribute to Ms. Webster pension board materials. Ms. Zumwalt stated that she took the board documents directly to Ms. Webster's office. Ms. Zumwalt had previously worked for the City Auditor's office.

25. See fn 23, 16 September 2004 Report p. 79.

26. 5 February 2003 Pension Plan Response to Blue Ribbon Report on City Finances.

27. See fn 23, 16 September 2004 Report p. 79.

28. 26 December 2000 memorandum from Ed Ryan to SDCERS Board of Administration.

29. San Diego City Charter § 39

30. See fn 23, 16 September 2004 Report p. 79.

31. 27 February 2002 Meeting Minutes of the Committee on Rules, Finance, and Intergovernmental Relations. At this time, the Rules Committee was chaired by Mayor Dick Murphy, and staffed by City Councilpersons Wear, Madaffer, Stevens, and Atkins.

32. Fiscal year 2001 pension plan actuarial report.

33. Minutes for the 27 February 2002, 20 March 2002 Rules Committee and the 15 April 2002 City Council Meeting.

34. Memorandum from Dan Andrews, City Attorney Investigator who reviewed the contents of the audio tapes of the Rules Committee Meetings for 27 February 2002 and 20 March 2002.

35. *Ibid.* The City Attorney's Office is currently investigating whether, as of 20 March 2002, the Mayor had prior knowledge of the actual funded ratio for the pension plan.

36. On 15 April 2002, following the Mayor's Blue Ribbon Committee Report on City of San Diego Finances, Council woman Frye made a motion directing the City Manager to return to the Council with a full report responding to the report of the Mayor's Blue Ribbon Committee on City of San Diego Finances. See fn 33.

37. 16 September 2004 Report, p. 89.

38. 16 September 2004 Report, p. 80.

39. 16 September 2002 memorandum from Terri Webster to Larry Grissom.

40. SDCERS Annual Actuarial Valuation 30 June 2002.

41. See fn 26, SDCERS response to the Mayor's Blue Ribbon Committee Report on City of San Diego Finances, 5 February 2003.

(2) **Interim Report No. 2 (February 2, 2005)**, regarding abuse, illegal acts, and fraud by City of San Diego officials, the City Attorney revealed substantial evidence consistent with a finding that the Mayor and Council authorized the issuance of a City bond offering and related disclosure documents that they knew to be false, such report being supported by the following documentation:

1. Interim Report No. 1 Regarding Possible Abuse, Fraud, and Illegal Acts by San Diego City Officials and Employees, pp. 15-16.

2. San Diego City Charter Article V §39. (Exhibit 1)

3. 11 October 2001 (10:13 AM) Email from Cathy Lexin to Terri Webster on the subject of "EEEK." (Exhibit 47)

4. 14 June 2002 Memorandum from Cathy Lexin to Mayor and City Council p. 2. (Exhibit 2)

5. San Diego City Employees Retirement System Annual Actuarial Valuations 30 June 2003 p. 13 (Exhibit 3) and 30 June 2004 p. 13 (Exhibit 4); see 14 June 2002 Memorandum from Cathy Lexin to Mayor and City Council p. 2 (Exhibit 2).

6. The "funding ratio" refers to the ratio between the pension's assets and liabilities.

7. 23 July 1996 Memorandum from Cathy Lexin to Larry Grissom re: City Manager's Retirement Proposal, p. 7 (Exhibit 5); see also, 30 June 1996 Actuarial Valuation (Exhibit 6).

8. Under the trigger, the City was required to return the pension plan to a 82.3% funding ratio by the July following the applicable actuarial report. The funding ratio fell to 77.3% (5% below the 82.3% trigger) as of June 2002 and 67% (15% below the 82.3% trigger) as of June 2003. Under the trigger formula, the City was required to pay $159 million by 1 July 2004 (.05 x $3,168,921) and $371 million by 1 July 2005 (.15 x $3,532,626); see, 23 July 1996 Memorandum from Cathy Lexin to Larry Grissom re:

City Manager's Retirement Proposal, p. 7 for trigger formula. (Exhibit 5)

9. San Diego City Charter Article IX § 143 (Exhibit 7); See, San Diego Municipal Code § 24.0801 (ante November 2002) (Exhibit 8).

10. 14 June 2002 Memorandum from Cathy Lexin to Mayor and City Council p. 2. (Exhibit 2)

11. 23 July 1996 Memorandum from Cathy Lexin to Larry Grissom p. 7 (Exhibit 5); the 1996 actuarial valuation was 92.3% (See, Annual Actuarial Valuation as of June 30, 1996 p. 16 (Exhibit 6)).

12. 3 December 2001 email from Terri Webster to Lawrence Grissom with a copy to Cathy Lexin on the subject of "earnings EEEK!" (Exhibit 9)

13. 3 January 2002 emails between Cathy Lexin and Terri Webster. (Exhibit 10)

14. 12 February 2002 Email from Terri Webster to Ed Ryan on the subject of EGF and CERS. (Exhibit 11)

15. San Diego City Employees' Retirement System Annual Actuarial Valuation 30 June 2001 p. 13. (Exhibit 12)

16. 28 February 2002 (8:10 AM) Email from Mary Vattimo to Ed Ryan, Terri Webster, Cathy Lexin, copied to Bruce Herring on the subject of CERS earnings.

17. 18 March 2002 Email from Terri Webster to Rgarnica@unitedcalbank.com on the subject of CERS. (Exhibit 13)

18. 6 March 2002 (5:32PM) Email from Lawrence Grissom to Terri Webster. (Exhibit 14)

19. 15 April 2002 (3:24 PM) Email from Lawrence Grissom to Terri Webster. (Exhibit 15)

20. 15 April 2002 (5:58 PM) Email from Terri Webster to Lawrence Grissom. (Exhibit 15)

21. 26 April 2002 Email from Terri Webster to Cathy Lexin about the subject of "funding ratio." (Exhibit 16)

22. 17 May 2002 (5:25 PM) from Terri Webster to Lawrence Webster on the subject of the "deal." (Exhibit 17)

23. 20 May 2002 (10:03 AM) Email from Lawrence Grissom to Terri Webster. (Exhibit 17)

24. 20 May 2002 (10:26 AM) Email from Terri Webster to Lawrence Grissom regarding "Curmudgeon speaks." (Exhibit 17)

25. See, San Diego City Charter Article IX § 143; Cal State Constitution Article 16 § 17 (retirement board of public pension plan has "fiduciary responsibility for ... administration of the system.") (Exhibit 18)

26. 21 May 2002 (9:22 AM) Email from Terri Webster to Dan Kelley on the subject of "laxing the trigger." (Exhibit 19)

27. Mayor's Blue Ribbon Committee Report on City of San Diego Finances (27 February 2002) p. 2. (Exhibit 20)

28. 27 February 2002 Blue Ribbon Committee Report on City of San Diego Finances p. 2. (Exhibit 20)

29. See "Blue Ribbon Work Plan." (Exhibit 21)

30. 27 February 2002 and 20 March 2002 Rules Committee Agendas; 15 April 2002 City of San Diego City Council Minutes. (Exhibit 22)

31. 13 July 2001 Minutes of Mayor Dick Murphy Blue Ribbon Committee on City Finances p. 2. (Exhibit 23)

32. 21 September 2001 Mayor Dick Murphy News for Release "Mayor Murphy Appoints Two to Retirement Board City Council Confirms Vortmann and Garnica." (Exhibit 24)

33. 27 February 2002 Blue Ribbon Committee Report on City of San Diego Finances p. 2. (Exhibit 20)

34. E.g., see 18 February 2002 letter from Mr. Vortmann to Fred W. Pierce IV Chairman San Diego City Employee Retirement System. (Exhibit 25)

35. 31 July 2001 (11:27 AM) Email from Mr. Vortmann's assistant Leilani Hughes to City Auditor Terri Webster re: "Questions for City Pension Manager." (Exhibit 26)

36. 30 August 2001 Vortmann memorandum "Employee Retirement Benefit Liabilities." (Exhibit 27)

37. 7 January 2002 (5:12 PM) Email from Terri Webster to Ed Ryan on the subject of "my suggestions on Redraft of Pension Sections." (Exhibit 52)

38. 30 June 2001 San Diego City Employees' Retirement System Annual Actuarial Valuation p. 13 (Exhibit 12); 18 February 2002 letter form Mr. Vortmann to Mr. Frederick W. Pierce, IV (Exhibit 25).

39. 27 February 2002 Blue Ribbon Committee Report on City of San Diego Finances p. 22 ("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.)." (Exhibit 28)

40. Compare 24 January 2002 draft of Blue Ribbon Committee Report on City of San Diego Finances p. 21 ("Investment performance in the first five months of Fiscal Year 2002 is lower than in Fiscal Year 2001.") (Exhibit 29) to the 14 February 2002 draft ("Investment performance in the first seven months of Fiscal Year 2002 is lower than in Fiscal Year 2001.") (Exhibit 30).

41. See, 30 June 2001 San Diego City Employees' Retirement System Annual Actuarial Valuation p. 13 showing the pension plan's funded ratio dropping 8% to 89.9%. (Exhibit 12)

42. 18 February 2002 letter from Richard Vortmann to Frederick W. Pierce IV. (Exhibit 25)

43. 18 February 2002 letter from Richard Vortmann to Frederick W. Pierce IV. (Exhibit 25)

44. 8 February 2005 Transcription of City Council Rules Committee Discussion of 27 February 2002. (Exhibit 31)

45. 18 February 2002 letter from Richard Vortmann to Frederick W. Pierce IV. (Exhibit 25)

46. 7 March 2002 (5:56 PM) Email from Terri Webster to Lawrence Grissom on the subject of "Blue Ribbon Report." (Exhibit 32)

47. 13 March 2002 (5:16 PM) Email from Lawrence Grissom to Dick Vortmann regarding "Response to your questions." (Exhibit 33)

48. 27 February 2002 San Diego City Council Rules Committee Action. (Exhibit 34)

49. 18 March 2002 City Manager Report "Response to the Blue Ribbon Committee Report" (Report No. 02-061). (Exhibit 35)

50. Transcription of City Council Rules Committee Discussion of 20 March 2002. (Exhibit 36)

51. Transcription of City Council Rules Committee Discussion of 20 March 2002. (Exhibit 36)

52. Transcription of City Council Rules Committee Discussion of 20 March 2002. (Exhibit 36)

53. Transcription of City Council Rules Committee Discussion of 20 March 2002. (Exhibit 36)

54. 29 April 2002 letter from Richard H. Vortmann to Blue Ribbon Committee members and City officials. (Exhibit 37)

55. 3 February 2005 San Diego Union-Tribune article (Matt T. Hall) "S.D. panelist's memo warned of fiscal woes." (Exhibit 38)

56. San Diego City Charter Article III § 11.1. (Exhibit 39)

57. San Diego City Charter Article III § 11.2. (Exhibit 39)

58. At that time the City Council included Mayor Dick Murphy, Council members Scott Peters, Toni Atkins, George Stevens, Byron Wear, Brian Maienschein, Donna Frye, Jim Madaffer, and Ralph Inzunza.

59. 21 February 2002 Closed Session Agenda Items for 26 February 2002 "Conference with Labor Negotiator, pursuant to Government Code § 54957.6: Agency negotiators: Michael Uberuaga, Lamont Ewell, Cathy Lexin, Dan Kelley, Stanley Griffith, Mike McGhee; Employee organizations: Municipal Employees Association, Local 127AFSME, AFL-CIO, Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association. (Exhibit 40)

60. 24 May 2002 Memorandum to Honorable Mayor & City Council from Daniel E. Kelley, Labor Relations Manager, regarding "Final Three Year offer to San Diego Police Officers Association." (Exhibit 41)

61. 15 March 2002 Memorandum to Mayor and City Council providing Closed Session Meet and Confer Materials for March 18, 2002. (Exhibit 42)

62. 15 March 2002 Memorandum to Mayor and City Council providing Closed Session Meet and Confer Materials for March 18, 2002, Slide 51. (Exhibit 42)

63. 15 March 2002 Memorandum to Mayor and City Council providing Closed Session Meet and Confer Materials for March 18, 2002, Slide 52. (Exhibit 42)

64. 15 March 2002 Memorandum to Mayor and City Council providing Closed Session Meet and Confer Materials for March 18, 2002, Slide 65. (Exhibit 42)

65. 18 March 2002 Closed Session Report City of San Diego. (Exhibit 43)

66. 16 April 2002 Closed Session Presentation, Slide 16. (Exhibit 44)

67. 16 April 2002 Closed Session Presentation, Slide 17 and copy of Slide 17 with handwritten notes. (Exhibit 45)

68. 12 April 2002 Closed Session memorandum to Mayor and City Council from Cathy Lexin, Human Resource Director, and Elmer Heap Deputy City Attorney regarding the subject of "Closed Session Met and Confer Agenda for April 15, 2002."

69. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002." (Exhibit 46)

70. The City's duty to keep the plan at a funding ratio is set forth in the 23 July 1996 memorandum from Cathy Lexin to Larry Grissom re: "City Manager's Retirement Proposal (Exhibit 5); the Actuarially Accrued Liability for 2002 is contained in the San Diego City Employees' Retirement System Annual Actuarial Valuation 30 June 2002 p. 13 (Exhibit 48).

71. San Diego City Employees' Retirement System Annual Actuarial Valuation 30 June 2002 p. 13. (Exhibit 48)

72. The Pension Reform Committee found in 2003 that only 6% of the under funding problem was due to earnings losses; see, City of San Diego

Pension Reform Committee page 11 of 74. (Exhibit 49)

73. Closed Session Report for the 29 April 2002 San Diego City Council Closed Session. (Exhibit 50)

74. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002." (Exhibit 46)

75. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002." (Exhibit 46)

76. The Police Officers Association President was not included in the final meet and confer agreement which, as to the Police Officers Association, went to "impasse" in 2002.

77. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 35). (Exhibit 51)

78. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 35). (Exhibit 51)

79. 13 June 2002 memorandum from San Diego City Human Resources Director Cathy Lexin to the Mayor and City Council. (Exhibit 53)

80. 29 October 2004 memorandum from SDCERS Administrator Lawrence Grissom to San Diego City Manager Lamont Ewell. (Exhibit 54)

81. 29 October 2004 memorandum from SDCERS Administrator Lawrence Grissom to San Diego City Manager Lamont Ewell. (Exhibit 54)

82. 13 June 2002 memorandum from San Diego City Human Resources Director Cathy Lexin to the Mayor and City Council. (Exhibit 53)

83. 13 June 2002 memorandum from San Diego City Human Resources Director Cathy Lexin to the Mayor and City Council. (Exhibit 53)

84. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slides 47-52). (Exhibit 55)

85. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 47). (Exhibit 55)

86. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 49). (Exhibit 55)

87. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 51). (Exhibit 55)

88. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 51). (Exhibit 55)

89. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 52). (Exhibit 55)

90. 26 April Closed Session Memorandum on the Subject of "Closed Session Meet and Confer Agenda for April 29, 2002" (Slide 52). (Exhibit 55)

91. 13 June 2002 memorandum from San Diego City Human Resources Director Cathy Lexin to the Mayor and City Council. (Exhibit 53)

92. 29 April 2002 Closed Session Report which reflects a 9-0 vote on the POA Safety Requirement Status. (Exhibit 50)

93. Minutes of 30 April 2002 Closed Session City Council Meet and Confer meeting. (Exhibit 56)

94. Minutes of 6 May 2002 Closed Session City Council Meet and Confer meetings. (Exhibit 57)

95. 6 May 2002 PowerPoint presentation for Closed Session City Council meeting regarding Meet and Confer issues (Slides 36-38). (Exhibit 57)

96. 6 May 2002 PowerPoint presentation for Closed Session City Council meeting regarding Meet and Confer issues (Slide 39). (Exhibit 57)

97. 6 May 2002 PowerPoint presentation for Closed Session City Council meeting regarding Meet and Confer issues (Slide 40). (Exhibit 57)

98. 6 May 2002 Closed Session Meeting Minutes. (Exhibit 57)

99. 24 May 2002 Memorandum from Daniel E. Kelley, Labor Relations Manager for the City of San Diego to the San Diego City Mayor and Council. (Exhibit 58)

100. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 1. (Exhibit 2)

101. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 1. (Exhibit 2)

102. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

103. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

104. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

105. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

106. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

107. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

108. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

109. 14 June 2002 Memorandum from San Diego City Human Resources Director Cathy Lexin to the San Diego Mayor and City Council p. 2. (Exhibit 2)

110. 24 June 2002 Letter from Richard Vortmann to SDCERS Board Members and Administrators. (Exhibit 59)

111. 24 June 2002 Letter from Richard Vortmann to SDCERS Board Members and Administrators. (Exhibit 59)

112. 24 June 2002 Letter from Richard Vortmann to SDCERS Board Members and Administrators. (Exhibit 59)

113. 24 June 2002 Letter from Richard Vortmann to SDCERS Board Members and Administrators. (Exhibit 59)

114. 3 July 2002 Memorandum from Bruce Herring to Lawrence Grissom re: "City's Proposal Regarding Contribution Rates and Reserves and Responses to Questions from SDCERS Trustees." (Exhibit 60)

115. 8 July 2002 Memorandum from Cathy Lexin to the Mayor and City Council re: "Meet and Confer: Contingent Retirement Benefits and Proposal to SDCERS," p. 2. (Exhibit 61)

116. 8 July 2002 Memorandum from Cathy Lexin to the Mayor and City Council re:"Meet and Confer: Contingent Retirement Benefits and Proposal to SDCERS." p. 2. (Exhibit 61)

117. 8 July 2002 Memorandum from Cathy Lexin to the Mayor and City Council re:"Meet and Confer: Contingent Retirement Benefits and Proposal to SDCERS." (Exhibit 61)

118. 9 July 2002 Closed Session Meeting Minutes for the San Diego City Council. (Exhibit 62)

119. 11 July 2002 Minutes SDCERS Board Meeting. (Exhibit 63)

120. Minutes of the Council of the City of San Diego for the Regular Meeting of Monday, November 18 p.39-40 (ITEM-133: Two actions related to Approval of Agreements on SDCERS Board Indemnification & City SDCERS Employer Contributions.") (Exhibit 64)

121. Minutes of the Council of the City of San Diego for the Regular Meeting of Monday, October 21, 2002 p.9 (ITEM-53: Approval of Ordinance amending the San Diego Municipal Code related to FY 2003 Negotiated Retirement Benefit Enhancements. (Exhibit 65)

122. Minutes of the Council of the City of San Diego for the Regular Meeting of Monday, November 18 p.8-10 (ITEMS-50 and 51: Approval of Ordinances amending the San Diego Municipal Code related to FY 2003 Negotiated Retirement Benefit Enhancements.) (Exhibit 66)

123. Ordinance No. 19121.

124. Minutes of 18 November 2002 Council Meeting. (Exhibits 64, 66)

125. 13 FR 8183, Dec. 22, 1948, as amended at 16 FR 7928, Aug. 11, 1951.

(Exhibit 67)

126. Handwritten notes by Terri Webster dated 11/26/03. (Exhibit 68)

127. 6 November 2001 Closed Session Minutes. (Exhibit 69)

128. Statement on Auditing Standard no 47, Audit Risk and Materiality in Conducting an Audit (AU § 312.10). (Exhibit 70)

129. Exchange Act Release No. 34,961 (Nov. 10, 1994).

130. Fippinger, Robert A. The Securities Law of Public Finance § 6:5.1 (6-42).

131. Fippinger, Robert A. The Securities Law of Public Finance § 6:5.1 (6-42).

132. Fippinger, Robert A. The Securities Law of Public Finance § 6:5.2 (6-44)

133. Fippinger, Robert A. The Securities Law of Public Finance § 6:5.2 (6-45); Release No. 33-7049 (9 March 1994).

134. Since 1990, underwriters of municipal securities have filed the official statement or offering document, for most municipal securities offerings, with the MSRB's Municipal Securities Information Library.

135. 16 September 2004 Report on Investigation, The City of San Diego, California's Disclosure of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004, pg. 117. (Exhibit 71)

136. California Constitution Article 16 Public Finance § 17. (Exhibit 18)

137. The impact of the trigger mechanism was interpreted by SDCERS outside fiduciary counsel, as well as by Mr. Maco, as requiring the City to maintain the funded ratio at 82.3%. V&E Report, page 83.

138. San Diego City Employees Retirement System 2004 Actuarial Report for as of 30 June 2004.

139. 21 June 2002 Minutes of the SDCERS Board Meeting pp. 16-17. (Exhibit 72)

140. See Meet and Confer Section of this Report, pg. 30, et seq.

141. 18 March 2002 Email from Terri Webster to Rgarnica@unitedcalbank.com on the subject of CERS. (Exhibit 13)

142. 18 March 2002 Email from Terri Webster to Rgarnica@unitedcalbank.com on the subject of CERS. (Exhibit 13)

143. 29 October 2004 Memorandum from Plan Administrator Lawrence Grissom to City Manager Lamont Ewell. (Exhibit 54)

144. See, 5 September 2003 Email from Diann Shipione to Plan Administrator documenting that the false statement was included in the August 2002 Wastewater $505 million bond offering (Exhibit 73); 6 February 2001 SDCERS Business & Procedures Minutes p. 4 (Exhibit 74).

145. Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36761 (January 24, 1996). (Exhibit 75)

146. 6 November 2001 Closed Session Minutes. (Exhibit 69)

147. 6 November 2001 Closed Session Minutes. (Exhibit 69)

148. The beginning date of 18 March 2002 marks the date that the Mayor and Council were provided a PowerPoint presentation showing the actuarial funding ratio had dropped to 89.9%.

149. See Chart of Bond Offerings from 29 April 2002 to 30 June 2003. (Exhibit 77)

150. 6 November 2001 Closed Session Minutes. (Exhibit 69)

151. 11 October 2004 and 29 October 2004 KPMG letters to San Diego Assistant City Attorney re: City of San Diego Fiscal Year 2003 Audit. (Exhibit 76)

(3) **Interim Report No. 3 (April 9, 2005)**, regarding violations of State and local laws as related to the SDCERS Pension Fund, the City Attorney concluded that City officials violated the California Constitution, State law, the San Diego City Charter, and the San Diego Municipal Code in causing the underfunding of the San Diego City Employees' Retirement System, such report being supported by the following documentation:

1. Robert L. Clark, Lee A. Craig, and Jack W. Wilson, *A History of Public Sector Pensions in the United States*, pp. 12–23 (2003).

2. "SDCERS Annual Actuarial Valuation," June 30, 2004, p. 9.

3. *Id.* at 13.

4. Letter from Rick Roeder to City of San Diego Pension Reform Committee of 4/20/04.

5. "SDCERS Annual Actuarial Valuation," June 30, 2004, p. 35.

6. City of San Diego Pension Reform Committee Final Report, September 15, 2004,

7. p. 28.

8. Letter from Rick Roeder to Pension Reform Committee of 5/4/04.

9. Paul S. Maco and Richard C. Sauer, Vinson & Elkins, *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*, [Vinson & Elkins Report], September 16, 2004, p. 5.

10. *Id.* at 38.

11. Denzil Y. Causey, Jr., *Duties and Liabilities of Public Accountants* 12 (Rev. ed. 1982).

12. San Diego Ordinance O-15353 (Oct. 6, 1980).

13. SDCERS Board Meeting, Minutes, April 19, 2002, p. 26.

14. Letter from Constance M. Hiatt, Hanson Bridget Marcus Vlahos and Rudy ("Hanson Bridgett") to SDCERS, General Counsel Loraine Chapin of 4/16/02.

15. San Diego Ordinance O-15758 (June 1, 1982).

16. San Diego Municipal Code [SDMC] §24.1502.

17. "SDCERS Annual Actuarial Valuation," June 30, 2004, p. 13.

18. Michael J. Aguirre, San Diego City Attorney, "Interim Report No. 2 Regarding Possible Abuse, Illegal Acts or Fraud by City of San Diego

Officials," February 9, 2005, pp. 9 – 17.

19. "SDCERS Annual Actuarial Valuation," June 30, 2004, p. 13.

20. Vinson & Elkins Report, p. 39.

21. Settlement Agreement, in *James F. Gleason, et al. v. San Diego City Employees Retirement System, et al.,* San Diego Superior Court Case No. GIC803779, part II.3(a).

22. City of San Diego Pension Reform Committee, *Final Report*, September 15, 2004, p. 9.

23. *Id.* at 10.

24. Letter from SDCERS Actuary Rick Roeder to SDCERS Board, November 5, 2002; see also Vinson & Elkins Report, pp.82-86 (emphasis added).

25. *See* Letter from SDCERS' counsel Robert Blum to Lawrence Grissom, SDCERS Plan Administrator, June 2002 (draft).

26. Vinson & Elkins Report, pp.80-81.

27. Cal. Gov't Code §1091(a).

28. Cal. Gov't Code § 87100.

29. SDMC §27.3560 (emphasis added).

30. Settlement Agreement, in *James F. Gleason, et al. v. San Diego City Employees Retirement System, et al.,* San Diego Superior Court Case No. GIC803779, part II(b)-(c).

31. Letter from Rick Roeder to Deborah Berger and Bruce Herring of 2/4/05.

(4) **Interim Report No. 4 (May 9, 2005)**, regarding additional funding for outside professionals reviewing alleged illegal acts, the City Attorney questioned whether the Outside Professionals' Audit Committee could finish its work in an economical and timely manner and recommended that the Council not approve any additional funds for the Committee until a complete review of the Committee's scope of work had been conducted, such report being supported by the following documentation:

1. Item S404, San Diego City Council Minutes, 3/8/05, p. 13.

2. See, "Audit Committee-Investigation Status" report, 5/6/05.

3. Independent Services Agreement between City of San Diego and Kroll Inc., 2/10/05, p. 2 ("The City has requested that Kroll (1) receive, review and evaluate the findings of the investigations by V&E and the City Attorney.").

4. See, letter from KPMG to the City of San Diego, 10/11/04 (Ex. 4a) and letter from KPMG to City of San Diego, 10/29/04 (Ex. 4b).

5. Paul S. Maco and Richard C. Sauer, Vinson & Elkins, L.L.P., Washington, D.C., *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, [16 September 2004 Report].

6. Vinson & Elkins Work Plan, 11/5/04.

7. See, for example, the 16 September 2004 Report, p. 8.

8. See, San Diego City Attorney Interim Reports 1 through 3.

9. Independent Services Agreement between City of San Diego and Kroll Inc., 2/10/05, p. 2 ("The City has requested that Kroll (1) receive, review and evaluate the findings of the investigations by V&E and the City Attorney.").

10. See, statement in the Status Report from the Outside Professionals Audit Committee, 5/6/05, that "At this time, Vinson & Elkins's work continues on going with <u>no change in the City</u>'s or Audit Committee's relationship." There is an independent agreement between the City and V&E which the audit committee does not the legal authority to alter without the permission of the City Council.

11. See, Philip J. LaVelle, *Pension investigators criticized anew | Firm is seeking more legal help*, San Diego Union-Tribune, 4/23/05, which reported: "Ewell also said an oral report would be acceptable, according to what he was told by Lynn Turner, a Kroll senior adviser leading the audit team. 'From an auditing investigative report, you're looking at the work

product, the methodology of getting there, how you test something,' Ewell said. 'So it's not so much a written report.'"

12. See, letter dated 4/19/05, Re: "Terms of Engagement as Counsel to the Audit Committee of the City of San Diego." The proposed agreement with Willkie Farr & Gallagher contemplates two of its partners (Michael R. Young and Benito Romano) with hourly rates that range from $560 to $825 will do the work V&E was contracted to do for the City. The agreement says that the new lawyers "are serving as counsel to the Audit Committee" the "payment of our bills is to be the responsibility."

13. See, Member Search on-line service for Michael R. Young and Benito Romano which found neither are licensed to practice law in California; and website for Willkie Farr & Gallagher lawyer resumes indicating that neither is licensed to practice law in California. This may be a violation of California Rule of Professional Responsibility §1-300.

14. Andrew Donohue, *Further Questions of City's Law Firm Could Continue Delay of Audits, Investigations*, Voice of San Diego, 4/22/05.

15. See, letter from KPMG to City of San Diego, 10/29/04.

16. See, "Audit Committee Investigation Status" report, p. 2, 5/6/05.

17. See, City of San Diego Supplemental Docket Number 4 for the Regular Meeting of Tuesday, 5/10/05.

18. See, "Audit Committee-Investigation Status" report, 5/6/05.

19. See, "Audit Committee-Investigation Status" report, 5/6/05 [emphasis added].

20. See, "Audit Committee-Investigation Status" report, 5/6/05.

21. See, "Audit Committee-Investigation Status" report, 5/6/05.

22. See, "Audit Committee-Investigation Status" report, 5/6/05.

23. See, "Audit Committee-Investigation Status" report, 5/6/05.

24. See, "Audit Committee-Investigation Status" report, 5/6/05.

25. See, "Audit Committee-Investigation Status" report, 5/6/05.

26. See, letter from KPMG to City of San Diego, 10/29/04.

27. This may violate California Rule of Professional Conduct § 1-300.

28. See, Michael R. Young, *Eighteen Safeguards to Corporate Self-Investigation*, The Metropolitan Corporate Counsel, 12/04.

29. See, letter from KPMG to City of San Diego, 10/29/04; amendment to original agreement between V&E and the City of San Diego.

30. See, Michael R. Young, *Eighteen Safeguards to Corporate Self-Investigation*, The Metropolitan Corporate Counsel, 12/04.

31. See, Michael R. Young, *Eighteen Safeguards to Corporate Self-Investigation*, The Metropolitan Corporate Counsel, 12/04.

32. Michael R. Young, *Eighteen Safeguards to Corporate Self-Investigation*, The Metropolitan Corporate Counsel, 12/04.

33. Michael R. Young, *Eighteen Safeguards to Corporate Self-Investigation*, The Metropolitan Corporate Counsel, 12/04.

34. See, On-Line Resume for Michael R. Young: www.Willkie.com/attorneys/bio_detail.aspx?iEmployee_ID=323144605.

(5) **Interim Report No. 5 (May 18, 2005)**, regarding the legal status of the elected officers retirement program, the City Attorney determined that the City Council violated the Charter's pension vesting rules when members passed an ordinance that granted benefits to elected officials who had not served for 10 years and who had not reached age 62.

1. San Diego City Charter art. IX, §141.

2. *See* City Att'y MOL No. 92-93 (Oct. 12, 1992) "Legislative Officers' Retirement Plan Vesting Requirements – San Diego Municipal Code Sections 24.0541, et seq.," which reached a conclusion opposite than the one set forth in this Report. City Att'y MOL 92-33 is hereby disapproved, and its conclusions are to have no further force or effect.

3. *See* Charter § 141 ("No employee shall be retired before reaching the age of sixty-two years of age and before completing ten years of continuous service.") (*See* footnote 1).

4. *See* City Manager's Report No. 01-258 (Nov. 20, 2001) "Modification of the Retirement Program for Former Elected Officers" [Manager's Report No. 01-258]; *See also* 6 November 2001, City Attorney memorandum to William Barber from Theresa C. McAteer re: "Retroactive Application of Changes to the Elected Officers Retirement Program; Query re: Mayor's Retirement Benefits Status."

5. *See* Charter § 141 (*See* footnote 1).

6. *See* Charter art. V, § 39 (Auditor and Comptroller must certify source of funds); *See also* Charter art. VII, §99 (no debt may be incurred without a vote of the people).

7. *See* 8 October 2001, Minutes of the San Diego City Council, Item 50, pp. 11-12.

8. *See* Manager's Report No. 01-258 (*See* footnote 4). Note that the present City Attorney has declined to participate in the EORP.

9. *See* Cal. Const. art. XI, §3(a).

10. *See* Charter §39; Charter §99 (*See* fn 6).

11. *See* Ordinance No. 0-19022 (Jan. 8, 2002); January 8, 2002, City Council Minutes for Item 51 pp. 9-10.

12. *See* City Manager's Report No. 01-258 (Nov. 20, 2001) (with attachments) (*See* footnote 4).

13. Charter §39; Charter §99 (*See* footnote 6).

14. *See* Charter §141 (*See* footnote 1).

15. Original Charter art. IX, § 141 (as adopted in 1931) (emphasis added).

16. *See generally* City Att'y MOL 2005-9 (April 27, 2005) "Rescission of Ordinance O-19126, Re: Five Year Vesting Requirement" (exhibits omitted).

17. *Compare* SDMC §24.1312 (current) *with* SDMC §24.1312 (prior to 2002).

18. SDMC §24.1312 (prior to 2002) (*See* footnote 17).

19. *See* City Att'y MOL 2005-9 (*See* footnote 16).

20. Prior SDMC §24.0545 (Jan. 12, 1971).

21. In addition to relaxing the rules to allow four year vesting, in 1995 the City Council made a specific *three year* vesting requirement for officers elected in 1995 who had three-year terms. *See* prior SDMC §24.0545(b) (Oct. 30, 1995).

22. Prior SDMC §24.0546 (Jan. 12, 1971).

23. To calculate these percentages: Assume a legislative officer serves 10 years and has a final salary of $70,000. Under the original LORP plan, the first $500 per month of salary would contribute a 5% benefit to the member's retirement. That would be ($500 * .05 * 10 years) or $250 per month. On a yearly accounting, that would be a $3000 per year benefit for the first $6000 of the member's salary. The remaining $64,000 of the member's salary would contribute ($64,000 * .03 * 10 years) or $19,200 per year. In total, the member's yearly retirement would be ($19,200 + $3000), or $22,200. If one divides the yearly benefit by the final salary ($22,200 / $70,000), equaling 0.317, and then divides by 10 years, the final blended retirement factor is obtained, which in this case is 3.17%. If the above calculation is repeated for a member whose final salary is $100,000, the final blended retirement factor is (($3000 + ($94,000 * .03 * 10 years))/$100,000) or (($3000 + $28,200)/$100,000) or 3.12% for ten years' service.

24. *See* Manager's Report No. 01-258 (*See* footnote 4).

25. *See* SDMC §24.1706.

26. *See* Ordinance O-18994 (Oct. 8, 2001).

27. *See* SDMC §24.1705 (showing new retirement age of 55).

28. *See* Manager's Report No. 01-258 (chart attachment to Report) (*see* footnote 4) (percentage calculations performed by the City Attorney's Office).

29. *See* Cal. Const. art. XVI, §18.

30. *See* San Diego City Attorney's Office Interim Report No. 3 "Regarding Violations of State and Local Laws Related to the SDCERS Pension Fund,"(2005), pp.18.-20 (exhibits omitted). All four prior interim reports are available on the City Attorney's website.

31. San Diego City Charter art. IX, §146.

32. *Id.*

33. *Montgomery v. Board of Administration*, 34 Cal. App. 2d 514, 520 (1939); *See also* Cal. Const. art. XI, section 3(a), (*See* footnote 9).

34. *Grimm v. City of San Diego*, 94 Cal. App. 3d 33, 39 (1979).

35. *Domar Electric, Inc. v. City of Los Angeles,* 9 Cal. 4th 161, 170 (1994).

36. *Id.*

37. *Id.* at 171.

(6) **Amended Interim Report No. 6 Regarding The San Diego City Employees' Retirement System Funding Scheme (July 1, 2005)**, regarding the scheme by the City to underfund the pension system, suppress information regarding such underfunding, while simultaneously granting hundreds of millions of dollars in new benefits in violation of the liability limits of the State Constitution and the City Charter, such report being supported by the following documentation:

1. Cal. Const. art. XVI, § 17(a).

2. See 23 July 1996 Lexin Memorandum and City Attorney Interim Reports Nos 1-5; see City Attorney's Website.

3. San Diego Charter § 99.

4. Cal. Const. Art. XVI, § 17(a). See n. 1.

5. San Diego Charter § 99. See n. 3.

6. Cal. Const Art. XVI, § 17(a). See n. 1.

7. February 1996 Jack McGrory memorandum to "Distribution."

8. San Diego Charter §§ 142 and 143 and Article XVI § 17(a) of the California Constitution require that the City's pension fund payment be determined by an actuary; see fn. 1.

9. 29 February 1996 Jack McGrory memorandum to "Distribution;" see n. 7.

10. See 16 September 2004 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 pp. 31-34 (16 September 2004 Report). The money diverted from the pension funds were euphemistically referred to as "surplus earnings" or "undistributed income." These diverted pension funds were "transferred" to "reserves." Funds held by the pension plan and all earnings thereon are required to be used so that benefits can be delivered promptly to plan participants. Diversions of surplus earnings are unlawful under the State Constitution and fiduciary laws. In *Board of Administration v. Wilson*, 52 Cal. App. 3d 1109, 1131-1137 (1997), the court held that vested state employee members of CalPERS have a contractual right to an actuarially sound retirement system; see City of San Diego Website.

11. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 2.

12. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 2. See n. 11.

13. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" pp. 2-3. See n. 11.

14. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 3. See n. 11.

15. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 3. See n. 11.

16. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 3. See n. 11.

17. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 4. See n. 11.

18. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 2. See n. 11.

19. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 5. See n. 11.

20. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 6. See n. 11.

21. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 7. See n. 11.

22. 1 March 1996 San Diego City Employees' Retirement System Memorandum from Larry Grissom to Keith Enerson regarding "Proposed Retirement Package" p. 7. See n. 11.

23. 19 March 1996 San Diego City Council Closed Session Docket.

24. 19 March 1996 San Diego City Council Closed Session Agenda.

25. 19 March 1996 San Diego City Council Closed Session Minutes p. 3.

26. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions." A 2 April 1996 letter from Jeffrey S. Leavitt to Bruce Herring confirms the City's retention of the Jones Day law firm "regarding the fiduciary and federal tax implications of the proposed revisions to benefits for City employees under the San Diego City Employees' Retirement System."

27. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions" p. 1. See n. 26.

28. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions" p. 1. See n. 26.

29. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions" p. 4. See n. 26.

30. The medical benefits issues are not discussed in this report.

31. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions" p. 5; see n. 26.

32. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions" p. 4; see n. 26.

33. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring re: "Fiduciary Aspects of Plan Revisions" pp. 4-5; see n. 26.

34. 9 April 1996 San Diego City Council Closed Session Minutes p. 3.

35. 11 April 1996 Closed Session Item Memorandum from Deputy City Attorney John M. Kaheny to City Clerk p. 2.

36. 16 April 1996 San Diego City Council Closed Session Agenda.

37. 16 April 1996 San Diego City Council Closed Session Minutes p. 3.

38. 16 April 1996 San Diego City Council Closed Session Minutes p. 3. See n. 37.

39. 23 April 1996 City Attorney Report to the Board of Administration for the San Diego City Employees' Retirement System.

40. 23 April 1996 City Attorney Report to the Board of Administration for the San Diego City Employees' Retirement System p. 1. See n. 39

41. 23 April 1996 City Attorney Report to the Board of Administration for the San Diego City Employees' Retirement System, p. 1. See n. 39.

42. 18 April 1996 Closed Session Item Memorandum from Deputy City Attorney John M. Kaheny to City Clerk.

43. 23 April 1996 San Diego City Council Closed Session Agenda.

44. 23 April 1996 San Diego City Council Closed Session Docket.

45. 23 April 1996 San Diego City Council Closed Session Minutes p. 1.

46. 29 April 1996 City Employees Retirement System "Concept Overview" p. 1-4.

47. 29 April 1996 City Employees Retirement System "Concept Overview" p. 1. See n. 46

48. Although the pension system actuarial report for the fiscal year ending 30 June 2004, estimated the pension deficit at $1.4 billion, work done by the City's outside auditor, KPMG, has caused the estimated shortfall to be put at closer to $1.7 billion.

49. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 2. See n. 46.

50. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 2; IRS Code § 415 provides for dollar limitations on benefits and contributions under qualified retirement plans. It also requires that the IRS Commissioner annually adjust these limits for cost of living increases. See n. 46.

51. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 2; IRS Code § 415 provides for dollar limitations on benefits and contributions under qualified retirement plans. It also requires that the IRS Commissioner annually adjust these limits for cost of living increases. See n. 46.

52. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 2. See n. 46.

53. 23 July 1996 memorandum from Cathy Lexin to Larry Grissom p. 2, 6; see fn 2.

54. The system actuary first estimated the cost of past service liability to be in excess of $120 million. After the City Attorney published this estimate, the system actuary reduced his cost estimate.

55. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 3. See n. 46.

56. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 3. See n. 46.

57. The CERS actuary has estimated the cost at several million dollars.

58. 23 July 1996 memorandum from Cathy Lexin to Larry Grissom p. 6. See n. 2.

59. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 3. See n. 46.

60. San Diego Charter § 99. See n. 3.

61. Cal. Const. Art. XVI, § 17(a). See n. 1.

62. These proposed contribution rates were blended -- this is, the rates paid for general member employees were averaged with those paid for public safety employees.

63. The contribution rate paid by the City in 1996 was the PUC rate, which tended to require lesser payments into the plan in the early years and much greater amounts later. Under the EAN method the payments were level and remained stable year to year.

64. San Diego Charter § 143; see n. 8.

65. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 4; see n. 46.

66. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 4; see n. 46.

67. 16 September 2004 Report pp. 53-56. Although the reserve accounts did not play a major role in the implementation of MP-1, they did serve as a basis for issuing false and misleading statements to the investment community; see City of San Diego Website.

68. 29 April 1996 City Employees' Retirement System "Concept Overview" p. 1. See n. 46.

69. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring; the letter was purportedly provided to Mr. Herring by Mr. Leavitt "as counsel to the City with the understanding that neither Jones, Day, Reavis & Pogue nor I are assuming any professional responsibility to any other person whatsoever." See n. 26.

70. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 2. See n. 26.

71. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 2 (n. 5). See n. 26.

72. See *When is Employer, Labor Union, Affiliated Entity or Person or Pension or Welfare Plan 'Fiduciary" within meaning of §3(21)(A)(i) or (III) or Employee Retirement Income Security Act of 1974* 178 A.L.R. Fed

129; see also, *Pension Ben. Guar. Corp. v. Solmsen*, 671 F. Supp. 983 (E.D.N.Y. 1987) (sponsor fiduciary under pension plan); *Schwartz v. Interfaith Medical Center*, 715 F. Supp. 1190 (E.D.N.Y. 1989) (employer acted in fiduciary capacity); *Ches v. Archer*, 827 F. Supp. 159 (W.D.N.Y 1993) (unresolved factual question about whether corporate officers acting as fiduciaries); *Hanley v. Giordano's Restaurant, Inc.*, 1995 WL 442143 (S.D.N.Y. 1995); *NYSA-ILA Medical & Clinical Services Fund v. Catucci*, 60 F. Supp. 2d 194 (S.D.N.Y. 1999).

73. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 2. See n. 26.

74. Mr. Leavitt cites the *NRLB v. AMAX* case for the proposition that when the employer's representatives serve on pension boards, they act on behalf of the pension board, not of the employer. However, the case also should have alerted Mr. Leavitt to the legal problems that arise when these pension board members act to advance the employer's interest at the expense of pension participants.

75. 16 July 1996 memorandum from John Casey to Fiduciary Counsel via Retirement Administrator.

76. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 1. See n. 26.

77. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring pp. 1-2. See n. 26.

78. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 2. See n. 26.

79. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 3. See n. 26.

80. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 3. See n. 26.

81. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 4; Mr. Leavitt cited *Hittle v. Santa Barbara County Employees Retirement Association*, 29 Cal. 3d 374, 392 (1985) and *Symington v. Albany*, 5 Cal. 3d 23, 33 (1971). See n. 26.

82. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 4. See n. 26.

83. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 5. See n. 26.

84. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 5. See n. 26.

85. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 5. See n. 26.

86. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 5. See n. 26.

87. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 5. See n. 26.

88. 29 April 1996 letter from Jeffrey S. Leavitt to Deputy City Manager Bruce A. Herring p. 5. See n. 26.

89. 2 May 1996 SDCERS Retirement Board of Administration Special Meeting p. 1.

90. 2 May 1996 SDCERS Retirement Board of Administration Special Meeting p. 1. See n. 89.

91. 1994 SDCERS Annual Actuarial Valuation 2004; see fn 48.

92. *See* 16 September 2004 Report p. 31 et seq. See n. 10.

93. *See* 16 September 2004 Report p. 3; Mr. Casey was referring to Mr. Joseph Wyatt's law firm Morrison and Foerster. The firm had previously advised against a program that had some of the elements contained in MP-1. Mr. Casey raised an implied concern that Mr. Wyatt was set aside in favor of another lawyer who would under an opinion supporting MP-1. See n. 10.

94. 2 May 1996 SDCERS Retirement Board of Administration Special Meeting p. 3. See n. 89.

95. 2 May 1996 City Employees' Retirement System Concept Overview p. 1.

96. 2 May 1996 City Employees' Retirement System Concept Overview p. 2. See n. 95.

97. 2 May 1996 City Employees' Retirement System Concept Overview p. 4. See n. 95.

98. 2 May 1996 MP-1 Power Point presentation documents attached to 2 May 1996 SDCERS Board of Trustees' Minutes of Meeting.

99. 7 May 1996 Cathy Lexin to Larry Grissom subject: "Retirement Questions."

100. On 15 May 1996, Ms. Lexin informed Ms. Smith that the estimated difference between PUC actuarial rates and agreed-to rates in the May 2 proposal for FY97 and FY98 was $15.7million and that the general fund portion would be approximately "$10.8 million." 15 May 1996 letter from Ms. Lexin to Ms. Ann Smith.

101. 14 May 1996 San Diego City Council Closed Session Minutes p. 2.

102. 15 May 1996 Jack McGrory memorandum to Honorable Mayor and City Manager.

103. 15 May 1996 SDCERS Retirement Board of Administration Minutes pp. 13-14.

104. 15 May 1996 SDCERS Retirement Board of Administration Minutes pp. 13-14. See n. 103.

105. 17 May 1996 Letter from Ann Smith to Cathy Lexin re: MEA's Proposal for Resolution of Retirement System Issues and Contract Extension Covering FY98.

106. 17 May 1996 Letter from Ann Smith to Cathy Lexin re: MEA's Proposal for Resolution of Retirement System Issues and Contract Extension Covering FY98. See n. 105.

107. Cal. Const. Art. XVI, § 17(a). See n. 1.

108. 17 May 1996 Letter from Ann Smith to Cathy Lexin re: "MEA's Proposal for Resolution of Retirement System Issues and Contract Extension Covering FY98." See n. 105.

109. 17 May 1996 Letter from Ann Smith to Cathy Lexin re: MEA's Proposal for Resolution of Retirement System Issues and Contract Extension Covering FY98" p. 3. See n. 105.

110. 25 May 1996 Letter from Rick Roeder to Larry Grissom.

111. 28 May 1996 Closed Session Meet and Confer documents.

112. 28 May 1996 Closed Session Meet and Confer documents. See n. 111.

113. 28 May 1996 Closed Session Meet and Confer documents p. 2. See n. 111.

114. 28 May 1996 Closed Session Meet and Confer documents p. 2. See n. 111.

115. 28 May 1996 Closed Session Meet and Confer documents p. 3. See n. 111.

116. 28 May 1996 Closed Session Meet and Confer documents p. 3. See n. 111.

117. 28 May 1996 San Diego City Council Closed Session Minutes p. 2.

118. 29 May 1996 Letter from Cathy Lexin to Jeffrey Leavitt (with 28 May 1996 proposal attached) with a copy to Deputy City Attorney John Kaheny.

119. 4 June 1996 San Diego City Council Closed Session Minutes.

120. 4 June 1996 Closed Session Agenda "City Employees Retirement System June 4, 1996 Proposal."

121. 4 June 1996 Management Proposal with Fire Fighters Local 145 (signed 5 June 1996), the POA, AFSCME Local 127, and the MEA for the FY98 MOU Extensions.

122. 4 June 1996 Closed Session Agenda "City Employees Retirement System June 4, 1996 Proposal." See n. 120.

123. 6 June 1996 Memorandum from City Manager Jack McGrory to Mayor and City Council re: Labor Negotiations FY 98 Tentative Agreements.

124. 4 June 1996 Closed Session Agenda "City Employees Retirement System June 4, 1996 Proposal," p. 5. See n. 120.

125. 4 June 1996 Closed Session Agenda "City Employees Retirement System June 4, 1996 Proposal" p. 3. See n. 120.

126. 4 June 1996 Closed Session Agenda "City Employees Retirement System June 4, 1996 Proposal" p. 5. See n. 120.

127. 4 June 1996 Closed Session Agenda "City Employees Retirement System June 4, 1996 Proposal" pp. 2-6. See n. 120.

128. 7 June 1996 City Employees Retirement System Proposal p. 5.

129. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 1.

130. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 1. See n. 129.

131. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 2. See n. 129.

132. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 2. See n. 129.

133. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 4. See n. 129.

134. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 4. See n. 129.

135. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 4. See n. 129.

136. Cal. Const. Art. XVI, § 17(a). "The power of the board of administration of a pension plan is subject to conditions discussed herein." See n. 1.

137. Cal. Const. Art. XVI, § 17(a). See n. 1.

138. Cal. Const. Art. XVI, § 17(a)(b). See n. 1.

139. Cal. Const. Art. XVI, § 17(b). (Emphasis added.) See n. 141.

140. 11 June 1996 Minutes of the SDCERS Special Workshop meeting p. 12. See n. 129.

141. 11 June 1996 Minutes SDCERS board of trustees Special Workshop p. 12. See n. 129.

142. San Diego Charter § 143. ("City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary."). See Cal. Const. Art. XVI, § 17(a); see also Employee Retirement Income Security Act (ERISA) § 404(a)(1), requiring fiduciaries to act solely in the interest of plan participants and beneficiaries. See n. 8.

143. In 2002 when the trigger was hit, the sunset provisions should have kicked in, and the benefits created under MP-1 should have been set aside. This result did not occur. During the 11 June 1996 workshop, Mr. Grissom stated that the sunset provision "is applicable to the entire proposal." 11 June 1996 Minutes of the SDCERS Retirement Board Special Work Shop meeting. See n. 129.

144. 11 June 1996 Minutes SDCERS board of trustees Special Workshop p. 12-15. See n. 129.

145. See generally June 2005 letter from the City of San Diego Audit Committee relating to Mr. Roeder; *When Is Employer, Labor Union, Affiliated Entity or Person or Pension or Welfare Plan 'Fiduciary' within meaning of §3(21)(A)(i) or (iii) or Employee Retirement Income Security Act of 1974* 178 A.L.R. Fed. 129 (2005). See n. 72.

146. 11 June 1996 Minutes SDCERS board of trustees Special Workshop p. 15. See n. 129.

147. *See* Cal. Const. Art. XVI, § 17(c). (Emphasis added.) See n. 1.

148. *See* 22 August 1995 letter from Morrison & Foerster to SDCERS administrator Lawrence Grissom.

149. 11 June 1996 Minutes SDCERS Board of Trustees Special Workshop p. 18. See n. 129.

150. 11 June 1996 Minutes SDCERS Board of Trustees Special Workshop pp. 19-20. See n. 129.

151. See *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109 (1997); see Addendum of Cases.

152. 11 June 1996 Minutes SDCERS Special Workshop p. 10. See n. 129.

153. Although the gap between the actual costs of the new benefits created by MP-1 and those estimated by actuary Roeder will have to be determined by a new independent actuary, the amount will be multiple millions of dollars.

154. 11 June 1996 Minutes SDCERS board of trustees Special Workshop pp. 22-23. See fn. 129.

155. 11 June 1996 Minutes SDCERS board of trustees Special Workshop p. 23. See n. 129.

156. 19 June 1996 memorandum form Larry Grissom to Cathy Lexin re: San Diego City Employees' Retirement System Issue No. 3 Employer Contribution Rates.

157. Undated check list compiled on or after 13 June 1996, and before 21 June 1996, relating to MP-1; secured from the files of City labor negotiator Mike McGee. See n. 157.

158. Undated check list dated on or after 13 June 1996, and before 21 June 1996, relating to MP-1; secured from the files of City Labor negotiator Mike McGee.

159. 21 June 1996 letter from Dwight A. Hamilton to Lawrence B. Grissom.

160. 21 June 1996 letter from Dwight A. Hamilton to Lawrence B. Grissom p. 3. See n. 159.

161. 21 June 1996 letter from Dwight A. Hamilton to Lawrence B. Grissom p. 3. See n. 159.

162. 21 June 1996 memorandum from Terri Webster to city_mgr.CTL.

163. 21 June 1996 memorandum from Terri Webster to city_mgr.CT. See n. 162.

164. 21 June 2002 minutes of SDCERS Board meetings p. 16.

165. 21 June 2002 minutes of SDCERS Board meetings p. 16. See n. 164.

166. 21 June 2002 minutes of SDCERS Board meetings pp. 119-20. See n. 164.

167. 19 September 1996 letter from Dwight A. Hamilton to Lawrence B. Grissom p. 4.

168. 25 June 1996 San Diego City Council closed session minutes p. 2.

169. 21 June 1996 Memorandum "Closed Session Agenda Items for June 25, 1996." The memorandum was signed by Deputy City Attorney John M. Kaheny.

170. 28 June 1996 Memorandum from City Manager Jack McGrory to Mayor and City Council re: "Retirement with four attachments."

171. The Council and Mayor were provided with the 7 June 1996 MP-1 proposal at the 25 June 1996 closed session, where it was handed out to those in attendance. 7 June 1996 City Employees Retirement System Proposal, with handwritten note "Handed Out @ Closed Session 6/25/96."

172. 28 June 1996 Memorandum from City Manager Jack McGrory to Mayor and City Council attachment "San Diego City Employee Retirement System (SDCERS) Proposal." See n. 170.

173. 28 June 1996 Memorandum from City Manager Jack McGrory to Mayor and City Council attachment, 21 June 1996 memorandum entitled "Modifications to Retirement System Proposal Dated June 7, 1996." See n. 170.

174. 21 June 1996 letter from Dwight Hamilton to SDCERS Administrator Lawrence Grissom purporting to approve MP-1 p. 3. See n. 159.

175. 25 June 1996 Continued Item request form related to Item 208.

176. See 25 June 1996 Closed Session minutes of the San Diego City Council. See n. 168; 2 July 1996 Closed Session Agenda, and the 27 June 1996 Closed Session memorandum regarding the Closed Session Agenda Items for July 2, 1996.

177. 2 July 1996 San Diego City Council Meeting Minutes pp. 1, 21-22.

178. 23 July 1996 Memorandum from Cathy Lexin to Lawrence Grissom regarding the approval of the final version of MP-1; see fn. 2.

179. 31 July 1996 memorandum from Lawrence Grissom to Business Procedures Committee p. 2.

180. 31 July 1996 memorandum from Lawrence Grissom to Business Procedures Committee p. 2. See n. 179.

181. 16 September 2004 Report pp. 52-53. See City of San Diego Website.

182. 16 September 2004 Report pp. 53-54. See City of San Diego Website.

183. 16 September 2004 Report p. 54. See City of San Diego Website.

184. 16 September 2004 Report p. 54. See City of San Diego Website.

185. 16 September 2004 Report p. 54. See City of San Diego Website.

186. 16 September 2004 Report p. 54. See City of San Diego Website.

187. 16 September 2004 Report pp. 54-55. See City of San Diego Website.

188. 10 October 1996 memorandum from Jack McGrory to Mayor and City Council regarding Legal Opinionfrom CERS Fiduciary Counsel.

189. 20 December 1996 SDCERS Board Minutes pp. 11-12.

190. 19 December 1996 Memorandum from Jack McGrory to Keith Enerson at the SDCERS Retirement Board.

191. 19 December 1996 memorandum from Jack McGrory to Keith Enerson at the SDCERS Retirement Board. See n. 190.

192. 19 December 1996 memorandum from Jack McGrory to Keith Enerson at the SDCERS Retirement Board. See n. 190.

193. SDCERS Bulletin "BENEFITS ELECTION" April 1997.

194. See San Diego City Attorney Interim Report II; see San Diego City Attorney Website.

195. MP-1 was implemented in a series of City Council meetings during March 1997.

196. See San Diego City Attorney Interim Report II. See City Attorney's Website, and 2004 SDCERS Actuarial Valuation. See also n. 91.

197. 11 October 1996 letter from City Manager Jack McGrory to John Gibson, Director Reports and Analysis Division, Federal Election Commission ("City of San Diego Expenditures" attachment).

198. 28 May 1996 Closed Session Meet and Confer documents, p. 2. See n. 111.

199. San Diego City Charter § 99. See n. 3; California State Constitution Art. XVI § 18, and n. 1. This part of the report presents a legal analysis that shows MP-1 is void. The San Diego City Attorney's Interim Report 3 analyzed other provisions of law that require MP-1 to be set aside. The analysis here also would apply to MP-2, the add-on contract created by the pension board and City Council in 2002. The legal basis for setting aside MP-1 offered in the City Attorney's Interim reports does not exhaust all options that the City has for setting aside MP-1 and MP-2.

200. The liability limit clause in the California State Constitution Article II § 18 discussed in the San Diego City Attorney Opinion was moved to Article XVI § 18. City Attorney City of San Diego Opinion (18 March 1968) *City Charter § 99-Continuing Contracts* p. 2.

201. See Minutes of 11 June 1996 SDCERS board workshop. N. 129; 21 June 1996 minutes of 21 June 1996 SDCERS board; 20 December 1996 SDCERS board, n. 189; 31 July 1996 memorandum from pension fund administrator Lawrence Grissom. N. 179.

202. Argument For Proposition A Signed by San Diego City Attorney Ed Butler. Proposition A was adopted by the voters at the 1968 Primary Election.

203. Article XVI § 18 (a) of the California State Constitution. See n. 1.

204. Webster's Third International Dictionary.

As shown above such reports were supported by documentary evidence complied by this office. I have previously provided to you a copy of each of these reports, and have transmitted with this letter a disc containing each of said reports, again, together with all attachments and supporting documentation, as you requested.

The information contained in the reports was compiled and analyzed under evidentiary trial standards. This method involves a review and analysis of documents existing contemporaneous with the facts at issue. You should note that the reports contain the ample use of documents and emails which overwhelmingly show knowledge, awareness and intent of the

actors. Under AU Section 326 the touchstone of competent evidence is "its objectivity, its timeliness, and the existence of other evidential matter corroborating the conclusion to which it leads all bear on its competence."

In each instance, the assertions of illegality contained in the several City Attorney reports are backed by contemporaneous documents and records. Under AU Section 326 "evidential matter supporting the financial statements consist of the underlying accounting data and *all corroborating information* available to the auditor." (AU Section 326, paragraph .15) "Corroborating evidential matter includes both written and electronic information such as . . . minutes of meetings, confirmations and other written representations by knowledgeable people . . . and other information . . . available to, the auditor which permits him or her to reach conclusions through valid reasoning." (AU Section 326, paragraph .17) The assertions of illegality in each of the reports are substantially documented and corroborated.

Further in compiling these reports this office conformed its investigations to AU Section 317 (AICPA Professional Standards) and AICPA Practice Alert 2004-01. And I note specifically that Interim Reports 1 through 3 were prepared in accordance with the accounting practice bulletin referenced in the October 29, 2004 letter from KPMG to the City.

With that said, the reports of the City Attorney show and document that there is substantial evidence consistent with findings, among other things, that:

1. In 1996 and 1997, City and pension officials violated their fiduciary duties owed to the City of San Diego and the San Diego City Employees' Retirement System in connection with the creation of a pension benefit and funding contract known as Manager's Proposal 1 (MP-1).

2. Such officials engaged in fraudulent and deceptive acts and practices in connection with the creation of hundreds of million of dollars of pension benefits related to MP-1.

3. In violation of Government Code Section 1090, these officials held prohibited contractual interests in the pension benefits that they voted to create.

4. Such officials, by offering to exchange and exchanging a thing of value with the pension board, these officials created, in MP-1, an illegal and unenforceable contract.

5. In creating pension benefits without paying for them, the City and pension officials violated the City Charter and the State Constitution.

In addition to copies of the Interim Reports, I am also transmitting a disc containing filings or notices filed by the City pursuant to continuing disclosure agreements entered into

with underwriters for certain of the City's bond offerings to permit such underwriters to comply with rules or regulations of the Securities and Exchange Commission.

Should the Audit Committee need any other information from this office, please feel free to contact me. I look forward to seeing you on the 9th of August.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

MDB:pev
Attachments

EXHIBIT 27

CITY IS SUBSTANTIALLY COMPLETE. WE BELIEVE THIS IS AN OPPORTUNE TIME TO RECOMMEND TO THE CITY AS BEING IN THE CITY'S BEST INTEREST THAT IT SELECT NEW COUNSEL TO REPRESENT THE CITY BEFORE THE SEC. WE WOULD BE GLAD TO ASSIST THE CITY IN IDENTIFYING SUCH COUNSEL. WE ARE ALSO GLAD TO CONTINUE OUR SEC REPRESENTATION UNTIL NEW COUNSEL IS SELECTED AND TO PROVIDE FOR SMOOTH TRANSITION. WE ARE HONORED TO HAVE SERVED THE CITY IN THESE MOST IMPORTANT MATTERS AND THANK YOU FOR ALLOWING US THAT PRIVILEGE.

ATKINS:
THANK YOU, MR. MACO. MR. EWELL, DO YOU WANT TO INTRODUCE THE NEXT SPEAKER?

EWELL:
YES, YOU'RE HONOR. MEMBERS OF THE COUNCIL. I WILL LIKE TO INTRODUCE YOUR AUDIT COMMITTEE AND I THINK MR. LEVITT IS GOING TO FIRST ADDRESS YOU, IF IM NOT MISTAKEN.

LEVITT:
MADAM MAYOR, MEMBERS OF THE CITY COUNCIL, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO APPEAR BEFORE YOU AND REPORT ON OUR COMMITTEES PROGRESS. WE COME TOGETHER THIS AFTERNOON UNDER EXCEEDINGLY DIFFICULT AND TRYING CIRCUMSTANCES. FROM THE RECENT DOWNGRADING OF THE RATING OF THE CITY'S BONDS TO THE ONGOING INVESTIGATIONS OF VARIOUS CITY OFFICIALS. THE FISCAL AND POLITICAL CRISIS FACING SAN DIEGO HAS ONLY DEEPENED. AMERICA'S FINEST CITY HAS BEEN TARNISHED BEYOND ALMOST ALL RECOGNITION. REALIZING THE EXTENT OF THE PROBLEMS FACING SAN DIEGO AND THE NECESSITY FOR INDEPENDENT ASSESSMENT OF ITS FINANCES, THE CITY'S OUTSIDE AUDITORS KPMG SUGGESTED THAT THIS BODY ESTABLISH AN INDEPENDENT AUDIT COMMITTEE IN THE MODEL OF THOSE REQUIRED BY PUBLIC COMPANIES UNDER THE SARBANES OXLEY ACT. IN ESTABLISHING THE AUDIT COMMITTEE, THE CITY COUNCIL WISELY RECOGNIZED THE IMPORTANT ROLE THAT QUALIFIED, COMMITTED, INDEPENDENT AND TOUGH MINDED AUDIT COMMITTEES PLAY AS GUARDIANS

OF THE PUBLIC INTEREST. YOU MADE OUR MISSION CRYSTAL CLEAR. TO ACT AS A FREESTANDING COMMITTEE, SEPARATE AND APART FROM THE BODY POLITIC, TO REVIEW THE INVESTIGATIVE ACTIVITY UNDERWAY, TO TAKE THE STEPS NECESSARY TO CORRECT THE CITY'S FINANCIAL DISCLOSURES AND PROVIDE A REMEDIATION PLAN TO PREVENT THE DEFICIENCIES FROM RECURRING. AND TO OTHERWISE SATISFY THE CITY'S AUDITORS. SO SAN DIEGO MAY THEN ISSUE CREDIBLE AND TRANSPARENT FINANCIAL STATEMENTS. THIS PAST WEEK, THE SEC CONFIRMED THE WISDOM OF THIS APPROACH AND REGAINING ACCESS TO THE SOURCES OF PUBLIC SOURCES NEEDED TO RESTORE THE CITY'S FINANCIAL VIABILITY AND THE VIABILITY IN PARTICULAR OF ITS PENSION SYSTEM. YET, IN THE MONTHS SINCE THESE DEVELOPMENTS, WE ARE AT A LOG JAM, BATTLES OVER POLITICAL TURF, OVERWHELM THE PUBLIC INTEREST. OPENNESS IN THE PURSUIT OF A CREDIBLE, EFFECTIVE INVESTIGATION IS BEING FRUSTRATED AND UNDERMINED BY LEGAL MANEUVERINGS AND POLITICAL SHOW MAN SHIP. SOME MAY SAY THAT THE ISSUES FACING SAN DIEGO ARE TOO COMPLEX SIMPLY TO BE PAINTED AS A CHOICE BETWEEN RIGHT AND WRONG. MY COLLEAGUES AND I ON THE AUDIT COMMITTEE DISAGREE WITH THAT JUDGMENT. THE CHOICE COULDN'T BE CLEARER. BEFORE YOU TODAY IS THE CHOICE EITHER TO REJECT THE POLITICS, THE PERSONAL AVARICE AND MISGUIDED POLICIES THAT HAVE PUT SAN DIEGO IN THE POSITION IT FINDS ITSELF IN. OR TO EXCUSE THEM, GRANT THEM A PASS TO CAUSE FURTHER DISARRAY, DIVISION, AND DISTRUST. IT IS A CHOICE BETWEEN PERSONAL GRUDGES AND THE COMMUNITY'S WELLBEING. BETWEEN ARGUING ABOUT THE PAST AND FINDING SOLUTIONS FOR THE FUTURE. BETWEEN THE CYNICISM, SKEPTICISM, AND HOPE. MY TESTIMONY TODAY I WILL REVIEW HOW WE ARRIVED AT THIS CHOICE. THE WORK THE AUDIT COMMITTEE HAS DONE, THE ROADBLOCKS WE HAVE ENCOUNTERED AND HOW ALL OF YOU CAN HELP US OVERCOME THEM. OVER THE PAST FIVE MONTHS SINCE YOU ESTABLISHED AN INDEPENDENT AUDIT COMMITTEE, WE HAVE MADE SOME SIGNIFICANT PROGRESS. FIRST WE HAVE ENGAGED IN EXTENSIVE DIALOGUE WITH THE CITY'S INVESTIGATORS AND VINSON AND ELKINS AND EVALUATED THE EXTENT OF ADDITIONAL WORK NECESSARY SO THAT THE

INVESTIGATION MAY BE BROUGHT TO A CONCLUSION. SECOND, WE HAVE MET WITH THE CITY'S OUTSIDE AUDITORS OF KPMG, DISCUSSED WITH THEM AT GREAT LENGTH THE INVESTIGATIVE MATERIAL AND ARE IN THE PROCESS OF IMPLEMENTING AN AGREED UPON PLAN WHICH, AT ITS CONCLUSION, WOULD ALLOW KPMG TO ISSUE AN AUDIT REPORT ON THE CITY'S FINANCIAL STATEMENTS. THIRD, WE HAVE BEGUN THE WORK ON REMEDIATION EFFORTS, INCLUDING THE REMOVAL OF THE CITY RETIREMENT SYSTEMS ACTUARY AND WORKING WITH A NEW CITY AUDITOR AND CONTROLLER WHO IS APPROPRIATELY IMPROVING INTERNAL CONTROLS. FOURTH, WE HAVE ORGANIZED AND ARE OVERSEEING THE PRODUCTION OF DOCUMENTS AT BOTH THE U.S. ATTORNEY AND SEC SUBPOENA MORE THAN A YEAR AGO. FIFTH, OVER THE COURSE OF OUR WORK THESE LAST FIVE MONTHS, WE HAVE HAD SEVERAL DISCUSSIONS AND MEETINGS WITH THE INDEPENDENT AUDITORS WHO SUPPORT OUR APPROACH AND OUR EFFORTS. FINALLY, WE HAVE UPDATED AND WILL CONTINUE TO UPDATE THE COUNCIL ON THE PROGRESS OF OUR WORK PLAN. AS WE PROCEED THROUGH SEGMENTS OF OUR PLAN, WE WILL ALSO ISSUE REGULARLY WRITTEN REPORTS TO THE COUNCIL, APPRISING YOU OF OUR PROGRESS AND ALERTING YOU TO ANY IMPEDIMENTS TO THAT PROGRESS THAT WE MAY BE ENCOUNTERING. PART OF THE AUDIT COMMITTEES INVESTIGATION IS REMEDIATION OF THE CAUSES OF THE DEFICIENCIES THAT ARE FOUND TO EXIST. IN DOING SO, THE AUDIT COMMITTEE HAS MET WITH CITY OFFICIALS, LEADERS IN THE BUSINESS COMMUNITY AND LABOR WHO SUPPORT WHOSE COMMITMENT, WHOSE COOPERATION ARE ESSENTIAL TO EVENTUALLY RESOLVING THE PENSION AND OTHER LONG TERM ISSUES THAT THREATEN THE COMMUNITY. INDEED FROM THE OUTSET OF THIS PROJECT, WE HAVE BEEN CLEAR THAT WE CANNOT COMPLETE THE TASK AT HAND WITHOUT THE ACTIVE SUPPORT AND COOPERATION OF KEY MEMBERS OF THE SAN DIEGO COMMUNITY. WE APPROACHED OUR MISSION KNOWING THAT WE COULD ONLY SUCCEED IF THE LEADERS OF THIS COMMUNITY WANTED US TO SUCCEED. UNFORTUNATELY, TIME AND TIME AGAIN, KEY FIGURES IN THE LEADERSHIP OF SAN DIEGO HAVE FRUSTRATED, IMPEDED AND EVEN THWARTED OUR EFFORT. IN JUST FIVE MONTHS OF WORK, WE HAVE ENCOUNTERED A

REFUSAL BY THE PENSION BOARD TO MAKE AVAILABLE TO THE U.S. ATTORNEY, THE SEC OR THE AUDIT COMMITTEE DOCUMENTS CRITICAL TO ASCERTAINMENT OF THE TRUTH AND CRITICAL TO THE COMPLETION OF AN INVESTIGATION SATISFACTORY BOTH TO US AND THE AUDITOR. WE HAVE ENCOUNTERED AN UNRELENTING DRUM BEAT OF ALMOST NONSTOP PUBLIC ACCUSATIONS BY THE CITY ATTORNEYS OFFICE, WHICH HAS ONLY SERVED TO CAUSE DIVISION, UNCERTAINTY, AND OBSTACLES TO PROGRESS. WE HAVE ENCOUNTERED THE DISTRACTION OF LITIGATION, OSTENSIBLY BEGUN ON BEHALF OF THE CITY, WHICH IS HAS RESULTED IN INCREASED ACRIMONY AND DELAY, IS NOW THE JUDICIARY MUST SPEND MONTHS OR YEARS WORKING THROUGH THE COUNTLESS CHARGES AND COUNTER CHARGES. THIS IN TURN HAS CREATED RELUCTANCE ON THOSE BEING SUED TO COOPERATE WITH THE AUDIT COMMITTEE AND ITS INVESTIGATIVE EFFORTS. WE HAVE ENCOUNTERED PUBLIC PLEDGES OF COOPERATION, BY THE CITY ATTORNEY WHO BEHIND THE SCENES HAS, IN FACT, FAILED TO FULFILL THOSE PLEDGES AND WHO TO THIS DAY HAS STILL NOT MADE AVAILABLE RELATED INVESTIGATIVE MATERIAL CRUCIAL TO OUR EFFORTS THAT WE REQUESTED MONTHS AGO. WE HAVE ENCOUNTERED QUESTIONS EVEN AMONG SOME OF THE MEMBERS OF THE CITY COUNCIL ITSELF AS TO WHETHER THE AUDIT COMMITTEE THAT IT FORMED SHOULD BE PERMITTED TO COMPLETE ITS TASK. THE AUDIT COMMITTEE IS GRAPPLING WITH AN EXTRAORDINARILY COMPLEX SITUATION. COMBING THROUGH HUNDREDS OF THOUSANDS OF RECORDS, SCORES OF ALLEGATIONS OF POSSIBLE VIOLATION OF CRIMINAL AND CIVIL LAW. WE HAVE A TEAM OF 15 LAWYERS AND ACCOUNTANTS WORKING LONG DAYS, LONG WEEKS TRYING EFFICIENTLY TO UNCOVER THE FACTS AND PREPARE A REPORT. THE HOSTILE ENVIRONMENT WE ARE OPERATING IN ONLY ADDS TO THE TIME AND IN TURN THE COSTS OF OUR REVIEW. BUT MORE THAN THAT, THIS CONTENTIOUSNESS ALSO FLIES IN THE FACE OF TWO CALLS BY THE SEC STAFF FOR THE LEADERSHIP OF THIS CITY TO COOPERATE. IGNORING THESE CALLS WILL ONLY ADD TO THE COSTS INCURRED BY THE PEOPLE OF SAN DIEGO. NOT JUST IN TERMS OF REPUTATION LOST, POTENTIALLY IN THE SIZE OF THE SANCTIONS HANDED OUT BY VARIOUS LAW ENFORCEMENT

AGENCIES. LET ME BE CRYSTAL CLEAR. THERE IS NO WAY SAN DIEGO CAN GET THE FUNDS IT NEEDS FROM PUBLIC CAPITAL MARKETS WITHOUT AN ADEQUATE AUDIT REPORT. THERE IS NO WAY TO GET SUCH A REPORT WITHOUT A THOROUGH INVESTIGATION BY A BODY UNENCUMBERED, UNTAINTED, AND UNABASHEDLY INDEPENDENT FROM THOSE INVOLVED IN THE SITUATION. OF COURSE, SOME HAVE SUGGESTED DISBAND THE AUDIT COMMITTEE, FIRE KPMG, SEEK AN AUDITOR WHO WOULD BE LESS RIGOROUS IN ITS REQUIREMENTS. WITHOUT GETTING INTO THE WRATH THAT MAY BE EXPECTED FROM REGULATORY OFFICIALS, IN RESPONSE TO SUCH AN IRRESPONSIBLE APPROACH IT IS INCONCEIVABLE TO ME THAT ANY REPUTABLE AUDITOR WOULD SIMPLY TURN A BLIND EYE TO THE LEGAL AND FACTUAL ISSUES THAT MUST BE INVESTIGATED AND RESOLVED BEFORE AN AUDIT REPORT MAY BE ISSUED. OTHERS HAVE ARGUED, ALMOST NAIVELY, THAT THE BANKRUPTCY OF THIS CITY IS A VIABLE ALTERNATIVE. YET, IT IS FAR FROM CLEAR THAT THE CITY WOULD EVEN QUALIFY FOR A BANKRUPTCY. BEYOND THAT, EVEN WITH BANKRUPTCY, EVEN WITH BANKRUPTCY THE CITY WOULD STILL NEED TO GET AN AUDIT REPORT. EVEN WITH BANKRUPTCY, THE CITY WOULD STILL NEED A THOROUGH INDEPENDENT INVESTIGATION. EVEN WITH BANKRUPTCY, THE CITY WOULD STILL NEED WAIVER OF THE ATTORNEY CLIENT PRIVILEGES BY THE PENSION BOARD. A BANKRUPTCY FILING WOULD DO NOTHING TO RESOLVE THE CITY'S PRESENT DIFFICULTIES. IT WOULD ONLY ADD NEW LAYERS OF COST AND DELAY AS ALL MEANINGFUL ACTIVITY WOULD HAVE TO BE ARGUED ABOUT BY LAWYERS, SUBJECT TO THE SCRUTINY OF VARIOUS COMMITTEES, ALL CONVENED AT CITY EXPENSE AND THEN SEPARATELY APPROVED BY THE BANKRUPTCY COURT. RESPONSIBLE OFFICIALS COULD EVEN RAISE THE POSSIBILITY OF BANKRUPTCY SPEAKS TO THE TRAGIC CIRCUMSTANCES OF THE CURRENT SITUATION. SAN DIEGO'S PROBLEMS ARE AT THEIR ROOT POLITICAL PROBLEMS, NOT ECONOMIC ONES. THIS IS A CITY WITH ABSOLUTELY EXTRAORDINARY ASSETS, MAGNIFICENT NATURAL BEAUTY AND RESOURCES, A FIRST RATE CULTURAL ENVIRONMENT, A COMMITTED PUBLICITY CITIZENRY, A HARD WORKING POPULOUS AND AND AN EXTREME STREAMLINE ROBUST ECONOMIC BASE. HOW TRAGIC IT IS THAT INFIGHTING, INTEMPERATE POLITICAL

DIATRIBE, PREMATURE PUBLIC CHARGES HAVE SO DRIVEN US UNDER THE MEMBERS OF THIS MAGNIFICENT COMMUNITY WITH NO OTHER NAVIGABLE PATH OUT OF THIS FISCAL CRISIS. I COME TODAY TO ASK YOU, THE MEMBERS OF THE CITY COUNCIL, FOR YOUR UNQUALIFIED SUPPORT. I CAN SAY IT IN NO OTHER WAY BUT THAT THE AUDIT COMMITTEE YOU ESTABLISHED CANNOT GUARANTEE ITS INDEPENDENCE WITHOUT YOUR SOLID BACKING. WE CANNOT FULFILL OUR MISSION WITHOUT A VOTE OF CONFIDENCE. TODAY YOU'VE GOT A CHOICE. YOU CAN DECIDE TO GIVE THE AUDIT COMMITTEE THE SUPPORT IT NEEDS TO COMPLETE ITS WORK OR EFFECTIVELY DISBAND. IT IS AN IMPORTANT DECISION. MAYBE ONE OF THE MOST IMPORTANT YOU'LL MAKE THIS TERM. AND AS YOU MAKE THIS DECISION, YOU SHOULD DO SO WITH FULL KNOWLEDGE AND AWARENESS THAT A DECISION TO DISBAND THE AUDIT COMMITTEE THROUGH LACK OF ACTIVE SUPPORT AND NECESSARY FUNDING WILL ALL BUT GUARANTEE THAT SAN DIEGO SINKS FURTHER INTO THE MORASS OF FISCAL CHAOS. AS YOU CONSIDER THE COURSE TO TAKE, ALLOW ME TO REITERATE THIS KEY POINT. THE INDEPENDENCE OF THIS AUDIT COMMITTEE IS CRITICAL TO ITS WORK. AND THAT CAN ONLY BE GUARANTEED BY YOUR SUPPORT. WE CANNOT, WE WILL NOT CONTINUE THE AUDIT COMMITTEES WORK WITHOUT YOUR BACKING. MEMBERS OF THE CITY COUNCIL, YOU ARE THE CUSTODIANS OF THE FUTURE OF THIS CITY AND THE MILLIONS OF PEOPLE WHO CALL IT HOME. YOU HAVE IT IN YOUR POWER TO ADDRESS THE MISTAKES OF THE PAST AND GIVE THIS CITY A BRIGHTER FUTURE. TO SET A TONE OF COOPERATION, NOT ACRIMONY... NEGOTIATION, NOT LITIGATION, DISCUSSION, NOT DIATRIBE. IT IS NOT AN IMPOSSIBLE TASK. FROM MY HOMETOWN IN NEW YORK IN THE 70'S, TO ORANGE COUNTY IN THE 90'S, OTHER LOCALITIES HAVE FACED SIMILAR PROBLEMS AND THEY HAVE OVERCOME THEM. AND I KNOW THAT SAN DIEGO CAN OVERCOME THEM TOO. ALREADY WE HAVE BEEN HEARTENED BY THE COOPERATION AND SHOW OF SUPPORT BY THE BUSINESS AND LABOR COMMUNITIES AND BY MEMBERS OF THIS COUNCIL. IF LEADERS FROM ACROSS SAN DIEGO SHOW THIS TYPE OF PATIENCE AND COOPERATION, IF ALL PARTIES INVOLVED QUICKLY PRODUCE THE DOCUMENTS THAT THIS COMMITTEE NEEDS, THE AUDIT COMMITTEE CAN WRAP UP ITS WORK BY THE

WRAP UP ITS WORK BY THE END OF THE YEAR, WE CAN BEGIN TO PUT THIS CITY BACK ON THE PATH TOWARD FISCAL HEALTH. I WOULD NOW LIKE TO CALL ON MY ASSOCIATE, MR. BENITO ROMANO.

ROMANO:
DEPUTY MAYOR ATKINS, MEMBERS OF THE CITY COUNCIL, I WOULD LIKE TO REVIEW BRIEFLY THE PROGRESS WE HAVE MADE SINCE OUR LAST PROGRESS REPORT, AND THEN MAKE A FEW OBSERVATIONS ABOUT WHERE I THINK WE ARE. SINCE OUR LAST REPORT TO THE COUNCIL, WE HAVE IDENTIFIED FROM ALL SORTS OF SOURCES APPROXIMATELY 140 ALLEGATIONS OF ILLEGAL ACTS OR MISCONDUCT. AND AS TO EACH, WE ARE GOING TO BE REQUIRED TO GAIN A COMPLETE UNDERSTANDING OF WHAT THOSE ACTS ARE AND WHAT INVESTIGATIVE PROCEDURES HAVE BEEN APPLIED TO THOSE ACTS BY EITHER MR. AGUIRRE OR MR. MACO. WE ARE GOING TO HAVE TO EVALUATE THE THOROUGHNESS AND ADEQUACY OF THE INVESTIGATIONS THAT HAVE GONE ON UP TO NOW AND WE ARE GOING TO HAVE TO MAKE SUBSTANCE ASSESSMENT OF THE CONCLUSIONS THAT HAVE BEEN DRAWN BY THE INVESTIGATIONS THAT HAVE GONE ON SO FAR. EVEN TO THE EXTENT NECESSARY, WE ARE GOING TO HAVE TO CONDUCT AN INVESTIGATION OF OUR OWN. THERE HAVE BEEN TWO INVESTIGATIONS OF SOME OF THESE ALLEGATIONS. ONE BY VINSON AND ELKINS AND ONE BY THE CITY ATTORNEY. AND WE HAVE FIRST REORGANIZED AND SYNTHESIZED THE MATERIAL FROM VINSON AND ELKINS SO THAT WE COULD UNDERSTAND IT. THE 140 ALLEGATIONS HAVE BEEN SYNTHESIZED INTO 17 STANTIVE SUBJECT AREAS. FOR EXAMPLE, ALL ISSUES RELATED TO THE USE OF SURPLUS EARNINGS HAVE BEEN LUMPED TOGETHER AND ALL THE RELEVANT MATERIAL RELATED TO THAT ISSUE HAS BEEN GROUPED. AS TO EACH, WE HAVE REQUESTED AND RECEIVED FROM VINSON AND ELKINS A SUMMARY MEMORANDA AND RELATED KEY DOCUMENTS SO THAT WE CAN UNDERSTAND THE CONCLUSIONS THAT THEY REACHED AND EVALUATE THEM. VINSON AND ELKINS HAS CONCLUDED ITS WORK. WE HAD HOPED FOR THE SAME LEVEL OF COOPERATION FROM THE CITY ATTORNEY, BUT UNFORTUNATELY, THAT HAS NOT HAPPENED. WE HAVE REQUESTED TWICE ACCESS

EXHIBIT 28

KPMG:
I UNDERSTAND.

ATKINS:
AND I UNDERSTAND THAT MR. ROMANO MENTIONED THAT YOU HAVE A MEETING WITH THE CITY ATTORNEYS OFFICE. SO IN TERMS OF THE DOCUMENTS THAT YOU I MEAN, THE ANSWER YOU GAVE WAS ONE- IT WAS LONG, AND IT WAS -YOU WILL MEET WITH THE ATTORNEY AND COME TO A MEETING OF THE MINDS SO THAT BY THE END OF THE NEXT MONTH, IF WE CONTINUE WORKING TOGETHER, WE WILL GET SOMETHING A LITTLE MORE SPECIFIC MAYBE ABOUT WHAT IT IS YOU NEED. I MEAN, WE CANT PUSH FOR WHAT WE THINK SHOULD HAPPEN WITH OUR COLLEAGUE HERE, UNLESS WE KNOW SPECIFICALLY WHAT IT IS, SO MY HOPE IS WITHIN THE NEXT FEW OR WHENEVER YOU MEET YOU WILL COME TO AN..

ROMANO:
I CAN'T GUARANTEE THAT THERE WILL BE A MEETING OF THE MINDS BUT WE WILL, I THINK WE UNDERSTAND WHAT WE NEED, AND I THINK MR. AGUIRRE UNDERSTANDS WHAT WE NEED, AND HE'S GRACIOUSLY OFFERED TO SIT DOWN WITH ME AND WALK THROUGH, EITHER THAT SET OF DOCUMENTS OR SOME OTHER SET OF DOCUMENTS SO THAT WE CAN THEN IDENTIFY WHAT MORE WE NEED AND DETERMINE IF IT EXISTS.

ATKINS:
THANK YOU. AND IN TERMS OF ONE OF THE COMMENTS, MR. LEVITT IF YOU WOULD BE THE ONE TO ASK. HELP US UNDERSTAND VERY BRIEFLY THE PERSPECTIVE OF THE SEC IN TERMS OF A COMMENT MADE BY EITHER ONE OF THE SPEAKERS OR MR. AGUIRRE, I CAN'T REMEMBER. AND WHOEVER HAS A PHONE GOING COULD YOU- THANK YOU I APPRECIATE IT. WHY CAN'T WE WAIT UNTIL THE CONCLUSION OF THE SEC INVESTIGATION, HELP US UNDERSTAND THE SEC PERSPECTIVE ON WHY THE PATH WE ARE ON WHICH THEY SEEM TO HAVE INDICATED TO US THAT IT IS THE RIGHT PATH, WHY WOULDN'T WE WAIT TILL THE CONCLUSION OF THEIR INVESTIGATION?

LEVITT:
IT IS ENTIRELY CONCEIVABLE THAT THE SEC WILL NOT COMPLETE THEIR WORK FOR A NUMBER OF YEARS. AND THAT OUR PROCESS WILL EXPEDITE WHATEVER ACTION THEY WILL OR WILL NOT TAKE.

ATKINS:
IS THAT THE PERSPECTIVE OF THE SEC I MEAN, HAVING CHAIRED THE SEC.

LEVITT:
IT VARIES ACCORDING TO THE ISSUE. I DON'T KNOW ENOUGH ABOUT WHAT THEY BELIEVE IS INVOLVED IN THIS ISSUE. BUT CLEARLY THEY ARE DEPENDING UPON US AS AN OUTSIDE AUDIT COMMITTEE TO HELP THEM REACH THEIR CONCLUSIONS AND GET ON WITH THEIR WORK.

ATKINS:
THANK YOU. I THINK IN TERMS OF SEEING SOME OF THE INVOICES, I HAVE TO ADMIT IT CERTAINLY IS PAINFUL FOR SOME OF US WHO DON'T OPERATE IN THE WORLD OF THE CORPORATE WORLD AND ATTORNEYS 6:40:04 AND CPAS. I MEAN, WE ARE PUBLIC SERVANTS. WE ARE NOT USED TO SUCH STATEMENTS IN TERMS WHAT WE DO, BUT I UNDERSTAND IT IS RELEVANT TO GETTING THE WORK DONE THAT WE NEED TO GET DONE. AND I WISH IT WERE OTHERWISE. AND I WISH WE DIDNT HAVE TO SPEND THE AMOUNT OF MONEY WE ARE SPENDING, BUT I THINK WE ARE GOING TO SPEND LESS AS MR. MADAFFER SAID, TO GET THROUGH THIS THAN TO START ALL OVER. I WOULD FINALLY SAY BEFORE I MAKE A FEW CONCLUDING COMMENTS, A QUESTION OR TWO BRIEFLY, AND THEN THE MANAGER TO FINISH UP TO GO ON TO THE NEXT ITEM. IT WAS MY UNDERSTANDING WHEN WE STARTED WITH V&E THAT THE ORIGINAL IT SORT OF MORPHED INTO QUITE A FEW THINGS THAT WAS ORIGINAL INTENTION OF IN TERMS OF WHEN THE PREVIOUS CITY ATTORNEY CONTRACTED AND BROUGHT V&E ON BOARD. AND THE SCOPE CHANGED OVER TIME. SO JUST TO TRY TO- FROM MY OWN MEMORY, WE SORT OF EXPANDED OVER TIME THE NATURE OF THE WORK. IT STARTED WITH ONE ATTORNEY,

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:

WE HAVEN'T DONE A 100 PERCENT AUDIT. WE'VE CHECKED IT-
YES.THE FOOTNOTES DO SUPPORT THE ITEMS THAT ARE
REFERENCED.

AGUIRRE:
DID YOU THEN CHECK TO SEE IF THE EXHIBITS THAT WERE
REFERENCED IN THE FOOTNOTES WERE IN FACT THERE?

LEVITT'S COLLEAGUE:
AGAIN, I DON'T THINK WE HAVE DONE A 100 PERCENT AUDIT. I
THINK THAT'S TRUE.

AGUIRRE:
TO THE EXTENT THAT YOU HAVE CHECKED, THAT WHICH THE
CITY ATTORNEY HAS SET FORTH IN THE FOOTNOTES AND
PROVIDED AS EXHIBITS IS SUPPORTIVE OF THE EXPRESSIONS SET
FORTH IN THE REPORTS?

LEVITT'S COLLEAGUE:
YES.

AGUIRRE:
OKAY. NOW MR. LEVITT, ONE LAST QUESTION TO YOU,
SIR, MR. LEVITT. DID THE KROLL COMPANY PROVIDE A
DETAIL FOR THE WORK PERFORMED SO THAT, FOR EXAMPLE, WE
WOULD BE ABLE TO KNOW THAT A KROLL, ONE OF THE 16 KROLL
TIME KEEPERS, WHAT THEY WORKED ON AND HOW LONG THEY
WORKED ON IT AND WHEN THEY WORKED ON IT.

LEVITT:
IM SURE WE COULD PROVIDE...

AGUIRRE:
I'M NOT ASKING COULD YOU BUT IM SAYING DID YOU PROVIDE,
IM SAYING DID YOU PROVIDE THAT TO THE CITY.

LEVITT:
IM NOT SURE I UNDERSTAND YOUR QUESTION NOR IT'S INTENT.

AGUIRRE:
WELL, FORGET ABOUT MY INTENT.

LEVITT:
NO, IM CURIOUS TO KNOW WHAT YOUR INTENT IS.
IF YOU ARE CONTINUING TO TRY TO PROVE THAT WE ARE OVER BILLING YOU, IN SOME WAY OR OTHER

AGUIRRE:
SIR, IM ASKING YOU A SIMPLE QUESTION.

MICHAEL YOUNG:
I DON'T UNDERSTAND EITHER.

AGUIRRE:
THIS IS A VERY SIMPLE QUESTION. DID YOU PROVIDE, AS FOR EXAMPLE, VINSON AND ELKINS DID IM NOT ASKING MR. YOUNG, IM ASKING MR. LEVITT. YOU STOOD UP, YOU'RE THE PERSON WHO MADE THE PRESENTATION. IM ASKING YOU ABOUT WHAT YOUR PERSONAL KNOWLEDGE IS. DID YOU PROVIDE AT THE KROLL COMPANY AN ITEMIZATION WHERE YOU STATED WHO WORKED ON

LEVITT:
NO, I DID NOT.

AGUIRRE:
YOU DID NOT DO THAT FOR YOUR TIME YOU DID NOT DO THAT IN...

LEVITT:
I PROVIDED THEM WITH THE AMOUNT OF TIME THAT I SPENT AND ON WHAT I'VE SPENT THAT TIME.

AGUIRRE:
YOU HAVE BROKEN DOWN BY THE HOURS THAT YOU SPENT ?

LEVITT:
PROBABLY

ATKINS:
MR. AGUIRRE-

AGUIRRE:
THE REASON THAT IS IMPORTANT -

[MULTIPLE VOICES]

LEVITT:
ONCE AGAIN I GET BACK TO THE OTHER ISSUE. IF YOU ARE QUIBBLING ABOUT

ATKINS:
I'M SORRY MR. LEVITT, JUST A MOMENT. MR. AGUIRRE GIVE ME A MOMENT. LET ME EXPLAIN I HAVE GIVEN EACH SIDE 45 MINUTES AND I WAS GOING TO ALLOW SOME LEEWAY, MR. AGUIRRE. BUT REALLY

AGUIRRE:
I THINK IM NOT SURE THE DIVISION OF TIME HAS BEEN FAIR.

ATKINS:
MR. AGUIRRE, MR. AGUIRRE, LET ME CHAIR THIS MEETING TODAY. YOU HAVE MEETINGS SCHEDULED WITH KROLL AND I THINK THIS CAN CONTINUE. BUT I HAVE TRIED TO BE FAIR TO EVERYONE HERE TODAY AND GIVE TIME. AND SO

AGUIRRE:
YOU'RE NOT BEING FAIR RIGHT NOW, IM SORRY. I WAS IN THE MIDDLE OF A QUESTION AND YOU INTERRUPTED ME.

ATKINS:
IM NOT GOING TO HAVE THIS COUNCIL CHAMBER DISRUPT. WE HAVE DONE WELL TO GET EVERYBODY'S POINT OUT.

[MULTIPLE VOICES]

AGUIRRE:
LET ME FINISH WHAT YOU SAID I COULD DO.

ATKINS:
I ASKED YOU TO MAKE CONCLUDING COMMENTS AND I GAVE YOU THE OPTION TO DO THAT. BUT I DON'T WANT TO GO INTO ANOTHER ROUND OF GRILLING.

AGUIRRE:
IM NOT GOING INTO ANOTHER ROUND OF GRILLING. I JUST ASKED A QUESTION, ILL LEAVE IT AT THAT AND LET ME MAKE MY CONCLUDING REMARKS SINCE WE HAVE FOUR PEOPLE THAT HAVE STOOD UP AND NOT PERMITTED ME TO PLACE THE QUESTIONS TO THE INDIVIDUAL.

ATKINS:
THANK YOU.

AGUIRRE:
THIS IS THE POINT. SO FAR THE REPORTS THAT HAVE BEEN ISSUED BY V&E BOTH ONE AND TWO, THE SECOND ONE UNDER THE AUSPICES AS WELL AS THE INDEPENDENT AUDIT COMMITTEE OR THE KROLL COMPANY, HAVE BEEN FAVORABLE TO THE COUNCIL, THE MAYOR AND TOP CITY OFFICIALS. THEY HAVE BEEN FAVORABLE IN THE SENSE THAT THEY FOUND NO WRONG DOING. AND IN THAT CONTEXT, WE ARE AUTHORIZING THE COUNCIL IS AUTHORIZING MILLIONS AND MILLIONS OF DOLLARS FOR THOSE REPORTS. NOW, I BELIEVE IN MY OWN HEART AND SOUL, ESPECIALLY BASED ON THE PERFORMANCE TODAY OF MR. LEVITT THAT THERE IS NO INDEPENDENCE WITH REGARD TO NO RELIABILITY. OTHER PEOPLE MAY REACH OTHER JUDGMENTS, OTHER PEOPLE HERE. BUT MY BEST JUDGMENT IS THAT THERE IS NOT THIS IS NOT AN INDEPENDENT GROUP AND I KNOW THAT THE VOTERS ARE GOING TO GO AGAINST THIS. TIME WILL TELL IF MY JUDGMENT IS RIGHT OR WRONG, BUT I DO NOT BELIEVE- I DO BELIEVE THAT THERE WAS INVOLVEMENT IN THE ACTUAL DRAFTING AS INDICATED BY THE TIME RECORDS OF THE REPORT, THE SECOND INTERIM REPORT THE SECOND REPORT ISSUED BY VINSON AND ELKINS. I DO BELIEVE IT IS A WHITEWASH. I DO

BELIEVE THAT WHEN ANYONE LOOKS AT IT, PEOPLE WILL COME TO THAT CONCLUSION WHO ARE CAREFUL IN DISCERNING IT. AS I SAID, I UNDERSTAND THAT MY COUNCIL IS NOT SUPPORTING THE PERSON THAT IS THE ELECTED CITY ATTORNEY TODAY. THE MAJORITY, AND THAT IS YOUR CHOICE AND I UNDERSTAND THAT. BUT AT SOME POINT, MAYBE NOT TODAY, BUT SOME POINT DOWN THE ROAD, MY ADVICE WILL BE THAT WE REGROUP, COME BACK TOGETHER, NOT SPEND MILLIONS OF MORE DOLLARS FOR OUTSIDE LAWYERS THAT ARE GOING TO TELL WHAT SOME PEOPLE WANT TO HEAR WHICH IS WHERE I THINK WE ARE NOW, AND THAT WEAK BEINGLY MAKE REAL PROGRESS ON THESE ITEMS. I KNOW I DON'T HAVE YOU TODAY, BUT I HOPE AT SOME POINT TO CONVINCE YOU THAT THIS IS ERROR AND THIS IS PUTTING MORE GOOD MONEY AFTER BAD. THANK YOU.

ATKINS:
THANK YOU, MR. AGUIRRE.

[APPLAUSE]

ATKINS:
MR. EWELL, WHAT ARE YOU ASKING US TO DO AT
THIS POINT WE HAVE A MOTION AND SECOND.

EWELL:
WE ARE ASKING THAT YOU ACCEPT THE THREE REPORTS THAT WERE OFFERED BY VINSON AND ELKINS. THE AUDIT COMMITTEE AND KPMG, AND THEN THAT YOU CONSIDER THE FUNDING THAT WE HAVE REQUESTED CONTINUE TO WORK THAT IS UNDERWAY. AND WITH RESPECT TO THE AUDIT COMMITTEE, THEY HAVE A REQUEST THAT I WOULD ASK THAT YOU CONSIDER. AS IT RELATES TO THE FUNDING, BUT AT THIS POINT ID ASK THAT YOU RECEIVE THE REPORTS AND I WANT TO THANK ALL THREE ENTITIES FOR THEIR PRESENCE.

ATKINS:

THANK YOU. OKAY. WE HAVE A MOTION AND A SECOND.
TO ACCEPT THE REPORT, WE ARE ONLY ON ITEM 330.
LET'S VOTE. CALL THE ROLL. IT PASSES UNANIMOUSLY.
I ABSOLUTELY MUST GO AHEAD. MR. MADAFFER, QUICKLY.
I MUST GIVE MY COLLEAGUES A FIVE MINUTE BREAK. THANK
YOU. WE WILL DO 331AND 332 TOGETHER AND I HOPE QUICKLY
AND IN FIVE MINUTES WE WILL BE BACK.

EXHIBIT 29

Pension Documents to Be Turned Over to Feds

By ANDREW DONOHUE
Voice Political Writer
Tuesday, Aug. 23, 2005

Officials in the city of San Diego's pension system have accepted a judge's secret order to turn over long-guarded documents to federal investigators, according to a source close to the proceedings.

Under the threat of being held in contempt of court, pension officials are giving the documents to investigators who have been probing possible political corruption in City Hall since early 2004, according to multiple sources who requested anonymity due to the sensitive nature of the case.

A secret hearing had been called as part of U.S. Attorney Carol Lam's attempt to force the documents' release, and a judge ruled in favor of the federal government, sources said.

The documents sought pertain to a deal cut between city and pension officials in 2002 that allowed the city to continue its historical underfunding of the pension plan in exchange for increased benefits for employees. The deal, and a similar 1996 pact, has contributed significantly to a pension deficit estimated to be at least $1.37 billion and appears to be central to the investigation being conducted by the FBI and the U.S. Attorney's Office.

Federal subpoenas seeking information related to the 2002 deal had earlier been rebuked by pension officials on the grounds the documents were protected by the attorney-client privilege.

When a newly constituted pension board took control of the system in April, Lam reiterated the request with a letter to the pension board seeking any communications between pension attorneys and board members or employees related to retirement benefit increases granted in 2002.

The letter also asks for a waiver of attorney-client privilege related to two lawsuits involving the pension system.

The first suit, known as the Gleason lawsuit, took issue with the city's practice of annually contributing less than recommended to its pension system. It resulted in a settlement with the city last year that required the city to make larger payments in to the pension fund.

The second suit is a malpractice claim brought by the pension board last year against its outside legal counsel for advice given during the consummation of the 2002 pension deal, known as Manager's Proposal 2. The suit is currently in settlement proceedings.

As a result of the 2002 deal, six current and former pension trustees have been charged by the District Attorney's Office with felony violations of the state's conflict-of-interest statute.

Assistant U.S. Attorney John B. Owens declined to comment, as did Michael Leone, outside counsel for the pension system. Retirement administrator Larry Grissom said it would be inappropriate to comment on grand jury proceedings.

The move to turn over the documents doesn't constitute a full waiver of the attorney-client privilege, meaning the archives won't yet be made available to the city's outside auditors. The auditors, KPMG, say they won't certify the city's long delayed fiscal year 2003 audit without access to these documents. Without a certified audit, the city remains frozen from the capital market to raise funds for infrastructure and construction projects.

Pension officials have been under pressure for months to release the documents from the city's auditors, elected officials and federal investigators.

Secret judicial hearings involving counsel for the government and related parties are used in connection with secret federal grand jury proceedings. They remain shielded from the public in order to protect the secret nature of the grand jury.

In addition to the Justice Department's investigation, the Securities and Exchange Commission is also investigating City Hall for officials' alleged failure to disclose the true depths of its financial problems to investors.

*Please contact Andrew Donohue directly at **Andrew.Donohue@voiceofsandiego.org** with your thoughts, ideas, personal stories or tips.*

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EXHIBIT 30

WASTEWATER INTERIM REPORT NO. 1

CITY OF SAN DIEGO OFFICIALS' FAILURE TO DISCLOSE MATERIAL FACTS IN CONNECTION WITH THE OFFER AND SALE OF WASTEWATER BONDS AND RELATED IMPROPER ACTIVITY

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

15 SEPTEMBER 2005

09-0001	Steiner Corp dba Alsco (Laundry)	72380	2586	1717
03-0900	KOCH Membrane Systems	110089	1570	1442
11-0444	Kelco Biopolymers Plant	100000	1639	1306

The new rate structure added significantly to the monthly costs of the biggest dischargers of organics (COD). The following table, compiled by San Diego Metropolitan Wastewater personnel using data currently available, demonstrates the estimated effect on monthly service charges under the new rate structure:[49]

Estimated effect on monthly sewer service charges when including organics in the rate structure for large organics dischargers

(Navy and UCSD not included because of multiple connections and a low strength/high flow waste stream)

Industry Name	**Before rate change**	**After rate change**	**% change**
ISP Alginates, Inc.	$74,000	$146,000	+98
Naval Station San Diego (total all connections) NAS North Island			
Heinz Frozen Foods	$15,000	$27,000	+81
Coca-Cola Bottling Company of San Diego	$21,000	$36,000	+69
UCSD (total all connections)			
Pall Filtration and Separations Group, Inc.	$8,800	$7,300	-16
Steiner Corp dba Alsco (Laundry)	$16,000	$20,000	+25
KOCH Membrane Systems	$14,000	$20,000	+42
Kelco Biopolymers Plant	$157,000	$311,000	+98

Clearly, the biggest beneficiaries of the unlawful rate structure were Kelco and ISP Alginates, Inc., two companies involved in the processing of kelp. Under the old rate structure, the two companies were able to avoid paying the City approximately $226,000/month or $2,712,000 annually.

XII.

CONCLUSION

The San Diego City Attorney concludes in this Wastewater Interim Report No. 1 there is substantial evidence consistent with a finding that City officials did attempt to conceal, and did

[49] Calculations by Metropolitan Wastewater Department, September 2005.

conceal, material information regarding the wastewater system's noncompliant rate structure and the potential risk of forfeiture of Federal grants and State loans.

Moreover, the City Attorney concludes, with respect to federal securities law, there is substantial evidence consistent with a finding that members of the City Council and other City officials acted knowingly or recklessly to approve related disclosures to investors without taking steps to prevent the dissemination of materially false or misleading information. In this matter, such steps should have included becoming familiar with the disclosure documents and questioning City officials, employees, or other agents about the disclosure of material facts, and withholding approval of offering documents until such time that those documents reflected all material information accurately. City officials and members of the City Council did not disclose the fact that the City was not in compliance with the user-based rate requirements for the wastewater system, contrary to California State and federal laws.

By_____

Michael J. Aguirre
City Attorney

EXHIBIT 31

MADAFFER:
1:54:06 I THINK WE WILL COME BACK TO ORDER..

CLERK:
COUNCIL MEMBER PETERS, DEPUTY MAYOR ATKINS, COUNCIL MEMBER YOUNG, COUNCIL MEMBER MAINSCHEIN, MAYOR PRO TEM MADAFFER.

MADAFFER:
IF YOU GUYS JUST IDENTIFY YOURSELVES FOR THE RECORD, WE WILL GET STARTED.

DAHLBERG:
TROY DAHLBERG, AUDIT COMMITTEE MEMBER.

ROMANO:
BENITO ROMANO, COUNSEL TO THE AUDIT COMMITTEE. I'D LIKE TO BEGIN THIS AFTERNOON. GOOD AFTERNOON FIRST OF ALL. WITH RESPECT TO THE QUESTION OF THE PUBLIC SPEAKER MR. HART, FOR THE RECORD THE AUDIT COMMITTEE WILL BE LOOKING AT THE EMAIL BOXES OF THE COUNCIL MEMBERS, PRESENT AND FORMER, AND THEIR SENIOR STAFF, THE TOTAL NUMBER OF EMAIL BOXES WILL BE SOMETHING IN THE RANGE OF 30 TO 40 EMAIL BOXES, WHICH IS AN AREA NOT APPARENTLY COVERED BY THE EARLIER INVESTIGATION DONE BY VINSON AND ELKINS. NOW TO THE COMMITTEE'S UPDATE REPORT. WE SUBMITTED A DETAILED REPORT ON SEPTEMBER 23 IN WHICH WE SAID AT THE OUTSET THAT WE PURSUING A WORK PLAN THAT CONTEMPLATES COMPLETION OF OUR WORK BY THE END OF THE YEAR BUT FRANKLY WE ADDED A NUMBER OF ITEMS THAT WE, IN THE REPORT WE FELT THAT IN FAIRNESS HAD TO BE RAISED NOW. THEY WILL OR HAVE REQUIRED ADDITIONAL INVESTIGATIVE PROCEDURES. WE HAVE COMPLETED THE PROCESS OF RESPONDING TO THE VARIOUS OUTSTANDING SEC AND U.S. ATTORNEY SUBPOENAS PURSUANT TO A JUNE 10TH PROCEDURE WE ADOPTED AND DISSEMINATED CITY WIDE. WE RECEIVED IN

EXCESS OF 12,000 ACTIVE EMPLOYEE CERTIFICATIONS THAT THEY HAVE SEARCHED THEIR WORK LOCATIONS AND HAVE PRODUCED TO THE DOCUMENT DEPOSITORY AT THE CITY ATTORNEYS OFFICE DOCUMENTS RESPONSIVE TO THESE REQUESTS. WITH THE EXCEPTING OF A SOLE SINGLE EMPLOYEE, ALL CITY EMPLOYEES OF ANY CONCEIVABLE SIGNIFICANCE IN TERMS OF HAVING DOCUMENTS THAT MIGHT BE RESPONSIVE, HAVE PROVIDED US WITH CERTIFICATIONS. WE HAVE ALSO COLLECTED AND HAVE EITHER ALREADY DEPOSITED IN THE DOCUMENT DEPOSITORY OR SCHEDULED TO BE DEPOSITED 400 BOXES OF ADDITIONAL MATERIAL RESPONSIVE TO THE SUBPOENAS. THIS IS IN ADDITION TO 100 GIGABYTES OF EMAILS AND ELECTRONIC DOCUMENTS. FOR THOSE OF YOU OVER 40, GIGABYTES IS A LOT OF INFORMATION. THE CITY ATTORNEYS OFFICE HAS SOMEWHAT BEHIND THE REST OF THE CITY, PRIMARILY BECAUSE, AS I UNDERSTAND IT, THESE ARE SHARED FILES OF FORMER CITY ATTORNEY EMPLOYEES WHO ARE THE CUSTODY OF WHICH ARE BEING TAKEN OVER BY CURRENT EMPLOYEES WHO ARE GOING BACK AND SEARCHING THOSE FILES TO MAKE SURE ANYTHING RESPONSIVE IN THEM HAS BEEN IDENTIFIED AND PRODUCED AND WE HAVE BEEN WORKING CLOSELY WITH THE CITY ATTORNEYS STAFF TO EXPEDITE THAT PROCESS. WE HAVE REVIEWED 200 BOXES OF DOCUMENTS FROM THE INITIAL SEC PRODUCTION, AS WELL AS 125 BOXES OF DOCUMENTS FROM THE U.S. ATTORNEYS OFFICE PRODUCTION. THIS, AGAIN, IS A LITTLE BIT MORE THAN WE ANTICIPATE BECAUSE THE JUNE 10TH PROCEDURES AS YOU MAY RECALL WERE INTENDED TO CAPTURE DOCUMENTS THAT WERE MISSED THE FIRST TIME. AND IT APPEARS THAT THE CITY EMPLOYEES WERE BEING VERY CAREFUL AND PREDOUSING ANYTHING THAT CONCEIVABLY COULD BE RESPONSIVE. WE ALSO HAVE TURNED OUR ATTENTION TO MATTERS RELATED TO WASTEWATER AT THE REQUEST OF THE STAFF OF THE SEC. WE HAVE SUSPENDED PRODUCTION OF THOSE DOCUMENTS PENDING OUR REVIEW OF THE DOCUMENTS THAT WE HAVE COLLECTED THUS FAR. THEY HAVE ASKED US TO COLLECT THE CRITICAL DOCUMENTS AND MAKE A PRELIMINARY PRESENTATION TO ASSIST THE SEC IN FURTHER REFINING WHAT ARE THE IMPORTANT ISSUES IN THE

WASTEWATER AREA. WE HAVE BEGUN TO DEVELOP A DATABASE A SEARCHABLE DATABASE OF ALL DOCUMENTS PRODUCED TO THE GOVERNMENT. WE ARE WORKING WITH ELECTRONIC 1:58:40 EVIDENCE DISCOVERY AND AMERICAN LEGAL CORPORATION TO DEVELOP THAT DATABASE AND TO COMPLETE THE UP LOADING OF ALL THE DOCUMENTS SO THAT THE GOVERNMENT WILL HAVE READY ACCESS TO A SEARCHABLE DATABASE OF ALL DOCUMENTS. WE HAVE RECEIVED FROM CERS WHAT PURPORTED TO BE ALL OF THE PRIVILEGED DOCUMENTS. WE HAD SOME DIFFICULTY UNTANGLING WHAT THEY GAVE US. WE LATER DETERMINED AFTER TALKING IT THEM THAT WE RECEIVED ALL BUT 400 OF THEM, AND WE HAVE BEEN GIVEN ASSURANCES THAT OF THOSE 400 WE WILL RECEIVE ADDITIONAL ONES, BUT IT APPEARS THAT THERE WILL BE 8 PRIVILEGED DOCUMENTS WE WILL NOT BE RECEIVING.

FRYE:
IM SORRY, I COULDN'T UNDERSTAND WHAT YOU JUST SAID.

ROMANO:
I'M SORRY. I'LL SPEAK A LITTLE MORE SLOWLY.

FRYE:
WELL, MAYBE JUST MORE LOUDLY. IT WAS EIGHT SOMETHING?

ROMANO:
WE RECEIVED SIX DISKS FROM THE CERS BOARD OR ITS COUNSEL. ON THE DISK, THE DISK WHERE IDENTIFIED TO US AS CONTAINING ALL OF THE PRIVILEGED DOCUMENTS THAT WE COULD FIND ON THE PRIVILEGE LOGS THAT WE HAD EARLIER OBTAINED. BECAUSE OF THE WAY IN WHICH THE DATA WAS ARRANGED ON THE DISKS WE COULDN'T MATCH IT UP TO THE LOGS. AS IT TURNS OUT, WE ARE SHORT 400 PRIVILEGED DOCUMENTS ON THE DISKS. WE LATER RECEIVED ASSURANCES THAT WE WOULD BE GETTING ACCESS TO THOSE 400 DOCUMENTS. AND UPON FURTHER INQUIRY BY US, IT TURNS OUT WE WILL BE GETTING ALL OF THE 400 DOCUMENTS LESS 8, 8 DOCUMENTS OF A PRIVILEGED NATURE WHICH ARE ON

THE LOGS WILL NOT BE PROVIDED TO US. WE HAD A MEETING WITH THE FIRM OBTAINED BY CERS TO CONDUCT AN INVESTIGATION NAVIGANT TO BEGIN A PROCESSES WE HOPE OF SHARING INFORMATION SO THAT, THEY CAN DO THEIR WORK QUICKLY AND WE CAN TAKE ADVANTAGE OF ACCESS TO OTHER CERS INFORMATION ADDITIONAL TO THE PRIVILEGED INFORMATION. NAVIGANT ONLY APPEARS TO BE A T THE BEGINNING OF THAT PROCESS AND HAVE NOT YET FULLY DEFINED THE SCOPE OF THEIR WORK. THAT IS OUR IMPRESSION. WE HAVE AT OUR DISPOSAL PRICEWATERHOUSECOOPERS TO PROVIDE THE AUDIT COMMITTEE WITH ADVICE CONCERNING THE ACCURACY OF CERS PENSION VALUATIONS AND UNDERLINE THE ASSUMPTIONS MADE BY CERS BOARD. AND WE WILL BE WORKING WITH THEM AS SOON AS THEY BEGIN THE PROCESS OF GATHERING INFORMATION. ATTACHED TO OUR UPDATE REPORT IS A GRID OR SCHEDULE THAT SHOWS APPROXIMATE PERIODS WHEN WE WILL BE COMPLETING THE VARIOUS TASKS. I THINK THAT CONCLUDES THE UPDATE REPORT.

MADAFFER :
VERY GOOD. MRS. FRYE? ANY OTHER MEMBERS OF THE COUNCIL? I KNOW MR. AGUIRRE YOU WANTED TO ASK A QUESTION AS WELL.

FRYE:
YES, JUST A COUPLE OF THINGS THAT SORT OF PIQUED MY INTEREST RELATED TO THE WASTEWATER ISSUES AND SPECIFICALLY OR PERHAPS I MISUNDERSTOOD YOU BUT THAT THE STAFF OF THE SEC HAVE REQUESTED THAT THE AUDIT COMMITTEE MAKE AN INVESTIGATION AND MAKE A PRESENTATION TO THE STAFF- SO YOU ARE ACTUALLY, I MEAN JUST WALK ME THROUGH THEN, I'M NOT SURE I UNDERSTAND THAT RELATIONSHIP.

ROMANO:
I THINK THE SEC STARTED BY SERVING A VERY BROAD SUBPOENA AND THEY WERE INCLUDING VOLUMINOUS RECORDS. I THINK GIVEN OUR INVOLVEMENT ALREADY ON THE PENSION RELATED MATTERS, THE SEC DETERMINED THAT IT WITH SAVE THEM TIME

IF WE WERE TO GO TO THEM EXAMINE GIVE THEM A REPORT AS TO WHAT WE THINK IN THE WASTEWATER AREA ARE THE IMPORTANT ISSUES THAT WOULD SHOULD DRAW THEIR PROFESSIONAL ATTENTION. AND THAT IS WHAT THIS PRELIMINARY PRESENTATION IS ABOUT. THEY ARE NOT ENDING THEIR INVESTIGATION. THEY ARE RESERVING THE RIGHT AS THEY ALWAYS HAVE, TO SEEK THE REST OF THE DOCUMENTS FROM THE CITY AND CONTINUE THEIR INVESTIGATION AS THEY SEE FIT. I THINK THEY DETERMINED THAT IT WOULD SAVE THEM CONSIDERABLE RESOURCES IF WE WERE TO GO TO THEM AND TALK TO THEM EARLY ABOUT WHAT IT IS WE THINK IS IMPORTANT IN THE WASTEWATER AREA.

FRYE:
RIGHT. AND I GUESS MY CONCERN KIND OF GOES TO THE KPMG ISSUE, THAT WE HAD WITH VINSON ELKINS, AND THAT VINSON ELKINS WAS SUPPOSED TO BE THE INDEPENDENT INVESTIGATORS YET THEY WERE REPRESENTING THE CITY WITH THE SEC. DO YOU REMEMBER THAT ?

ROMANO:
YES. OF COURSE.

FRYE:
SO IF YOU'RE. I MEAN, I'M JUST NOT SURE WHAT YOUR CAPACITY IS, WHAT ROLE YOU ARE PLAYING WITH THE SEC.

ROMANO:
IT'S ESSENTIALLY NO...WE ARE AS INDEPENDENT INVESTIGATORS WE WOULD BE LOOKING AT THE WASTEWATER ISSUES PURSUANT TO THE SUBPOENA THAT THEY WERE SERVED AND THE ISSUES THAT WERE BROUGHT TO OUR ATTENTION. WE ARE SHARING OUR IMPRESSION WITH THE SEC WHILE WE ARE IN THE MIST OF GATHERING THIS INFORMATION. IT'S NOTHING REALLY MORE THAN THAT. WE ARE NOT REPRESENTING THE CITY IN THAT CONNECTION. THE CITY HAS IT'S OWN COUNSEL TO ARGUE WHATEVER THE CITY WANTS TO ARGUE ON WHATEVER POSITION

THE CITY WANTS TO TAKE. WE ARE SIMPLY GIVING THE SEC OUR UNVARNISHED INDEPENDENT VIEWS ON WHAT WE THINK THE EVIDENCE SHOWS AS WE WOULD IN THE PENSION AREA.

FRYE:
RIGHT AND SO YOU GIVE THEM YOUR UNVARNISHED VIEWS ON WHAT YOU THINK THE EVIDENCE SHOWS. DO YOU PROVIDE THAT TO US AS WELL?

ROMANO:
WE WILL CERTAINLY INCLUDE IT.

FRYE:
AT THE SAME TIME OR HOW DOES THAT WORK? HOW DOES THAT PROCESS WORK, WHEN YOU PROVIDE DISCUSSION WITH THE SEC?

ROMANO:
WE WOULD INCLUDE IT IN OUR REPORT, CERTAINLY.

FRYE:
OK. SO FOR EXAMPLE; THE STAFF OF THE SEC HAS REQUESTED THE AUDIT COMMITTEE TO MAKE A PRESENTATION TO THEM BEFORE RESUMING PRODUCTION OF DOCUMENTS. SO WHAT WILL HAPPEN IS YOU WILL COME AND YOU WILL MAKE A REPORT TO THE CITY COUNCIL AND THEN YOU WOULD GO AND TALK TO THE SEC STAFF AND PRESENT YOUR FINDINGS OF WHAT YOU THINK. IS THAT HOW THIS WORKS?

ROMANO:
NO. WHAT WE THINK SHOULD HAPPEN IS THAT WE WILL PRESENT TO THE SEC IN A CONFIDENTIAL COMMUNICATION WHAT WE THINK THE EVIDENCE THAT WE HAVE GATHERED TENDS TO INDICATE. OUR REPORT WILL ULTIMATELY INCLUDE A PORTION DEVOTED TO THE WASTE WATER MATTER AND BY THEN WE WOULD HAVE FINISHED IT. I THINK THE SEC WANTS A MUCH MORE EARLIER VIEW OF WHAT THE EVIDENCE INDICATES BEFORE WE

COMPLETE THE WASTEWATER INVESTIGATION OR THE INVESTIGATION DEVOTED TO WASTEWATER MATTERS.

DAHLBERG:
I THINK ITS IMPORTANT TO NOTE THAT WE ARE NOT GOING TO GO AND GIVE A FINAL FINDING TO THE SEC ON THE WASTEWATER. WHAT THEY ARE SAYING IS GO OUT THERE AND TELL US WHERE THE RELEVANT FACTS ARE, WHO THE RELEVANT INDIVIDUALS ARE THAT SEEM TO HAVE INFORMATION AND KNOWLEDGE ABOUT THIS AND WHAT ARE THE ISSUES THAT THEY ARE COMING UP WITH. IT IS A MUCH MORE NARROWING AND FOCUSING THAN A BROAD BASED SUBPOENA THAT WOULD BE COSTLY TO THE CITY AND SEC TO SORT THROUGH HAVE INDIVIDUALS OR DOCUMENTS THAT REALLY ARE NOT THAT RELEVANT TO KEY ISSUES. THEY ARE NOT LOOKING TO US TO MAKE AN INDEPENDENT FINDINGS ON ULTIMATE RESOLUTIONS IN OTHER WORDS WE DON'T SAY THERE IS A VIOLATION OF 17A OR 10B5 AT THIS STAGE. THEY WILL WAIT JUST LIKE EVERYONE ELSE WILL UNTIL WE DO OUR FINAL REPORT. THIS IS MORE FOR DISCOVERY PURPOSES SO THAT THEY DON'T WASTE TIME AND EFFORT AND THE CITY DOESN'T WASTE MORE TIME AND EFFORT TO BASICALLY GET A BUNCH OF INFORMATION.

FRYE:
I JUST WANTED THAT CLARIFIED SO THAT WE DIDN'T RUN INTO THE SAME PROBLEM THAT WE RAN INTO WITH VINSON AND ELKINS WITH OUR OUTSIDE AUDITORS THAT THERE WAS LACK OF BELIEVING THAT V&E HAD DONE A DESCENT JOB AND THAT THEY WHERE INDEPENDENT. THAT'S ALL. I THINK THERE WAS SOME SORT OF A CONFLICT SO I'M SAYING THAT I WOULD LIKE YOU TO SAY THAT OUT LOUD.

ROMANO:
THAT'S CORRECT, YOU ACTUALLY SUMMARIZED IT ACCURATELY. WHAT THEY WERE CONCERNED ABOUT, I THINK THE SEC WAS CONCERNED THAT THEY WERE RECEIVING VOLUMES MUCH DOCUMENTS THAT REALLY WERE NOT GOING TO BE

PARTICULARLY HELPFUL. IT WAS AN EFFORT TO REALLY HONE IN ON WHAT THE IMPORTANT ISSUES WERE.

DAHLBERG:
I THINK THEY WERE SENSITIVE TO THE COST THE CITY HAD TO GO THROUGH TO PULL A BUNCH OF DOCUMENTS TOGETHER.

FRYE:
AND I APPRECIATE THAT, I APPRECIATE THE SENSITIVITY TO NOT HAVING TO PRODUCE 5,000 MORE DOCUMENTS. THEN WE HAD TALKED ABOUT THE CITY EMPLOYEES RETIREMENT SYSTEM THE FOR HUNDRED PRIVILEGED DOCUMENTS THAT WERE ON THE LOG THAT DIDN'T MATCH BUT ANYWAYS, SO YOU FOUND OUT THAT ALL BUT EIGHT DOCUMENTS WERE ALLEGEDLY WAIVED WITHOUT COOPERATE RETIREMENT BOARD THAT WE HAD THAT THOSE EIGHT DOCUMENTS THAT WILL NOT BE PROVIDED.

DAHLBERG:
THEY MADE THE REPRESENTATION TO US LAST WEEK WHEN WE SAT DOWN WITH THEM. WE SAT DOWN WITH THEM AND SAID, YOU NEED TO HELP US TO FIGURE OUT TO UNDO THE PUZZLE. WHEN THEY DID THAT, WE BASICALLY CAME UP WITH ABOUT FOUR HUNDRED DOCUMENTS THAT WERE NOT INCLUDED IN THE SUPPOSEDLY ALL PRIVILEGED INFORMATION WE GOT. GOING THROUGH THOSE FOUR HUNDRED. THEY CAME TO AN AGREEMENT THAT THEY WOULD GIVE US ALL BUT EIGHT OF THE FOUR HUNDRED AND THEY ARE STILL FOR WHATEVER REASON SAYING THEY WILL NOT GIVE US THOSE EIGHT. THEY WILL GIVE US THE REST EVEN THOUGH THEY HAVEN'T GIVEN US THAT YET, THEY HAVE REPRESENTED TO US THAT THEY WILL.

FRYE:
AND SO FOR THOSE WHO ARE BETTING THAT THOSE EIGHT DOCUMENTS THAT WILL STOP THE FINAL AUDIT BY THE AUDIT COMMITTEE, I MEAN BY THE OUTSIDE AUDITOR. THE EIGHT DOCUMENTS THAT WE NEED TO HAVE IN ORDER TO COMPLETE THE INVESTIGATION.

DAHLBERG:
YOU'D HAVE TO GO THROUGH EVERYTHING TO KNOW. WE DON'T KNOW NOW.

FRYE:
THAT'S EXACTLY MY POINT. MY POINT IS THAT NOW WE ARE DOWN TO AT LEAST EIGHT DOCUMENTS. WE KNOW OF EIGHT DOCUMENTS THAT WE NEED THAT THEY DO NOT WANT TO PROVIDE.

DAHLBERG:
I DON'T THINK WE'VE DONE AN ANALYSIS TONIGHT EIGHT TO FIGURE OUT HOW CRITICAL THEY ARE. IN THE LOG IT DOES GIVE YOU SOME CLUE ABOUT WHO IS FROM AND WHO IT'S TO AND THE TIMING AND A LITTLE BIT ABOUT THE SUBSTANCE OF THE LETTER AND I THINK ALL OF THE EIGHT RELATE TO INTERACTIONS BETWEEN SELTZER CAPLAN AND CERS. YOU HAVE TO SORT OF SEE WHERE THOSE DOCUMENTS PLAY OUT AS FAT AS WHAT ISSUES THEY ARE ADDRESSING. THERE AREN'T DOCUMENTS IN THERE THAT APPEAR TO BE DOCUMENTS THAT WERE SORT OF DURING THE COURSE OF SOME OF THE ACTIVITIES. MOST OF THESE SEEM TO BE MOST OF THESE SEEM TO BE SUBSEQUENT TO THAT.

FRYE:
AND SO HOW WILL WE COMPEL THE CERS BOARD TO RELEASE THOSE DOCUMENTS? SO WE HAVE TO GO TO COURT DO YOU THINK?

DAHLBERG:
NO. I THINK ONE OF THE MESSAGES HERE IS THAT THE PRIVILEGE DOCUMENTS GETTING THOSE IS NOT THE END OF THE RELATIONSHIP THAT IS GOING TO HAVE TO EXIST BETWEEN THE COUNCIL, THE AUDIT COMMITTEE, AND CERS IN ORDER TO COMPLETE EVERYTHING THAT NEEDS TO BE DONE. WE HAVE ALWAYS TALKED ABOUT REMEDIATION BEING CRITICAL, TO THE EXTENT THAT REMEDIATION INVOLVED CERS THAT IS GOING TO

BE CRITICAL, TO THE EXTENT THAT THERE ARE OTHER DOCUMENTS FROM THE DOCUMENTS THAT WE NOW HAVE THAT INDICATE THAT THERE IS SOME OTHER INFORMATION THAT CERS HAVE THAT MAY BE EXTREMELY RELEVANT TO COMPLETE OUR INVESTIGATION THAT IS CRITICAL. IN OUR MEETINGS WITH NAVIGANT AT THE END OF LAST WEEK WE REACHED OUT TO THE AND ASKED THEM IF WE COULD SHARE INFORMATION TO COMPLETE THESE INVESTIGATIONS AS QUICKLY AS POSSIBLE AND WE ACTUALLY MADE A REQUEST OF SOME INFORMATION THAT WE WOULD LIKE TO SEE IN ADDITION TO THE PRIVILAGED DOCUMENTS.

FRYE:
THEN THIS COUNCIL AND I'M ASSUMING THE PUBLIC WILL GET COPIES OF WHATEVER DOCUMENTS THAT YOU ARE ASKING FOR OR AT LEAST A LIST OF THE DOCUMENTS THAT YOU ARE ASKING FOR THAT ARE NOT BEING RELEASED. SO WE WILL HAVE AN IDEA ON WHAT IS NOT BEING DISCLOSED.

ROMANO:
I THINK WE HAVE THE ABILITY NOW HAVING UNRAVELED THE MYSTERY OF THE DISKS VERSUS THE LOGS, THEY ARE DESCRIBED ON THE LOGS, THE 8 DOCUMENTS THAT ARE MISSING. I THINK WE HAVE THAT, WITH SOME CONFIDENCE I THINK.

FRYE:
THANK YOU.

MADAFFER:
THANK YOU MRS. FRYE. I HAVE MRS. ATKINS, MR. AGUIRRE, MR. YOUNG, MR. PETERS.

ATKINS:
I THINK AT SOME POINT AS I ASK KPMG BETWEEN NOW AND THE NEXT REPORT TO DETERMINE THE RELEVANCE OF NAVIGANT AND WHETHER THEY ARE GOING TO FEEL LIKE THEY NEED TO WAIT UNTIL THAT INVESTIGATION CONCLUDES IN ORDER TO COMPLETE

OUR AUDIT. I WANT TO ASK YOU, YOU KNOW, I KNOW THAT YOU'RE WORKING WITH OR ATTEMPTING TO WORK WITH STAFF OF THE CERS BOARD OR BOARD MEMBERS OR BOTH?

DAHLBERG:
WE HAVE REACHED OUT A COUPLE OF TIMES TO THE BOARD MEMBERS AND NAVIGANT AS WELL FOR COOPERATION

ATKINS:
SO AT SOME POINT WE WILL HOPE THAT ALL OF THOSE DOCUMENTS WILL BE RELEASED, I DON'T CHANGE MY OPINION ON THAT. I THINK WE NEEDED IT, WE SHOULD OF GOTTEN THE WAIVER, WE DIDN'T AND YOU FOUND A MEASURE YOU THOUGHT WOULD GET YOU EVERYTHING YOU NEEDED AND NOW YOU ARE TELLING US THAT THERE ARE EIGHT DOCUMENTS THAT COULD BE SIGNIFICANT OR NOT BE SIGNIFICANT. AT SOME POINT WITHIN THE NEXT, WE GOT NINETY DAYS AS I SAID TO THEM TO STAY ON YOUR CALENDAR TIMELINE. WILL THERE BE A POINT WITHIN NEXT MONTH THAT YOU EITHER PUT IT IN YOUR NEXT REPORT OR LET US KNOW AHEAD OF TIME IF DOES DOCUMENTS ARE GOING TO BE DETERMINED NOT TO BE RELEVANT TO COMPLETING THE AUDIT FIRST AND FOREMOST AND THEN TO YOUR COMPLETING THE REPORT YOU NEED TO DO TO MEET THE SEC'S SATISFACTION IS CERTAINLY SOMETHING WE WOULD WANT TO SEE AND HEAR BECAUSE IT ALSO TALKS ABOUT THE MITIGATION ISSUES. SO WILL THERE BE A POINT NEXT MONTH WHERE WE WILL MAKE A DETERMINATION AS TO WHETHER THOSE DOCUMENTS ARE RELEVANT OR NOT AND PROCEED? HOW LONG WILL THOSE DOCUMENTS BE OUT THERE BEFORE YOU NEED US TO PUSH OR DO SOMETHING MORE?

ROMANO:
IT IS A VERY GOOD QUESTION, I THINK THE ONLY ANSWER IS THE ONE THAT MR. DAHLBERG JUST GAVE THAT WE WILL GAIN AN UNDERSTANDING ON WHERE THOSE DOCUMENTS WILL FIT WITHIN THE OVERALL CONTEXT AND CHRONOLOGY CERTAINLY WITHIN THE NEXT THIRTY DAYS, SO WE WILL HAVE A BETTER IDEA

WHETHER THEY ARE IMPORTANT OR NOT. IF WE CONCLUDE EITHER WAY, ONE WAY OR ANOTHER WE WILL CERTAINLY BRING IT TO THE COUNCIL'S ATTENTION WITHIN THE NEXT THIRTY DAYS.

ATKINS:
I UNDERSTAND THAT OUR RELATIONSHIP WITH THE CERS ORGANIZATION AND BOARD IS LONG TERM AND I APPRECIATE YOUR COMMENTS MR. DAHLBERG AND CERTAINLY TO CONTINUE AND REPEAT THE MESSAGE THAT COMPLETING OUR AUDITS IS GOING TO BE GOOD NOT ONLY FOR THE CITY BUT FOR PARTICIPANTS OF CERS AND THE PROGRAM, THE RETIREMENT SYSTEM. I HOPE THAT WE WILL CONTINUE TO MAKE THAT MESSAGE AND HOPEFULLY BY OCTOBER TENTH WE WILL HAVE TWO FINAL PEOPLE TO PUT ON THE BOARD THAT COULD HOPEFULLY LEND SOME ASSISTANCE.

ROMANO:
IF I COULD JUST REITERATE WHAT MR. DAHLBERG SAID. WE SHOULDN'T FOCUS ONLY ON THE PRIVILEGED DOCUMENTS. WE ARE ASKING AND EXPECTING FROM THE CERS ORGANIZATION, ACCESS TO THEIR NON-PRIVILEGED MATERIAL AND ACCESS TO OTHER INFORMATION THAT WE'LL NEED IN ORDER TO COMPLETE THE INVESTIGATION.

ATKINS:
IT IS CERTAINLY UNDERSTOOD BUT AS OBSTACLES ARE IDENTIFIED BEFORE US WHETHER IT IS THAT ISSUE OR A CITY EMPLOYEE MIGHT HAVE ACCESS TO DOCUMENTS THAT SHOULD BE RELEASED AS PART AS THE DOCUMENTS PRODUCTION AND OF COURSE YOUR CONTINUING TO WORK WITH THE ATTORNEY TO GET EVERYTHING YOU NEED SO THAT WE ARE IN COMPLIANCE. I LOOK AT WHAT YOU TELL ME AND I SEE THE OBSTACLES AND I WANT TO FIGURE OUT VERY TANGIBLY AND SPECIFICALLY HOW WE GET THROUGH THOSE OBSTACLES AND SO I'M SURE YOU ARE GOING TO HAVE A ROUND OF WHOLE NEW OBSTACLES OF DIFFERENT NATURE AT SOME POINT BUT WE HAVE TO GET

EXHIBIT 32

NITA M. NOONE
.SSISTANT CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

October 4, 2005

Benito Romano
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, N.Y. 10019-6099

Jeffrey Klein
KROLL
660 S. Figueroa, 9th Floor
Los Angeles, CA 90017

Dear Sirs:

I understand from our conversation on September 21, 2005, during a meeting at my office, that Mr. Romano and Mr. Dahlberg will begin shortly or have begun a draft of the Audit Committee's report. Please let me know at your earliest convenience whether the drafting has begun.

I look forward to your early response.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By Anita M. Noone
Anita M. Noone
Assistant City Attorney

AMN:jb
cc: Troy Dahlberg, KROLL
Lynn Turner, KROLL
Michael Aguirre, City Attorney

EXHIBIT 33

Audit Committee
of the
City of San Diego

October 25, 2005

Honorable Mayor Toni Atkins
Members of the City Council
City of San Diego
202 C Street, Suite 900
San Diego, CA 92101

Re: Audit Committee – Investigation Status Update

Honorable Mayor and Council Members:

In connection with our ongoing investigation, we are writing to bring you up to date on our progress and a number of issues that are impacting the Audit Committee's work plan. Our work continues to be focused on the objective of issuing a thorough and complete report that will be necessary for the independent auditors to issue an opinion on the City's financial statements, in accordance with the required auditing standards. As both of the City's auditors have appropriately pointed out, a complete and thorough investigation is necessary in order for an audit to be completed. And we note that regardless of the financial status of the city, and whether it would or would not ultimately engage in a bankruptcy filing, to be able to reaccess the U.S. capital markets the city will be required to complete and file financial statements that are in accordance with the applicable accounting principles and that have been the subject of an independent audit done in accordance with required auditing standards.

While we have made significant progress to date, we have also identified a number of what we believe are shortcomings and issues with prior investigations, some of which we have previously discussed with you. Some of those shortcomings have resulted in relevant documents not being examined as part of previous examinations. Also additional evidence has come to our attention, which has caused us to expand the scope of our investigation through additional interviews and examination of additional evidence.

Progress to Date

A summary of the progress made to date in our investigation includes:

- We have completed review of approximately 350 boxes of documents from the City's productions to law enforcement agencies for approximately 35 key

individuals of interest and approximately 30 binders provided by the City Attorney.

- Since late September we have reviewed approximately 250 boxes of documents collected according to procedures described in a June 10, 2005 memorandum to all City employees ("June 10, Memo") for approximately 35 key individuals of interest.

- We have completed a review of more than 8,000 attorney-client privileged documents (consisting of 60,000 pages) produced by SDCERS in response to requests from the Audit Committee, US law enforcement agencies, the City Council and City Attorney. Unfortunately due to technical problems approximately 2,000 e-mail communications and approximately 600 e-mail attachments were not included in the information provided to the Audit Committee. This will require additional follow-up as is further discussed below.

- In reviewing the work of V&E and Applied Discovery, we discovered that about one-third of the data needed for V&E's review was not loaded in the Applied Discovery database. This error required the Audit Committee to completely repeat the e-mail review performed by V&E.

- We also reviewed approximately 65,000 non-privileged SD CER's documents, and 17,500 electronic documents of key employees that were previously reviewed by V&E.

- We have reviewed the reports, memoranda, exhibits and related work product of Vinson & Elkins ("V&E") prepared in connection with its investigation of pension related matters on behalf of the City.

- We have reviewed each of the seven reports and related exhibits issued by the City Attorney in connection with his investigation of pension and Wastewater related matters.

- We are in the process of considering the evidence obtained to date as well as that to be obtained, in order to reconcile the differing views expressed by V&E and the City Attorney in their separate reports.

- We have met regularly with KPMG LLP ("KPMG"), the independent auditors of the City's 2003 Comprehensive Annual Financial Report ("CAFR") and have provided updates on our progress. They are reviewing our work on an

Audit Committee of the City of San Diego

ongoing basis. We have undertaken procedures they have requested we perform as well.

- We have met with Macias Gini & Company, the independent auditors of the City's 2004 CAFR.
- We have met regularly with the staff of both the United States Attorney's Office ("US Attorney") and the Securities Exchange Commission ("SEC") and have provided reports on our progress.
- As part of our communication with the external auditors and law enforcement agencies, we have agreed on what search terms we should use when performing the required electronic searches of documents such as email. These searches are performed to identify relevant documents while avoiding having to manually examine all the relevant hard copy documents, a time consuming and costly process.
- We have made substantial progress in reviewing the City's previous CAFR's for compliance with Generally Accepted Accounting Principles.
- We brought to successful conclusion document collection in response to a dozen outstanding government subpoenas. With minor exceptions, every active employee has provided a written confirmation that all responsive documents have been identified, and delivered to the City's document repository for production to the government.
- In addition to document review, we have contacted approximately 50 individuals to arrange for interviews and have commenced interviews related to the Wastewater matter.
- Steven M. Metz of Pricewaterhou seCoopers, LLP ("PWC") has been retained to provide the Audit Committee with actuarial advice. We have conferred with Mr. Metz to make sure that he understands the Audit Committee's needs and the time-frame required. PWC has begun reviewing the actuarial valuations used to prepare the 2003 CAFR by the City. This will aid the Audit Committee in reaching a conclusion regarding the accuracy of the calculations of the City's unfunded liability and its expected impact, including timing of future payments. This will be important information in formulating an appropriate remediation plan. The above procedures have also resulted in a number of issues being identified in connection with the work of the Audit Committee.

Audit Committee
of the
City of San Diego

Summary of Issues

A key objective of the investigation is to provide evidence necessary for the external auditors so that they can perform the necessary and required auditing steps, including those steps required when there are allegations of fraud, prior to issuing their opinion on the financial statements of the city. As previously mentioned, we have identified shortcomings in prior investigations that have resulted in relevant documents not being examined as part of prior investigations. As a result, we have now been put in the position of having to go back and get the documents that were not produced and reviewed, and perform the necessary procedures. Short of doing that, we would be unable to certify to the auditors and law enforcement agencies that we had done a thorough and complete investigation.

The issues we have identified during the course of our investigation include:

- Investigative procedures have determined that e-mail for the relevant period of time, previously gathered by San Diego Data Processing Center ("SDDPC") from the City's back-up tapes for analysis is incomplete. As a result, documents that should have been searched for their relevancy to the investigation were not. It appears that most, if not all, of the e-mail extracted from the City's back-up tapes was affected

- As the City Attorney has pointed out, not all the relevant email boxes and storage drives were searched in earlier investigations. Based on information obtained to date, it has been determined that review of approximately 90 e-mail mailboxes and records for additional individuals is necessary. We will also perform a review on most of their directories on the City server. Additionally, we will need to review approximately 40 hard drives of elected officials.

- Facilitating the City's production of records to the SEC and US Attorney, which had been requested as early as 2004, required more staff time and effort than was initially anticipated.

- City Employees provided approximately 400 boxes of documents in response the June 10, Memo. This volume of records is far greater than what was initially expected. Review of this information will require more time than was previously anticipated.

- Information uncovered during our investigation has created the need to conduct additional interviews.

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of the
City of San Diego

Electronic Mail

As previously noted, the database created by Applied Discovery and analyzed by V&E failed to capture approximately 57,000 relevant e-mail files and related attachments. As a result, it is necessary to recreate and search that database. We cannot just search for files not examined in the initial investigation as Applied Discovery cannot assure us as to which documents were or were not captured.

In addition to re-searching the 35 e-mail mailboxes reviewed by V&E, our review will encompass approximately 60 additional e-mail mailboxes, of which 40 e-mail mailboxes are for elected officials and senior staff, 10 e-mail mailboxes relate to Wastewater and 10 are SDCERS e-mail mailboxes. It is appropriate to consider these individuals based on evidence we are aware of to date and to ensure a thorough investigation. Our original work plan contemplated reviewing only a small portion of these additional e-mail mailboxes. However, based on documents examined to date and what we now know, reviewing the communications of these additional individuals is required.

Due to technical obstacles encountered by SDDPC when attempting to previously retrieve e-mail from the City's back-up tapes, it became clear that the methods previously used by SDDPC to retrieve records were not reliable. Once again, we now understand that documents for the relevant period of time were not captured and properly reviewed for their relevancy to the investigation. As a result, we have spent a significant amount of time working to identify and obtain missing data.

The City's e-mail is maintained on the "GroupWise" system. E-mail communication is extracted from City back-up tapes using "Nexic Publisher" software before the information can be searched. According to SDDPC and our technical experts, Nexic Publisher does not properly capture some data. This issue appears to have inconsistently affected many different e-mail mailboxes. Because the problem appears to be somewhat random and unpredictable from mailbox to mailbox, we, along with SDDPC, have not identified a simple, standardized solution. We considered having SDDPC personnel manually correct this extraction problem. However, we believe this manual process would be unreliable and therefore unacceptable. As of result, we are unable to accurately estimate the total number of e-mails that will be captured by our search of all relevant e-mail mailboxes using search terms and keywords. Based on analysis of the 35 e-mail mailboxes that were previously incompletely reviewed, our revised and agreed upon set of search terms will yield approximately 185,000 e-mails. As responsive e-mail was likely missed during prior Nexic Publisher extractions from the GroupWise system, we will likely identify additional e-mail from these 35 e-mail mailboxes that will also require review.

Several options are available to address this problem. We and SDDPC believe the most promising option involves retaining Novell, the software company that developed GroupWise, to assist with extracting data from GroupWise. Novell has confirmed that it has a software utility that searches and extracts data from the restored back-up tape and eliminates the above identified issue. Currently, based on what we have been told by Novell, we understand it will take up to a month to obtain the data we need using this alternative.

Document Production

The procedure authorized on the June 10, 2005 Memo was necessary to ensure to the law enforcement agencies and other recipients of our reports, that all City employees complied, without exception, with the subpoenas. This procedure also was done to ensure that all relevant documents were produced and appropriately made available for the Audit Committee investigation. Significant Audit Committee support of this process was not anticipated in our original work plan because it was expected the City Attorney's Office and other City departments would be able complete the task in an expeditious and timely manner. However, our involvement increased in order to complete a comprehensive production to the SEC and US Attorney within a time frame that would also allow us to complete our efforts as soon as possible. Our efforts required significant staff time dedicated to making hundreds of follow-up calls to employees or their supervisors to obtain written certifications of compliance with our requests. The process also entailed hundreds of daily contacts with City employees to monitor and ensure delivery of documents to the City's document repository. We also met regularly with representatives of the City Attorney and City Manager's Offices to follow-up and move the production toward a timely completion. This process resulted in a substantially greater volume of production than was expected, which will require a significant amount of time to review. For example, approximately 400 boxes of documents have been produced to date.

All of these records will be included in a database representing the documents identified by City employees as being responsive to the various subpoenas served upon the City. Largely as a result of the unexpectedly high volume of production by City employees, creating this database will take longer and cost more than was originally anticipated.

Wastewater

The initial work plan for investigating the Wastewater matter has been expanded. Procedures completed to date have identified information that increased the scope of investigation. More than 40 boxes of hard copy documents have already been reviewed.

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As a result of reviewing those materials, conducting interviews, and gathering other information, we have determined we will need to expand the scope of our investigation beyond that contemplated in our original work plan. These procedures include: interviewing additional witnesses; identifying and extracting data from e-mail mailboxes belonging to employees and elected officials; and reviewing the files so identified. The SEC staff, consistent with the SEC's policy in Seaboard, has accepted the Audit Committee's offer to complete an investigation of this matter and report back to the SEC staff with the findings and determinations resulting from the investigation.

San Diego City Employees' Retirement System Records

Based on the results of our procedures, additional time will be required to finish investigating the records provided by SDCERS. Through our ongoing review of the privileged SDCERS records, we identified additional individuals relevant to our investigation. As a result, it will require more time than anticipated to finish investigating the records provided by SDCERS including reviewing the records and communications of these individuals.

We have discovered technical problems through our review of these privileged records that appear related to those described above. It appears that due to these technical issues approximately 2,000 e-mail communications and approximately 600 e-mail attachments were not included in the information provided to the Audit Committee. To the best of our knowledge, these technical issues also may have affected the documents provided to the law enforcement agencies. Seltzer Caplan McMahon Vitek, on behalf of SDCERS, is currently working to identify, locate, and produce the missing records and is cooperating with us to resolve these technical issues. However, correcting these data integrity issues and reviewing the additional files will be a time consuming process.

The Navigant investigation of SDCERS is underway. We have been informed the investigation will be performed on a privileged and confidential basis. We believe this decision is in error. It is important that any documentary evidence that is identified that has relevance to the investigations being performed by the law enforcement agencies or Audit Committee be made available to all the appropriate parties in a timely fashion. The recent document production by SDCERS has illustrated the importance of obtaining, on an unfettered basis, all relevant documents. The production of those documents was necessary and welcomed by the Audit Committee. However, any difficulties with respect to future access to information could impact our ability to complete our task in a timely fashion.

We continue devoting unanticipated time and resources to handling a number of public records requests.

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Impact of Document Production Issues

As a result of the issues we have identified as set forth above, the Audit Committee has been required to expand the scope of its investigation. However, until the necessary documents can be obtained through the Novell solution, we will be slowing down the process so as to avoid unnecessary costs.

Until recently we have had approximately 25 junior attorneys, legal assistants and Kroll employees reviewing documents on an expedited basis. At the same time, we have done initial interviews with respect to the Wastewater matter, and several dozen additional pension-related interviews are being scheduled. Senior attorneys and Kroll personnel are devoting hundreds of hours to detailed analysis of factual, legal and accounting issues, as well as to supervision and coordination. In addition, we have had a number of Kroll personnel performing forensic electronic data analysis. Some of this analysis identified the previously mentioned issues with the investigations. In total we have approximately 50 people working on the investigation.

Once the necessary documents are obtained, which we currently understand will be around the end of November, we will ramp our efforts back up and expedite our work so as to complete our project. By ramping back up at that time to the staffing levels previously mentioned, we believe we can review approximately 30,000 documents per week. Once we have resolved the technical problem with extracting the e-mails from the "GroupWise" system and have a better understanding of the number of documents we will have to review, we will adjust our staffing levels to complete our work on a revised, more definite schedule. For example, assuming we obtain 200,000 e-mail from GroupWise to review, our review should be completed within 6-8 weeks. Thereafter, interviews should be completed within 4-6 weeks and our final report should be completed one month thereafter. We expect our staffing levels and expenses to decrease following document review as we focus on the final drafting of our report.

In the next month, as the City's data processing staff, vendors and we address the technical problems with retrieving electronic e-mails and are able to determine the volume of data for our review, we will provide a more precise estimate of costs and completion date. We are working closely with the City Manager as additional information is obtained and we will be better able to estimate the costs necessary to complete the investigation. However, without knowing if we must search and review 20,000 or 200,000 documents, we are not able to tell you with precision what our costs will likely run.

It should be noted a number of the document production issues raised above should have previously been identified and resolved earlier on in the investigation by SDDPC, Applied Discovery, V&E and/or the City Attorney's office. We have

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informed KPMG and the investigative agencies about these issues and they have expressed an interest in seeing them resolved. Additional time will be required to ensure that all the relevant evidence is obtained, considered, and provided to the law enforcement agencies and the external auditors. This additional time will make it difficult to complete the process by the end of the year and will impact costs. As issues are identified, we are attempting to find the most cost effective and timely solutions to resolve them, without compromising the integrity and thoroughness of the investigation.

Very truly yours,

A r t lLevitt
Audit Committee Member

Lynn E. Turner
Audit Committee Member

T D
Audit Committee Member

r a

cc: Securities and Exchange Commission Staff
U.S. Attorney
KPMG LLP

EXHIBIT 34

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, NOVEMBER 1, 2005
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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ITEM-335: Selecting Morgan Lewis and Bockius for Representation of the City of San Diego in Matters with the U. S. Attorney.

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-301015

Selecting Morgan Lewis and Bockius for Representation of the City of San Diego in Matters with the U. S. Attorney;

Directing the City Attorney to prepare the necessary resolution.

SUPPORTING INFORMATION:

As part of the continued cooperation in the investigation of the City of San Diego, the Deputy Mayor has docketed the selecting of Morgan Lewis and Bockius for representation of the City of San Diego in matters with the U. S. Attorney.

Gattas

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:05 p.m. – 2:06 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION TO APPROVE THE SELECTION. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S500: Three actions related to Fifth Amendment to Agreement with Kroll, Inc. for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); Fourth Amendment to Agreement with Willkie, Farr & Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on these Matters; and Acceptance of KPMG/Audit Committee Status Report.

(See memorandum from Audit Committee dated 10/25/2005.)

(Continued from the meeting of October 24, 2005, Item 203, at the request of the Audit Committee, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2006-) REMOVED FROM THE DOCKET

Authorizing a Fifth Amendment to the Agreement with Kroll Inc., in the amount of $1,750,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution.

Subitem-B: (R-2006-) REMOVED FROM THE DOCKET

Authorizing a Fourth Amendment to Agreement with Willkie, Farr & Gallagher LLP in the amount of $1,250,000 for provision of independent legal counsel to the City Audit Committee and Kroll in connection with the above matters, and directing the City Attorney to prepare applicable resolution.

Subitem-C: (R-2006-) NOTED AND FILED

Accepting the status reports of the Audit Committee and KPMG; directing the City Attorney to prepare applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see attached agreement with Kroll). The original agreement was for a not-to-exceed amount of $250,000.

Four subsequent amendments increased the not-to-exceed amount to $3,525,000, and another amendment is before the Mayor and City Council today requesting an additional amount of $1,750,000, bringing the total not-to-exceed amount to $5,275,000.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP ("Willkie, Farr"). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation. Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of $500,000 was approved by the Mayor and City Council in May of 2005. Three subsequent amendments increased the not-to-exceed amount to $2,650,000. An additional amendment is before the Mayor and City Council today, requesting an additional $1,250,000 to cover estimated expenses for November through December of Fiscal Year 2006, and would bring the total not-to-exceed amount to 3,900,000.

The requested funding is consistent with information presented to the Mayor and City Council on October 10, at which time the City Manager's Office outline anticipated future spending requirements for the audit and financial investigations.

Ewell/Villa/LI

Aud. Certs. 2600304 and 2600305.

Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: SUBITEMS A, B, & C: MEET

COUNCIL ACTION: (Time duration: 2:12 p.m. – 5:32 p.m.)

Motion by Frye to direct the City Auditor to review Kroll's billing; and direction to Kroll to work with the City Auditor and to report back to Council in two weeks with the protocol. Second by Young. Failed. 3456-yea; 1-7-nay; 28M vacant.

EXHIBIT 35

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

EXHIBIT 36

SignOnSanDiego.com
THE SAN DIEGO UNION-TRIBUNE

PRINT THIS

San Diego's Pension Crisis

City's financial picture worse than ever, Sanders says

By Matthew T. Hall
UNION-TRIBUNE STAFF WRITER

January 7, 2006

Two hours after federal indictments were announced yesterday, Mayor Jerry Sanders delivered the grim news that San Diego's finances, dismal for two years, are worse than ever.

He labeled San Diego "a national embarrassment" and said, "Our general fund is a disaster, and the city's lost the trust and confidence of our citizens."

EARNIE GRAFTON / Union-Tribune
City Attorney Michael Aguirre (left) and Mayor Jerry Sanders discussed the federal indictments during an afternoon news conference yesterday in City Hall.

Sanders, a former police chief who became mayor just last month,said the pension deficit could be $2 billion – $600 million more than previously estimated. That will put an even greater strain on the city's tight operating budget.

"We don't know the depth of the problem right now," he said.

Sanders made his remarks at an afternoon news conference with City Attorney Michael Aguirre, a rare show of collaboration at a City Hall riven by animosity and name-calling among its elected officials last year.

Analysts who measure the city's ability to make its bond payments wouldn't speculate on what effect the indictments might have on their decision-making, but one said the city's credit rating depends on completing its overdue financial audits.

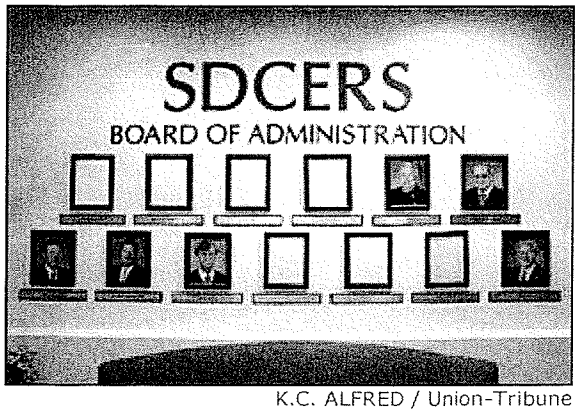
"What we're waiting for are audited financial statements and without that we cannot even begin to consider reinstating their rating," said Paul Dyson, an analyst with Standard and Poor's ratings services.

"The pension indictments aside, that's basically our position."

The consulting firm the city hired to independently investigate San Diego's finances also faces new difficulties following the indictments.

Troy Dahlberg, a managing partner for Kroll Inc., said the criminal allegations will now have to be reviewed, but the firm will not have access to the interviews conducted by government attorneys.

"We are not privy to the evidence that's gathered by any of the governmental agencies," Dahlberg said. "It's on our shoulders to go out and do our own investigation."



K.C. ALFRED / Union-Tribune
Pictures of some of the new members of the San Diego City Employees Retirement System's board of directors were on display in the lobby of the pension system's office.

He said Kroll, a New York-based risk management firm, has not been provided all of the e-mail for two of the officials indicted, former pension system administrator Lawrence Grissom and general counsel Loraine Chapin.

The consultants from Kroll are investigating questions about failures to properly disclose financial information about the city's employee pension fund and its wastewater system.

Yesterday's indictments are the first federal criminal charges filed in a two-year corruption investigation by the U.S. Attorney's Office. A separate investigation by the Securities and Exchange Commission into possible securities fraud continues.

Sanders said he needs an independent actuary's evaluation to determine the exact amount of the pension deficit. The current estimates don't factor in $500 million or more the city has in unfunded retiree health care costs.

Once he has a solid figure, Sanders will know how much the city will have to pay into the fund next fiscal year.

Aguirre estimates the city's payment may range from $200 million to $300 million, figures he called "very staggering ... under the best circumstances."

The city's current general fund budget is $865 million. It pays for daily operating expenses such as roads, parks and public safety.

Sanders has until April 15 to prepare next year's budget under the new strong-mayor system of government. The new fiscal year starts July 1.

The mayor said he and other top officials are "clearly ... taking steps to put our financial house in order."

He said in the past year the city has gained a new city attorney, a new auditor and a new mayor surrounded by new administrators, including the city's first chief financial officer.

Sanders said he has scheduled a trip to San Francisco in the next few weeks to discuss the staffing and other changes with rating agencies. The agencies have been slashing San Diego's credit rating for the past two years, making it impossible to borrow money from the bond market. The $3.6 billion San Diego City Employees Retirement System has about 17,000 participants. More than 6,000 retirees, survivors and spouses are receiving benefits currently.

By the last estimate, San Diego's pension system has less than two-thirds of the money it will need for employees who retire in the future.

The city has pumped nearly $300 million into the pension system since July 1, 2004.

San Diego's fiscal calamities are well documented.

The city hasn't issued an annual audit since 2002, and that one misstated the city's net assets by $640 million, a more egregious overstatement than Enron made when it restated $580 million in revenue in 2001 before going bankrupt.

The auditing delays led one Wall Street rating agency to suspend the city's credit rating in 2004. Two other agencies have cut the city's ratings several times since city officials acknowledged in January 2004 hiding a growing pension deficit.

KPMG, the firm auditing the city's 2003 books, demanded the city conduct an internal investigation into a long and varied list of employee wrongdoing, which is being done. Once that's completed, KPMG officials say they can finish their audit.

The city has been billed $24 million by several consulting firms investigating the city's failure to properly disclose its financial woes.

Steven Feinstein, a professor of finance at Babson College, a well-regarded business school near Boston, said the practical effect of the indictments may not ripple through the Wall Street rating agencies.

"They don't rate ethics," Feinstein said. "They rate the ability of the city to pay."

He said that rating agencies would consider the U.S. attorney's case in two distinct ways.

"If the rating agency looks at it as they're rooting out wrongdoing, that's good news going forward," Feinstein said.

The flip side, he said, is the possibility "that this was the tip of the iceberg and there are other people responsible," which could make analysts anxious.

Feinstein said either way the development marks a turning point. "Even if they don't root out all the fraud or alleged fraud, anybody who was perpetuating the fraud has been put on notice that they won't get away with it."

▪Matthew Hall: (619) 542-4599; **matthew.hall@uniontrib.com**

Find this article at:
http://www.signonsandiego.com/news/metro/pension/20060107-9999-1n7finances.html

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 37

Not Requesting, Insisting

By ANDREW DONOHUE
Voice Staff Writer
Tuesday, Dec. 20, 2005

Consultants preparing the investigation into alleged wrongdoing at City Hall will likely return to the City Council in January to seek authorization for another $9 million to $11 million to complete the probe. Whether the consultants will be asking for the money or demanding it is a matter for interpretation.

A number of council members who have fully supported the consultants' work to date have signaled their intent to question whether the payment is worthwhile, as the costs and scope of the investigation have grown dramatically in recent months.

However, the consultants say the resolution the City Council passed in March authorizing the investigation essentially called for them to receive whatever funding necessary to complete the investigation.

"We wanted that empowerment so that they wouldn't interfere with the investigation improperly," said Troy Dahlberg, a partner with Kroll, Inc., a private firm conducting the investigation.

The unexpected escalation of the costs and duration of Kroll's probe underscore the city's financial mess and the lengthy, costly route it has taken to repair financial disclosure issues that first surfaced in late 2003 and have left it excluded from Wall Street.

The effort to produce an investigative report satisfactory to the Securities and Exchange Commission and outside auditor began in February 2004 after questions arose surrounding the veracity of the city's financial reporting to investors and the public.

Since then, the cash-strapped city has spent $26 million on 19 different consultants to help untangle its financial mess. The struggle was highlighted last week when council members were told that accountants and attorneys for the audit committee had billed the city for $3.3 million more than they were authorized.

"While I know this isn't cheap, what price do we put on putting the city's fiscal house in order?" City Councilman Jim Madaffer said.

The unauthorized billings irked some council members. But Dahlberg pointed to the council's creation of the audit committee as justification for the new billings.

On March 8, the City Council authorized Dahlberg and two former leaders of the Securities and Exchange Commission to comprise "the Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002." The resolution cites the sections of Sarbanes-Oxley -- federal legislation that tightened financial reporting and accounting regulations in the wake of corporate scandals -- that apply to audit committees.

Found within those listed sections of the federal legislation is the following sentence: "Funding -- Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee for the board of directors, for payment of compensation."

Dahlberg said this passage is critical to the independence his group needs to complete the investigation.

"The reason we agreed to do the audit committee thing was the understanding that we would be dealt with under Sarbanes-Oxley. Because if not, it would have been a loser from the start," he said. "We would not agree to take on a position or responsibility where we would not get the resources to do it completely."

The issue of independence in an investigator has been key in San Diego. The audit committee's predecessors, law firm Vinson & Elkins, spent 18 months on the job, collected $6 million and produced two reports that were rejected for their lack of independence by both the SEC and the city's outside auditors, KPMG.

Audit committee officials have stressed this need for independence, especially in the face of questions surrounding its billing practices. When City Attorney Mike Aguirre expressed concern a number of months ago that Kroll wasn't complying with the city's billing procedures and producing detailed bills, Kroll officials said it was necessary to their independence to maintain such austere records.

But that independence can also interfere with financial prudence in a city that has been forced to trim the basic services it provides to residents in order to deal with its problems.

"We certainly do not want to stand in the way of independence, but at the same time we are a city with great financial problems. And there has to be a way to balance this. That attitude that they are authorized to spend anything they want is not a helpful attitude," said City Councilwoman Donna Frye.

Frye, who voted for the ordinance, said council members were told originally that the audit committee's investigation would only likely last a few months and cost a few hundred thousand dollars. She called Dahlberg's interpretation of the resolution "ridiculous."

"If that is in effect true, they could spend any amount of money they wanted to without having to run it past us," Frye said.

The council originally authorized the Kroll's contract for $250,000, but it was understood they would likely come back to seek further funds when the original contract was inked. Now the crew and its attorneys have been authorized for more than $6 million. Former SEC chief Arthur Levitt, who heads the group, bills at $900 an hour.

"They never voted on a number," Dahlberg said. "But there was never any reason to believe they weren't going to support it because it was what needed to get done."

Audit committee officials said their work has essentially been on hold since early November because they had exhausted their authorized funds. However, the new billings indicate that work was done after the authorized funds had been run through.

Audit committee officials say that glitches in the city's data processing system have delayed the investigation, which had been slated to be finished by this month. The documents are being sorted and Dahlberg said an accurate timeline for completion can be offered once it is known how many e-mails remain to be searched.

"We did not envision originally it would be so difficult to get access to and get our hands on documents that were so important to the investigation," Dahlberg said.

New Mayor Jerry Sanders has been waiting for specific timeline and budget estimates from Kroll to hold a City Council hearing to authorize additional funding. A special session has been called for Tuesday, but Kroll's budget won't be voted on. An update on the investigation will be given to council members and they will be asked to authorize funds for one of the data collection agencies working with Kroll.

City Attorney Mike Aguirre said the audit committee has sufficient information to complete its reports.

"This group of very sophisticated New York operatives are exploiting reform in order to line their pockets with unearned money, and they are making the situation worse," he said.

*Please contact Andrew Donohue directly at **andrew.donohue@voiceofsandiego.orgwith** your thoughts, ideas, personal stories or tips.*

Back

EXHIBIT 38

Audit Committee
of the
City of San Diego

January 13, 2006

Honorable Mayor Jerry Sanders
City of San Diego
City Administration Building
11th Floor, 202 C Street
San Diego, CA 92101

Council President Scott Peters
City of San Diego
202 C Street
MS #10A
San Diego, CA 92101

Re: Audit Committee Investigation

Dear Honorable Mayor Sanders and Council President Peters;

We understand the City Council will be voting on funding for the Audit Committee next week. We appreciate this and very much look forward to a timely and expeditious completion of the investigation at the earliest possible date. Completion of the investigation is an important step in obtaining audited financial statements, restoring credit ratings and facilitating cooperation with the investigation by the Securities and Exchange Commission.

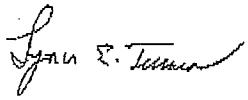
Since our update to the City Council on October 25, we limited our work to gathering and quantification of electronic data relevant to our investigation, as we informed you we would, to limit costs. We worked with Novell and San Diego Data Processing Corporation ("SDDPC") to identify and extract the email mailboxes from the restored back-up tapes and convert the data into a searchable format. SDDPC and the City's Chief Information Officer, Rey Arellano, continue working with the Audit Committee to complete the process of obtaining the hard drives and H drives related to the investigation. Novell has also been identifying archive emails located on the hard drives and H drives we have obtained. NTI Breakwater completed searching the data from email mailboxes and other data sources. Applied Discovery has uploaded email data and has been working with the Audit Committee to confirm and document the accuracy of the uploaded information. Although we have completed the upload of the email, we are in the process of obtaining and searching the remaining data so that it may be uploaded to Applied Discovery.

Given the document production that has now been accomplished, we estimate that the professional fees for services not yet incurred, to complete the remaining work necessary for the investigation and issuance of our work are in the range of approximately $7 million to $10 million. This estimated range is also set forth in the attached draft resolution. In addition, the draft resolution notes there is also approximately $3.3 million in billed and unbilled services that have been not paid at this time. Once this funding is approved, we will commence immediately to ramp back up the necessary staff and complete the necessary steps. In December we met with staff of Councilmembers and the Mayor and reviewed in greater granularity the details of our costs. As we mentioned then, for the investigation to accomplish its goal, and to have value to the City, it is important the integrity of the process be maintained including the independence and where appropriate, the confidentiality of the investigation. This is entirely consistent with such investigations in the private sector and by law enforcement agencies.

We look forward to the City Council's decision on the funding and completion of the project. If the Council determines not to approve the funding, we assume that will be consistent with a decision not to complete the investigation. Of course, the City's cooperation in completing the work that needs to be done is important.

Should you have any questions, please feel free to contact either myself or Troy Dahlberg.

Sincerely,



Lynn E. Turner
Audit Committee member

cc: Arthur Levitt, Audit Committee member
Troy Dahlberg, Audit Committee member
Council President Pro Tem Tony Young
Councilmember Toni Atkins
Councilmember Donna Frye
Councilmember Jim Madaffer
Councilmember Brian Maienschein

Attachment

EXHIBIT 39

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, JANUARY 17, 2006
AT 10:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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* ITEM-101: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico.

(District 8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2006-289) ADOPTED AS RESOLUTION R-301152

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION: GEN'L- State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 10:58 a.m. – 11:01 a.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant.

ITEM-200: Accepting the Report of the Audit Committee.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2006-603) ADOPTED AS RESOLUTION R-301170

Accepting the report of the Audit Committee;

Authorizing the Auditor and Comptroller to appropriate and expend revenue and/or expenditure savings projected to be higher than budgeted levels in an amount not to exceed $10 million for additional expenses related to the Audit Committee's on-going investigations.

SUPPORTING INFORMATION:

The Audit Committee, as part of an on-going investigation of the City's 2003 financial statements, has been asked to give an update to the City Council. As part of the report the Mayor will ask the City Council to approve an amount not to exceed $10 million for additional expenses related to this committee's investigatory work. This amount, combined with past allocations for the Audit Committee, reflects a total amount not to exceed $16.2 million.

Gattas

Aud. Cert. 2600539

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 4:15 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION ACCEPTING THE REPORT OF THE AUDIT COMMITTEE AND AUTHORIZE THE AUDITOR TO APPROPRIATE AND EXPEND REVENUE IN AN AMOUNT NOT TO EXCEED $10 MILLION FOR EXPENSES RELATED TO THE AUDIT COMMITTEE'S ON-GOING INVESTIGATIONS FROM THE GENERAL FUND EXCESS PROPERTY TAXES. DIRECT THE CITY ATTORNEY TO WORK WITH THE MAYOR AND FINANCING STAFF AND RETURN TO COUNCIL AT A LATER DATE WITH A LEGAL ANALYSIS AND ALLOCATION METHODOLOGY FOR THOSE FUNDS. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, District 8-vacant.

ITEM-201: Fifth Amendment to Agreement with HDR Engineering Inc. for Construction Management/Program Manager Services for Metropolitan Wastewater Department.

(Rancho Bernardo, San Pasqual, and Lake Hodges Community Areas. District 5.)

(Continued from the meeting of December 5, 2005, Item S402, at the request of the City Attorney, for further review.)

EXHIBIT 40

Audit Committee
of the
City of San Diego

January 25, 2006

Honorable Jerry Sanders
Mayor of the City of San Diego
Mr. Scott Peters
President, San Diego City Council
City of San Diego
202 C Street, Suite 900
San Diego, CA 92101

Dear Sirs:

On January 17, 2006 we appeared before the City Council in support of and to respond to questions related to a request for funding for the Audit Committee to complete its investigation. In advance of the City Council meeting we submitted a letter to each of you, dated January 13, 2006, providing an update of our work and attaching a draft resolution making plain that, in addition to the $7-$10 million forecasted range of professional fees for the Audit Committee and its counsel (exclusive of out-of-pocket expenses), the following amounts were outstanding for billed and unbilled time:

	Billed	Unbilled	Totals
Kroll	$1,549,881.17	400,000.00	
Willkie Farr & Gallagher LLP	939,683.73	400,000.00	
	$2,489,564.90	$800,000.00	$3,289,564.90

Therefore, the total funding required by the Audit Committee to complete its work was in the range of $10.3 - $13.3 million. We understand the City Council authorized an expenditure of up to $10 million for the Audit Committee to complete its work, which, as we have noted repeatedly, is an important step in obtaining audited financial statements, restoring the City's

Audit rating and facilitating cooperation with law enforcement. The Audit Committee will do everything it can to complete the investigation in an efficient and timely manner, consistent with its independence and obligation to be thorough. Be advised, however, the authorized level of funding, based on our present best estimate, will very likely fall short of the funding required to complete the investigation by as much as approximately $3.3 million.

Sincerely Yours,

Troy Dahlberg

Troy Dahlberg, Audit Committee member

cc: Kevin Faulconer, Councilmember
Toni Atkins, Councilmember
Tony Young , Councilmember Pro Tem
Brian Maienschein, Councilmember
Donna Frye, Councilmember
Jim Madaffer, Councilmember
Ben Hueso, Councilmember

EXHIBIT 41

INTERIM REPORT NO. 7

SDCERS ATTORNEY-CLIENT PRIVILEGE

DOCUMENTS RELEASED UNDER FEDERAL COURT ORDER

REPORT OF THE

SAN DIEGO CITY ATTORNEY

MICHAEL J. AGUIRRE

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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

6 DECEMBER 2005

> In addition to the failure to comply with the 'disclosure' and 'record' elements of section 1091.5, it appears adoption of this ordinance implicated only Board member Saathoff's interests, and therefore would constitute an 'individual' contract, rather than a contract between two public agencies, such that neither the 'non-interest' or 'remote interest' exceptions could be applied.[64]

Moreover, Leone restated his opinion that it is likely that the contract would be voided as a result of conflict of interest violations.[65]

Leone also found that the benefit enhancements approved by the City Council in 2002 were contingent on the SDCERS Board lowering the trigger from 82.3 percent as established in the 1996 Manager's Proposal I to 75 percent. Leone wrote:

> The evidence is clear that the City promised its unions enhanced retirement benefits, contingent on the Board's adoption of Manager's Proposal II. The evidence is likewise clear that the linkage between enhanced retirement benefits for City employees, and adoption of a new "contribution agreement" was repeatedly emphasized in communications between City labor negotiators and SDCERS Board members.[66]

SDCERS and the City entered into a settlement with the plaintiff in the case in August 2004.[67]

IV.

CONCLUSION

An analysis of several thousand documents released by SDCERS in September 2005 under Federal Court order provides additional evidence illustrating that retirement benefits

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[64] 13 May 2004. Seltzer Caplan McMahon Vitek opinion to Lawrence Grissom. Re: James F. Gleason, etc. v. San Diego City Employees' Retirement. P. 27. (Exhibit 46)

[65] 13 May 2004. Seltzer Caplan McMahon Vitek opinion to Lawrence Grissom. Re: James F. Gleason, etc. v. San Diego City Employees' Retirement. P. 28. (Exhibit 46)

[66] 13 May 2004. Seltzer Caplan McMahon Vitek opinion to Lawrence Grissom. Re: James F. Gleason, etc. v. San Diego City Employees' Retirement. P. 7. (Exhibit 46)

[67] 16 September 2004. Vinson and Elkins' "Report on Investigation." P. 98. (Exhibit 47)

granted by the City Council as part of Manager's Proposal II was part of a quid pro quo arrangement to entice the SDCERS Board to lower the 82.3 percent funding trigger.

The release of the documents also specifically illustrates there is substantial evidence that officials and trustees of SDCERS violated Government Code 1090 and there is also substantial evidence these officers also violated their fiduciary duty to the pension system.

Documents released by SDCERS show there is substantial evidence certain Board members violated their duties as trustees of the pension trust by placing their personal financial interests over maintaining the financial integrity of the pension trust. The violations were then compounded by the SDCERS Board's refusal to correct the illegal acts by keeping Manager's Proposal II in place, until it was made the subject of civil litigation.

The documents released by SDCERS also contain substantial evidence that SDCERS officials withheld key information from the public, the City of San Diego and certain individuals on the SDCERS Board. The City Attorney's Office is currently investigating whether city and SDCERS officials engaged in related obstruction of justice. This inquiry will be the subject of a later Interim Report.

By_____
Michael J. Aguirre
City Attorney

EXHIBIT 42

AU Section 319

Consideration of Internal Control in a Financial Statement Audit

Source: SAS No. 55; SAS No. 78; SAS No. 94.*

Effective for audits of financial statements for periods beginning on or after January 1, 1990, unless otherwise indicated.

Introduction

.01 This section provides guidance on the independent auditor's consideration of an entity's internal control in an audit of financial statements in accordance with generally accepted auditing standards. It defines internal control,[1] describes the objectives and components of internal control, and explains how an auditor should consider internal control in planning and performing an audit. In particular, this section provides guidance about implementing the second standard of field work: "A sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed."

.02 In all audits, the auditor should obtain an understanding of internal control sufficient to plan the audit by performing procedures to understand the design of controls relevant to an audit of financial statements and determining whether they have been placed in operation. In obtaining this understanding, the auditor considers how an entity's use of information technology (IT)[2] and manual procedures may affect controls relevant to the audit. The auditor then assesses control risk for the assertions embodied in the account balance, transaction class, and disclosure components of the financial statements.

.03 The auditor may determine that assessing control risk below the maximum level[3] for certain assertions would be effective and more efficient

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* This section has been revised to reflect the amendments and conforming changes necessary due to the issuance of Statement on Auditing Standards No. 78, effective for audits of financial statements for periods beginning on or after January 1, 1997. The amendments are made to recognize the definition and description of internal control contained in *Internal Control—Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO Report). This section has also been amended to reflect the issuance of Statement on Auditing Standards No. 94, effective for audits of financial statements for periods beginning on or after June 1, 2001. Earlier application is permissible.

[1] Internal control *also may be referred to as internal control structure.*

[2] Information technology (IT) encompasses automated means of originating, processing, storing, and communicating information, and includes recording devices, communication systems, computer systems (including hardware and software components and data), and other electronic devices. An entity's use of IT may be extensive; however, the auditor is primarily interested in the entity's use of IT to initiate, record, process, and report transactions or other financial data.

[3] Control risk may be assessed in quantitative terms, such as percentages, or in nonquantitative terms that range, for example, from a maximum to a minimum. The term *maximum level* is used in this section to mean the greatest probability that a material misstatement that could occur in a financial statement assertion will not be prevented or detected on a timely basis by an entity's internal control.

than performing only substantive tests. In addition, the auditor may determine that it is not practical or possible to restrict detection risk to an acceptable level by performing only substantive tests for one or more financial statement assertions. In such circumstances, the auditor should obtain evidential matter about the effectiveness of both the design and operation of controls to reduce the assessed level of control risk. Such evidential matter may be obtained from tests of controls planned and performed concurrent with or subsequent to obtaining the understanding.[4] Such evidential matter also may be obtained from procedures that were not specifically planned as tests of controls but that nevertheless provide evidential matter about the effectiveness of the design and operation of the controls. For certain assertions, the auditor may desire to further reduce the assessed level of control risk. In such cases, the auditor considers whether evidential matter sufficient to support a further reduction is likely to be available and whether performing additional tests of controls to obtain such evidential matter would be efficient.

.04 Alternatively, the auditor may assess control risk at the maximum level because he or she believes controls are unlikely to pertain to an assertion or are unlikely to be effective, or because evaluating the effectiveness of controls would be inefficient. However, the auditor needs to be satisfied that performing only substantive tests would be effective in restricting detection risk to an acceptable level. When evidence of an entity's initiation, recording, or processing of financial data exists only in electronic form, the auditor's ability to obtain the desired assurance only from substantive tests would significantly diminish.

.05 The auditor uses the understanding of internal control and the assessed level of control risk in determining the nature, timing, and extent of substantive tests for financial statement assertions.

Definition of Internal Control

.06 *Internal control* is a process—effected by an entity's board of directors, management, and other personnel—designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (*a*) reliability of financial reporting, (*b*) effectiveness and efficiency of operations, and (*c*) compliance with applicable laws and regulations.

.07 Internal control consists of five interrelated components:

a. *Control environment* sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.

b. *Risk assessment* is the entity's identification and analysis of relevant risks to achievement of its objectives, forming a basis for determining how the risks should be managed.

c. *Control activities* are the policies and procedures that help ensure that management directives are carried out.

d. *Information and communication* systems support the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.

e. *Monitoring* is a process that assesses the quality of internal control performance over time.

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[4] If the auditor is unable to obtain such evidential matter, he or she should consider the guidance in section 326, *Evidential Matter*, paragraphs .14 and .25.

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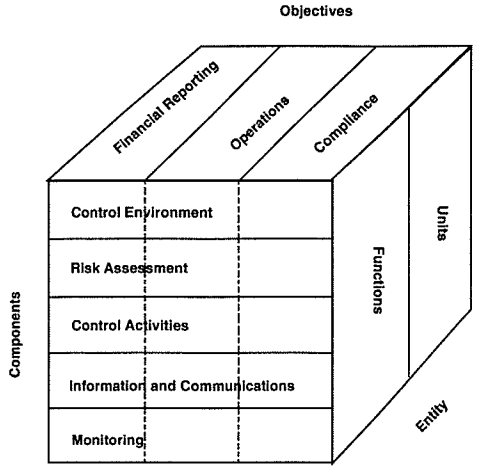
Relationship Between Objectives and Components

.08 There is a direct relationship between objectives, which are what an entity strives to achieve, and components, which represent what is needed to achieve the objectives. In addition, internal control is relevant to the entire entity, or to any of its operating units or business functions. This relationship is depicted as follows:



.09 Although an entity's internal control addresses objectives in each of the categories referred to in paragraph .06, not all of these objectives and related controls are relevant to an audit of the entity's financial statements. Also, although internal control is relevant to the entire entity or to any of its operating units or business functions, an understanding of internal control relevant to each of the entity's operating units and business functions may not be necessary to plan and perform an effective audit.

Financial Reporting Objective

.10 Generally, controls that are relevant to an audit pertain to the entity's objective of preparing financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles.[5]

Operations and Compliance Objectives

.11 The controls relating to operations and compliance[6] objectives may be relevant to an audit if they pertain to data the auditor evaluates or uses in applying auditing procedures. For example, controls pertaining to nonfinancial

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[5] The term *comprehensive basis of accounting other than generally accepted accounting principles* is defined in section 623, *Special Reports*, paragraph .04. Hereafter, reference to generally accepted accounting principles in this section includes, where applicable, an other comprehensive basis of accounting.

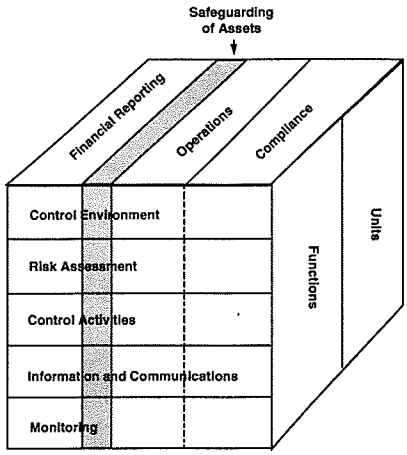
[6] An auditor may need to consider controls relevant to compliance objectives when performing an audit in accordance with section 801, *Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance*.

data that the auditor uses in analytical procedures, such as production statistics, or pertaining to detecting noncompliance with laws and regulations that may have a direct and material effect on the financial statements, such as controls over compliance with income tax laws and regulations used to determine the income tax provision, may be relevant to an audit.

.12 An entity generally has controls relating to objectives that are not relevant to an audit and therefore need not be considered. For example, controls concerning compliance with health and safety regulations or concerning the effectiveness and efficiency of certain management decision-making processes (such as the appropriate price to charge for its products or whether to make expenditures for certain research and development or advertising activities), although important to the entity, ordinarily do not relate to a financial statement audit. Similarly, an entity may rely on a sophisticated system of automated controls to provide efficient and effective operations (such as a commercial airline's system of automated controls to maintain flight schedules), but these controls ordinarily would not be relevant to the financial statement audit and therefore need not be considered.

Safeguarding of Assets

.13 Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition may include controls relating to financial reporting and operations objectives. This relationship is depicted as follows:



In obtaining an understanding of each of the components of internal control to plan the audit, the auditor's consideration of safeguarding controls is generally limited to those relevant to the reliability of financial reporting. For example, use of a lockbox system for collecting cash or access controls, such as passwords, that limit access to the data and programs that process cash disbursements may be relevant to a financial statement audit. Conversely, controls to prevent the excess use of materials in production generally are not relevant to a financial statement audit.

Application of Components to a Financial Statement Audit

.14 The division of internal control into five components provides a useful framework for auditors to consider the impact of an entity's internal control in

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an audit. However, it does not necessarily reflect how an entity considers and implements internal control. Also, the auditor's primary consideration is whether a specific control affects financial statement assertions rather than its classification into any particular component. Controls relevant to the audit are those that individually or in combination with others are likely to prevent or detect material misstatements in financial statement assertions. Such controls may exist in any of the five components.

.15 The five components of internal control are applicable to the audit of every entity. The components should be considered in the context of—

- The entity's size.
- The entity's organization and ownership characteristics.
- The nature of the entity's business.
- The diversity and complexity of the entity's operations.
- Applicable legal and regulatory requirements.
- The nature and complexity of the systems that are part of the entity's internal control, including the use of service organizations.[7]

Effect of Information Technology on Internal Control

.16 An entity's use of IT may affect any of the five components of internal control relevant to the achievement of the entity's financial reporting, operations, or compliance objectives, and its operating units or business functions. For example, an entity may use IT as part of discrete systems that support only particular business units, functions, or activities, such as a unique accounts receivable system for a particular business unit or a system that controls the operation of factory equipment. Alternatively, an entity may have complex, highly integrated systems that share data and that are used to support all aspects of the entity's financial reporting, operations, and compliance objectives.

.17 The use of IT also affects the fundamental manner in which transactions are initiated, recorded, processed, and reported.[8] In a manual system, an entity uses manual procedures and records in paper format (for example, individuals may manually record sales orders on paper forms or journals, authorize credit, prepare shipping reports and invoices, and maintain accounts receivable records). Controls in such a system also are manual and may include such procedures as approvals and reviews of activities, and reconciliations and follow-up of reconciling items. Alternatively, an entity may have information systems that use automated procedures to initiate, record, process, and report transactions, in which case records in electronic format replace such paper documents as purchase orders, invoices, shipping documents, and related accounting records. Controls in systems that use IT consist of a combination of automated controls (for example, controls embedded in computer programs) and manual controls. Further, manual controls may be independent of IT, may use information produced by IT, or may be limited to monitoring the effective functioning of IT and of automated controls, and to handling exceptions. An entity's mix of manual and automated controls varies with the nature and complexity of the entity's use of IT.

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[7] See section 324, *Service Organizations*, for guidance if an entity obtains services that are part of its information system from another organization.

[8] Paragraph 12 of the appendix [paragraph .110] defines *initiation*, *recording*, *processing*, and *reporting* as used throughout this section.

.18 IT provides potential benefits of effectiveness and efficiency for an entity's internal control because it enables an entity to—

- Consistently apply predefined business rules and perform complex calculations in processing large volumes of transactions or data.
- Enhance the timeliness, availability, and accuracy of information.
- Facilitate the additional analysis of information.
- Enhance the ability to monitor the performance of the entity's activities and its policies and procedures.
- Reduce the risk that controls will be circumvented.
- Enhance the ability to achieve effective segregation of duties by implementing security controls in applications, databases, and operating systems.

.19 IT also poses specific risks to an entity's internal control, including—

- Reliance on systems or programs that are inaccurately processing data, processing inaccurate data, or both.
- Unauthorized access to data that may result in destruction of data or improper changes to data, including the recording of unauthorized or nonexistent transactions or inaccurate recording of transactions.
- Unauthorized changes to data in master files.
- Unauthorized changes to systems or programs.
- Failure to make necessary changes to systems or programs.
- Inappropriate manual intervention.
- Potential loss of data.

.20 The extent and nature of these risks to internal control vary depending on the nature and characteristics of the entity's information system. For example, multiple users, either external or internal, may access a common database of information that affects financial reporting. In such circumstances, a lack of control at a single user entry point might compromise the security of the entire database, potentially resulting in improper changes to or destruction of data. When IT personnel or users are given, or can gain, access privileges beyond those necessary to perform their assigned duties, a breakdown in segregation of duties can occur. This could result in unauthorized transactions or changes to programs or data that affect the financial statements. Therefore, the nature and characteristics of an entity's use of IT in its information system affect the entity's internal control.

Limitations of an Entity's Internal Control

.21 Internal control, no matter how well designed and operated, can provide only reasonable assurance of achieving an entity's control objectives. The likelihood of achievement is affected by limitations inherent to internal control. These include the realities that human judgment in decision-making can be faulty and that breakdowns in internal control can occur because of human failures such as simple errors or mistakes. For example, errors may occur in designing, maintaining, or monitoring automated controls. If an entity's IT personnel do not completely understand how an order entry system

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processes sales transactions, they may erroneously design changes to the system to process sales for a new line of products. On the other hand, such changes may be correctly designed but misunderstood by individuals who translate the design into program code. Errors also may occur in the use of information produced by IT. For example, automated controls may be designed to report transactions over a specified dollar limit for management review, but individuals responsible for conducting the review may not understand the purpose of such reports and, accordingly, may fail to review them or investigate unusual items.

.22 Additionally, controls, whether manual or automated, can be circumvented by the collusion of two or more people or inappropriate management override of internal control. For example, management may enter into side agreements with customers that alter the terms and conditions of the entity's standard sales contract in ways that would preclude revenue recognition. Also, edit routines in a software program that are designed to identify and report transactions that exceed specified credit limits may be overridden or disabled.

.23 Internal control is influenced by the quantitative and qualitative estimates and judgments made by management in evaluating the cost-benefit relationship of an entity's internal control. The cost of an entity's internal control should not exceed the benefits that are expected to be derived. Although the cost-benefit relationship is a primary criterion that should be considered in designing internal control, the precise measurement of costs and benefits usually is not possible.

.24 Custom, culture, and the corporate governance system may inhibit fraud, but they are not absolute deterrents. An effective control environment, too, may help reduce the risk of fraud. For example, an effective board of directors, audit committee, and internal audit function may constrain improper conduct by management. Alternatively, the control environment may reduce the effectiveness of other components. For example, when the nature of management incentives increases the risk of material misstatement of financial statements, the effectiveness of control activities may be reduced.

Obtaining an Understanding of Internal Control

.25 In all audits, the auditor should obtain an understanding of each of the five components of internal control sufficient to plan the audit. A sufficient understanding is obtained by performing procedures to understand the design of controls relevant to an audit of financial statements and determining whether they have been placed in operation. In planning the audit, such knowledge should be used to—

- Identify types of potential misstatement.
- Consider factors that affect the risk of material misstatement.
- Design tests of controls, when applicable. Paragraphs .65 through .69 of this section discuss factors the auditor considers in determining whether to perform tests of controls.
- Design substantive tests.

.26 The nature, timing, and extent of procedures the auditor chooses to perform to obtain the understanding will vary depending on the size and complexity of the entity, previous experience with the entity, the nature of the

specific controls used by the entity including the entity's use of IT, the nature and extent of changes in systems and operations, and the nature of the entity's documentation of specific controls. For example, the understanding of risk assessment needed to plan an audit for an entity operating in a relatively stable environment may be limited. Also, the understanding of monitoring needed to plan an audit for a small, noncomplex entity may be limited. Similarly, the auditor may need only a limited understanding of control activities to plan an audit for a noncomplex entity that has significant owner-manager approval and review of transactions and accounting records. On the other hand, the auditor may need a greater understanding of control activities to plan an audit for an entity that has a large volume of revenue transactions and that relies on IT to measure and bill for services based on a complex, frequently changing rate structure.

.27 Whether a control has been *placed in operation* at a point in time is different from its *operating effectiveness* over a period of time. In obtaining knowledge about whether controls have been placed in operation, the auditor determines that the entity is using them. Operating effectiveness, on the other hand, is concerned with how the control (whether manual or automated) was applied, the consistency with which it was applied, and by whom it was applied. The auditor determines whether controls have been placed in operation as part of the understanding of internal control necessary to plan the audit. The auditor evaluates the operating effectiveness of controls as part of assessing control risk, as discussed in paragraphs .62 through .83 of this section. Although understanding internal control and assessing control risk are discussed separately in this section, they may be performed concurrently in an audit. Furthermore, some of the procedures performed to obtain the understanding may provide evidential matter about the operating effectiveness of controls relevant to certain assertions.

.28 The auditor's understanding of internal control may sometimes raise doubts about the auditability of an entity's financial statements. Concerns about the integrity of the entity's management may be so serious as to cause the auditor to conclude that the risk of management misrepresentation in the financial statements is such that an audit cannot be conducted. Concerns about the nature and extent of an entity's records may cause the auditor to conclude that it is unlikely that sufficient competent evidential matter will be available to support an opinion on the financial statements.

Understanding of Internal Control Necessary to Plan the Audit

.29 In making a judgment about the understanding of internal control necessary to plan the audit, the auditor considers the knowledge obtained from other sources about the types of misstatement that could occur, the risk that such misstatements may occur, and the factors that influence the design of tests of controls, when applicable, and substantive tests. Other sources of such knowledge include information from previous audits and the auditor's understanding of the industry and market in which the entity operates. The auditor also considers his or her assessment of inherent risk, judgments about materiality, and the complexity and sophistication of the entity's operations and systems, including the extent to which the entity relies on manual controls or on automated controls.

.30 In making a judgment about the understanding of internal control necessary to plan the audit, the auditor also considers IT risks that could result

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in misstatements. For example, if an entity uses IT to perform complex calculations, the entity receives the benefit of having the calculations consistently performed. However, the use of IT also presents risks, such as the risk that improperly authorized, incorrectly defined, or improperly implemented changes to the system or programs performing the calculations, or to related program tables or master files, could result in consistently performing those calculations inaccurately. As an entity's operations and systems become more complex and sophisticated, it becomes more likely that the auditor would need to increase his or her understanding of the internal control components to obtain the understanding necessary to design tests of controls, when applicable, and substantive tests.

.31 The auditor should consider whether specialized skills are needed for the auditor to determine the effect of IT on the audit, to understand the IT controls, or to design and perform tests of IT controls or substantive tests. A professional possessing IT skills may be either on the auditor's staff or an outside professional. In determining whether such a professional is needed on the audit team, the auditor considers factors such as the following:

- The complexity of the entity's systems and IT controls and the manner in which they are used in conducting the entity's business
- The significance of changes made to existing systems, or the implementation of new systems
- The extent to which data is shared among systems
- The extent of the entity's participation in electronic commerce
- The entity's use of emerging technologies
- The significance of audit evidence that is available only in electronic form

.32 Procedures that the auditor may assign to a professional possessing IT skills include inquiring of an entity's IT personnel how data and transactions are initiated, recorded, processed, and reported and how IT controls are designed; inspecting systems documentation; observing the operation of IT controls; and planning and performing tests of IT controls. If the use of a professional possessing IT skills is planned, the auditor should have sufficient IT-related knowledge to communicate the audit objectives to the professional, to evaluate whether the specified procedures will meet the auditor's objectives, and to evaluate the results of the procedures as they relate to the nature, timing, and extent of other planned audit procedures.[9]

.33 Paragraphs .34 through .57 of this section provide an overview of the five internal control components and the auditor's understanding of the components relating to a financial statement audit. A more detailed discussion of these components is provided in the appendix [paragraph .110].

Control Environment

.34 The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure. Control environment factors include the following:

a. Integrity and ethical values

b. Commitment to competence

[9] See section 311, *Planning and Supervision*, paragraph .10.

c. Board of directors or audit committee participation

d. Management's philosophy and operating style

e. Organizational structure

f. Assignment of authority and responsibility

g. Human resource policies and practices

.35 The auditor should obtain sufficient knowledge of the control environment to understand management's and the board of directors' attitude, awareness, and actions concerning the control environment, considering both the substance of controls and their collective effect. The auditor should concentrate on the substance of controls rather than their form, because controls may be established but not acted upon. For example, management may establish a formal code of conduct but act in a manner that condones violations of that code.

.36 When obtaining an understanding of the control environment, the auditor considers the collective effect on the control environment of strengths and weaknesses in various control environment factors. Management's strengths and weaknesses may have a pervasive effect on internal control. For example, owner-manager controls may mitigate a lack of segregation of duties in a small business, or an active and independent board of directors may influence the philosophy and operating style of senior management in larger entities. Alternatively, management's failure to commit sufficient resources to address security risks presented by IT may adversely affect internal control by allowing improper changes to be made to computer programs or to data, or by allowing unauthorized transactions to be processed. Similarly, human resource policies and practices directed toward hiring competent financial, accounting, and IT personnel may not mitigate a strong bias by top management to overstate earnings.

Risk Assessment

.37 An entity's risk assessment for financial reporting purposes is its identification, analysis, and management of risks relevant to the preparation of financial statements that are fairly presented in conformity with generally accepted accounting principles. For example, risk assessment may address how the entity considers the possibility of unrecorded transactions or identifies and analyzes significant estimates recorded in the financial statements. Risks relevant to reliable financial reporting also relate to specific events or transactions.

.38 Risks relevant to financial reporting include external and internal events and circumstances that may occur and adversely affect an entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements.[10] Risks can arise or change due to circumstances such as the following:

- Changes in operating environment
- New personnel
- New or revamped information systems
- Rapid growth
- New technology
- New business models, products, or activities

[10] These assertions are discussed in section 326.

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- Corporate restructurings
- Expanded foreign operations
- New accounting pronouncements

.39 The auditor should obtain sufficient knowledge of the entity's risk assessment process to understand how management considers risks relevant to financial reporting objectives and decides about actions to address those risks. This knowledge might include understanding how management identifies risks, estimates the significance of the risks, assesses the likelihood of their occurrence, and relates them to financial reporting. The use of IT may be an important element in an entity's risk assessment process, including providing timely information to facilitate the identification and management of risks.

.40 An entity's risk assessment differs from the auditor's consideration of audit risk in a financial statement audit. The purpose of an entity's risk assessment is to identify, analyze, and manage risks that affect entity objectives. In a financial statement audit, the auditor assesses inherent and control risks to evaluate the likelihood that material misstatements could occur in the financial statements.

Control Activities

.41 Control activities are the policies and procedures that help ensure that management directives are carried out. They help ensure that necessary actions are taken to address risks to achievement of the entity's objectives. Control activities, whether automated or manual, have various objectives and are applied at various organizational and functional levels. Generally, control activities that may be relevant to an audit may be categorized as policies and procedures that pertain to the following:

- Performance reviews
- Information processing
- Physical controls
- Segregation of duties

.42 The auditor should obtain an understanding of those control activities relevant to planning the audit. As the auditor obtains an understanding of the other components, he or she is also likely to obtain knowledge about some control activities. For example, in obtaining an understanding of the documents, records, and processing steps in the financial reporting information system that pertain to cash, the auditor is likely to become aware of whether bank accounts are reconciled. The auditor should consider the knowledge about the presence or absence of control activities obtained from the understanding of the other components in determining whether it is necessary to devote additional attention to obtaining an understanding of control activities to plan the audit. Ordinarily, audit planning does not require an understanding of the control activities related to each account balance, transaction class, and disclosure component in the financial statements or to every assertion relevant to them.

.43 The auditor should obtain an understanding of how IT affects control activities that are relevant to planning the audit. Some entities and auditors may view the IT control activities in terms of application controls and general controls. Application controls apply to the processing of individual applications. Accordingly, application controls relate to the use of IT to initiate, record,

process, and report transactions or other financial data. These controls help ensure that transactions occurred, are authorized, and are completely and accurately recorded and processed. Examples include edit checks of input data, numerical sequence checks, and manual follow-up of exception reports.

.44 Application controls may be performed by IT (for example, automated reconciliation of subsystems) or by individuals. When application controls are performed by people interacting with IT, they may be referred to as user controls. The effectiveness of user controls, such as reviews of computer-produced exception reports or other information produced by IT, may depend on the accuracy of the information produced. For example, a user may review an exception report to identify credit sales over a customer's authorized credit limit without performing procedures to verify its accuracy. In such cases, the effectiveness of the user control (that is, the review of the exception report) depends on both the effectiveness of the user review and the accuracy of the information in the report produced by IT.

.45 General controls are policies and procedures that relate to many applications and support the effective functioning of application controls by helping to ensure the continued proper operation of information systems. General controls commonly include controls over data center and network operations; system software acquisition and maintenance; access security; and application system acquisition, development, and maintenance.

.46 The use of IT affects the way that control activities are implemented. For example, when IT is used in an information system, segregation of duties often is achieved by implementing security controls.

Information and Communication

.47 The information system relevant to financial reporting objectives, which includes the accounting system, consists of the procedures, whether automated or manual, and records established to initiate, record, process, and report entity transactions (as well as events and conditions) and to maintain accountability for the related assets, liabilities, and equity. The quality of system-generated information affects management's ability to make appropriate decisions in controlling the entity's activities and to prepare reliable financial reports.

.48 Communication involves providing an understanding of individual roles and responsibilities pertaining to internal control over financial reporting.

.49 The auditor should obtain sufficient knowledge of the information system relevant to financial reporting to understand—

- The classes of transactions in the entity's operations that are significant to the financial statements.
- The procedures, both automated and manual, by which transactions are initiated, recorded, processed, and reported from their occurrence to their inclusion in the financial statements.
- The related accounting records, whether electronic or manual, supporting information, and specific accounts in the financial statements involved in initiating, recording, processing, and reporting transactions.
- How the information system captures other events and conditions that are significant to the financial statements.
- The financial reporting process used to prepare the entity's financial statements, including significant accounting estimates and disclosures.

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.50 When IT is used to initiate, record, process, or report transactions or other financial data for inclusion in financial statements, the systems and programs may include controls related to the corresponding assertions for significant accounts or may be critical to the effective functioning of manual controls that depend on IT.

.51 In obtaining an understanding of the financial reporting process, the auditor should understand the automated and manual procedures an entity uses to prepare financial statements and related disclosures, and how misstatements may occur. Such procedures include—

- *The procedures used to enter transaction totals into the general ledger.* In some information systems, IT may be used to automatically transfer such information from transaction processing systems to general ledger or financial reporting systems. The automated processes and controls in such systems may reduce the risk of inadvertent error but do not overcome the risk that individuals may inappropriately override such automated processes, for example, by changing the amounts being automatically passed to the general ledger or financial reporting system. Furthermore, in planning the audit, the auditor should be aware that when IT is used to automatically transfer information there may be little or no visible evidence of such intervention in the information systems.
- *The procedures used to initiate, record, and process journal entries in the general ledger.* An entity's financial reporting process used to prepare the financial statements typically includes the use of standard journal entries that are required on a recurring basis to record transactions such as monthly sales, purchases, and cash disbursements, or to record accounting estimates that are periodically made by management such as changes in the estimate of uncollectible accounts receivable. An entity's financial reporting process also includes the use of nonstandard journal entries to record nonrecurring or unusual transactions or adjustments such as a business combination or disposal, or a nonrecurring estimate such as an asset impairment. In manual, paper-based general ledger systems, such journal entries may be identified through inspection of ledgers, journals, and supporting documentation. However, when IT is used to maintain the general ledger and prepare financial statements, such entries may exist only in electronic form and may be more difficult to identify through physical inspection of printed documents.
- *Other procedures used to record recurring and nonrecurring adjustments to the financial statements.* These are procedures that are not reflected in formal journal entries, such as consolidating adjustments, report combinations, and reclassifications.

.52 The auditor also should obtain sufficient knowledge of the means the entity uses to communicate financial reporting roles and responsibilities and significant matters relating to financial reporting.

Monitoring

.53 An important management responsibility is to establish and maintain internal control. Management monitors controls to consider whether they are operating as intended and that they are modified as appropriate for changes in conditions.

.54 Monitoring is a process that assesses the quality of internal control performance over time. It involves assessing the design and operation of controls on a timely basis and taking necessary corrective actions. This process is accomplished through ongoing activities, separate evaluations, or a combination of the two. In many entities, internal auditors or personnel performing similar functions contribute to the monitoring of an entity's activities. Monitoring activities may include using information from communications from external parties such as customer complaints and regulator comments that may indicate problems or highlight areas in need of improvement. In many entities, much of the information used in monitoring may be produced by the entity's information system. If management assumes that data used for monitoring are accurate without having a basis for that assumption, errors may exist in the information, potentially leading management to incorrect conclusions from its monitoring activities.

.55 The auditor should obtain sufficient knowledge of the major types of activities the entity uses to monitor internal control over financial reporting, including the source of the information related to those activities, and how those activities are used to initiate corrective actions. When obtaining an understanding of the internal audit function, the auditor should follow the guidance in section 322, *The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements*, paragraphs .04 through .08.

Application to Small and Midsized Entities

.56 The way in which the objectives of internal control are achieved will vary based on an entity's size and complexity, among other considerations. Specifically, small and midsized entities may use less formal means to ensure that internal control objectives are achieved. For example, smaller entities with active management involvement in the financial reporting process may not have extensive descriptions of accounting procedures, sophisticated information systems, or written policies. Smaller entities may not have a written code of conduct but, instead, develop a culture that emphasizes the importance of integrity and ethical behavior through oral communication and by management example. Similarly, smaller entities may not have an independent or outside member on their board of directors.

.57 When small or midsized entities are involved in complex transactions or are subject to legal and regulatory requirements also found in larger entities, more formal means of ensuring that internal control objectives are achieved may be present. Also, small and midsized entities may use IT in various ways to achieve their objectives. For example, a small entity may use sophisticated applications of IT as part of its information system. The impact of IT on an entity's internal control is related more to the nature and complexity of the systems in use than to the entity's size.

Procedures to Obtain Understanding

.58 In obtaining an understanding of controls that are relevant to audit planning, the auditor should perform procedures to obtain sufficient knowledge about the design of the relevant controls pertaining to each of the five internal control components and determine whether they have been placed in operation. This knowledge is ordinarily obtained through previous experience with the entity and procedures such as inquiries of appropriate management, supervisory, and staff personnel; inspection of entity documents and records; and observation of entity activities and operations. The nature and extent of

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the procedures performed generally vary from entity to entity and are influenced by the size and complexity of the entity, the auditor's previous experience with the entity, the nature of the particular control, and the nature of the entity's documentation of specific controls.

.59 For example, the auditor's prior experience with the entity may provide an understanding of its classes of transactions. Inquiries of appropriate entity personnel and inspection of documents and records, such as source documents, journals, and ledgers, may provide an understanding of the accounting records. Similarly, in obtaining an understanding of the design of automated controls and determining whether they have been placed in operation, the auditor may make inquiries of appropriate entity personnel and inspect relevant systems documentation, reports (for example, exception reports or reports evidencing the processing of transactions or application of other controls), or other documents.

.60 The auditor's assessments of inherent risk and judgments about materiality for various account balances and transaction classes also affect the nature and extent of the procedures performed to obtain the understanding. For example, the auditor may conclude that planning the audit of the prepaid insurance account does not require specific procedures to be included in obtaining the understanding of internal control.

Documenting the Understanding

.61 The auditor should document the understanding of the entity's internal control components obtained to plan the audit. The form and extent of this documentation is influenced by the nature and complexity of the entity's controls. For example, documentation of the understanding of internal control of a complex information system in which a large volume of transactions are electronically initiated, recorded, processed, or reported may include flowcharts, questionnaires, or decision tables. For an information system making limited or no use of IT or for which few transactions are processed (for example, long-term debt), documentation in the form of a memorandum may be sufficient. Generally, the more complex the entity's internal control and the more extensive the procedures performed by the auditor, the more extensive the auditor's documentation should be.

Assessing Control Risk

.62 Section 326, *Evidential Matter*, states that most of the independent auditor's work in forming an opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements. These assertions are embodied in the account balance, transaction class, and disclosure components of financial statements and are classified according to the following broad categories:

- Existence or occurrence
- Completeness
- Rights and obligations
- Valuation or allocation
- Presentation and disclosure

In planning and performing an audit, an auditor considers these assertions in the context of their relationship to a specific account balance or class of transactions.

.63 The risk of material misstatement[11] in financial statement assertions consists of inherent risk, control risk, and detection risk. Inherent risk is the susceptibility of an assertion to a material misstatement assuming there are no related controls. Control risk is the risk that a material misstatement that could occur in an assertion will not be prevented or detected on a timely basis by the entity's internal control. Detection risk is the risk that the auditor will not detect a material misstatement that exists in an assertion.

.64 Assessing control risk is the process of evaluating the effectiveness of an entity's internal control in preventing or detecting material misstatements in the financial statements. Control risk should be assessed in terms of financial statement assertions.

.65 After obtaining the understanding of internal control, the auditor may assess control risk at the maximum level[12] for some or all assertions because he or she believes controls are unlikely to pertain to an assertion or are unlikely to be effective, or because evaluating the effectiveness of controls would be inefficient. However, the auditor needs to be satisfied that performing only substantive tests would be effective in restricting detection risk to an acceptable level. For example, the auditor may determine that performing only substantive tests would be effective and more efficient than performing tests of controls for assertions related to fixed assets and to long-term debt in an entity where a limited number of transactions are related to those financial statement components, and when the auditor can readily obtain corroborating evidence in the form of documents and confirmations. In circumstances where the auditor is performing only substantive tests in restricting detection risk to an acceptable level and where the information used by the auditor to perform such substantive tests is produced by the entity's information system, the auditor should obtain evidence about the accuracy and completeness of the information.

.66 In other circumstances, the auditor may determine that assessing control risk below the maximum level for certain assertions would be effective and more efficient than performing only substantive tests. In addition, the auditor may determine that it is not practical or possible to restrict detection risk to an acceptable level by performing only substantive tests for one or more financial statement assertions. In such circumstances, the auditor should obtain evidential matter about the effectiveness of both the design and operation of controls to reduce the assessed level of control risk.[13]

.67 In determining whether assessing control risk at the maximum level or at a lower level would be an effective approach for specific assertions, the auditor should consider—

- The nature of the assertion.
- The volume of transactions or data related to the assertion.

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[11] For purposes of this section, a material misstatement in a financial statement assertion is a misstatement whether caused by error or fraud as discussed in section 312, *Audit Risk and Materiality in Conducting an Audit*, that either individually or when aggregated with other misstatements in other assertions would be material to the financial statements taken as a whole.

[12] See footnote 3.

[13] See footnote 4.

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- The nature and complexity of the systems, including the use of IT, by which the entity processes and controls information supporting the assertion.
- The nature of the available evidential matter, including audit evidence that is available only in electronic form.

.68 In circumstances where a significant amount of information supporting one or more financial statement assertions is electronically initiated, recorded, processed, or reported, the auditor may determine that it is not possible to design effective substantive tests that by themselves would provide sufficient evidence that the assertions are not materially misstated. For such assertions, significant audit evidence may be available only in electronic form. In such cases, its competence and sufficiency as evidential matter usually depend on the effectiveness of controls over its accuracy and completeness. Furthermore, the potential for improper initiation or alteration of information to occur and not be detected may be greater if information is initiated, recorded, processed, or reported only in electronic form and appropriate controls are not operating effectively. In such circumstances, the auditor should perform tests of controls to gather evidential matter to use in assessing control risk.

.69 Examples of situations where the auditor may find it impossible to design effective substantive tests that by themselves would provide sufficient evidence that certain assertions are not materially misstated include the following:

- An entity that conducts business using IT to initiate orders for goods based on predetermined decision rules and to pay the related payables based on system-generated information regarding receipt of goods. No other documentation of orders or goods received is produced or maintained.
- An entity that provides electronic services to customers (for example, an Internet service provider or a telephone company) and uses IT to log services provided to users, initiate bills for the services, process the billing transactions, and automatically record such amounts in electronic accounting records that are used to produce the financial statements.

Assessing Control Risk Below the Maximum Level

.70 Assessing control risk below the maximum level involves[14]—

- Identifying specific controls relevant to specific assertions.
- Performing tests of controls.
- Concluding on the assessed level of control risk.

Identifying Specific Controls Relevant to Specific Assertions

.71 The auditor's understanding about internal control should be used to identify the types of potential misstatements that could occur and to consider factors that affect the risk of material misstatement. In assessing control risk,

[14] Section 324 describes reports that an auditor may obtain that may assist in identifying controls relevant to specific assertions and obtaining evidential matter regarding their operating effectiveness when an entity uses a service organization.

the auditor should identify the controls that are likely to prevent or detect material misstatement in specific assertions. In identifying controls relevant to specific financial statement assertions, the auditor should consider that the controls can have either a pervasive effect on many assertions or a specific effect on an individual assertion, depending on the nature of the particular internal control component involved. For example, the conclusion that an entity's control environment is highly effective may influence the auditor's decision about the number of an entity's locations at which auditing procedures are to be performed or whether to perform certain auditing procedures for some account balances or transaction classes at an interim date. Either decision affects the way in which auditing procedures are applied to specific assertions, even though the auditor may not have specifically considered each individual assertion that is affected by such decisions.

.72 Conversely, some control activities may have a specific effect on an individual assertion embodied in a particular account balance or transaction class. For example, the control activities that an entity established to ensure that its personnel are properly counting and recording the annual physical inventory relate directly to the existence assertion for the inventory account balance.

.73 Controls can be either directly or indirectly related to an assertion. The more indirect the relationship, the less effective that control may be in reducing control risk for that assertion. For example, a sales manager's review of a summary of sales activity for specific stores by region ordinarily is indirectly related to the completeness assertion for sales revenue. Accordingly, it may be less effective in reducing control risk for that assertion than controls more directly related to that assertion, such as matching shipping documents with billing documents.

.74 General controls relate to many applications and support the effective functioning of application controls by helping to ensure the continued proper operation of information systems. The auditor should consider the need to identify not only application controls directly related to one or more assertions, but also relevant general controls.

Performing Tests of Controls

.75 Procedures directed toward evaluating the effectiveness of the design of a control are concerned with whether that control is suitably designed to prevent or detect material misstatements in specific financial statement assertions. Procedures to obtain such evidential matter ordinarily include inquiries of appropriate entity personnel; inspection of documents, reports, or electronic files; and observation of the application of specific controls. For entities with complex internal control, the auditor should consider the use of flowcharts, questionnaires, or decision tables to facilitate the application of procedures directed toward evaluating the effectiveness of the design of a control.

.76 Procedures to obtain evidential matter about the effectiveness of the operation of a control are referred to as tests of controls (paragraphs .90 through .104 of this section discuss characteristics of evidential matter to consider when performing tests of controls). Tests of controls directed toward the operating effectiveness of a control are concerned with how the control (whether manual or automated) was applied, the consistency with which it was applied during the audit period, and by whom it was applied. These tests ordinarily include procedures such as inquiries of appropriate entity personnel; inspection of documents, reports, or electronic files, indicating performance

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of the control; observation of the application of the control; and reperformance of the application of the control by the auditor. In some circumstances, a specific procedure may address the effectiveness of both design and operation. However, a combination of procedures may be necessary to evaluate the effectiveness of the design or operation of a control.

.77 In designing tests of automated controls, the auditor should consider the need to obtain evidence supporting the effective operation of controls directly related to the assertions as well as other indirect controls on which these controls depend. For example, the auditor may identify a "user review of an exception report of credit sales over a customer's authorized credit limit" as a direct control related to an assertion. In such cases, the auditor should consider the effectiveness of the user review of the report and also the controls related to the accuracy of the information in the report (for example, the general controls).

.78 Because of the inherent consistency of IT processing, the auditor may be able to reduce the extent of testing of an automated control. For example, a programmed application control should function consistently unless the program (including the tables, files, or other permanent data used by the program) is changed. Once the auditor determines that an automated control is functioning as intended (which could be done at the time the control is initially implemented or at some other date), the auditor should consider performing tests to determine that the control continues to function effectively. Such tests might include determining that changes to the program are not made without being subject to the appropriate program change controls, that the authorized version of the program is used for processing transactions, and that other relevant general controls are effective. Such tests also might include determining that changes to the programs have not been made, as may be the case when the entity uses packaged software applications without modifying or maintaining them.

.79 To test automated controls, the auditor may need to use techniques that are different from those used to test manual controls. For example, computer-assisted audit techniques may be used to test automated controls or data related to assertions. Also, the auditor may use other automated tools or reports produced by IT to test the operating effectiveness of general controls, such as program change controls, access controls, and system software controls. The auditor should consider whether specialized skills are needed to design and perform such tests of controls.

Concluding on the Assessed Level of Control Risk

.80 The conclusion reached as a result of assessing control risk is referred to as the assessed level of control risk. In determining the evidential matter necessary to support an assessed level of control risk below the maximum level, the auditor should consider the characteristics of evidential matter about control risk discussed in paragraphs .90 through .104. Generally, however, the lower the assessed level of control risk, the greater the assurance the evidential matter must provide that the controls relevant to an assertion are designed and operating effectively.

.81 The auditor uses the assessed level of control risk (together with the assessed level of inherent risk) to determine the acceptable level of detection risk for financial statement assertions. The auditor uses the acceptable level of detection risk to determine the nature, timing, and extent of the auditing procedures

to be applied to the account balance or class of transactions to detect material misstatements in the financial statement assertions. Auditing procedures designed to detect such misstatements are referred to in this section as substantive tests.

.82 As the acceptable level of detection risk decreases, the assurance provided from substantive tests should increase. Consequently, the auditor may do one or more of the following:

- Change the nature of substantive tests from a less effective to a more effective procedure, such as using tests directed toward independent parties outside the entity rather than tests directed toward parties or documentation within the entity.
- Change the timing of substantive tests, such as performing them at year end rather than at an interim date.
- Change the extent of substantive tests, such as using a larger sample size.

Documenting the Assessed Level of Control Risk

.83 In addition to the documentation of the understanding of internal control discussed in paragraph .61, the auditor should document his or her conclusions about the assessed level of control risk. Conclusions about the assessed level of control risk may differ as they relate to various account balances or classes of transactions. For those financial statement assertions where control risk is assessed at the maximum level, the auditor should document his or her conclusion that control risk is at the maximum level but need not document the basis for that conclusion. For those assertions where the assessed level of control risk is below the maximum level, the auditor should document the basis for his or her conclusion that the effectiveness of the design and operation of controls supports that assessed level. The nature and extent of the auditor's documentation are influenced by the assessed level of control risk, the nature of the entity's internal control, and the nature of the entity's documentation of internal control.

Relationship of Understanding to Assessing Control Risk

.84 Although understanding internal control and assessing control risk are discussed separately in this section, they may be performed concurrently in an audit. The objective of procedures performed to obtain an understanding of internal control (discussed in paragraphs .58 through .60) is to provide the auditor with knowledge necessary for audit planning. The objective of tests of controls (discussed in paragraphs .75 through .79) is to provide the auditor with evidential matter to use in assessing control risk. However, procedures performed to achieve one objective may also pertain to the other objective.

.85 Based on the assessed level of control risk the auditor expects to support and audit efficiency considerations, the auditor often plans to perform some tests of controls concurrently with obtaining the understanding of internal control. In addition, even though some of the procedures performed to obtain the understanding were not specifically planned as tests of controls, they may nevertheless provide evidential matter about the effectiveness of both the design and operation of the controls relevant to certain assertions. For

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example, because of the inherent consistency of IT processing, performing procedures to determine whether an automated control has been placed in operation may serve as a test of that control's operating effectiveness, depending on such factors as whether the program has been changed or whether there is a significant risk of unauthorized change or other improper intervention. Also, in obtaining an understanding of the control environment, the auditor may have made inquiries about management's use of budgets, observed management's comparison of monthly budgeted and actual expenses, and inspected reports pertaining to the investigation of variances between budgeted and actual amounts. Although these procedures provide knowledge about the design of the entity's budgeting policies and whether they have been placed in operation, they may also provide evidential matter about the effectiveness of the operation of budgeting policies in preventing or detecting material misstatements in the classification of expenses. In some circumstances, that evidential matter may be sufficient to support an assessed level of control risk that is below the maximum level for the presentation and disclosure assertions pertaining to expenses in the income statement.

.86 When the auditor concludes that procedures performed to obtain the understanding of internal control also provide evidential matter for assessing control risk, he or she should consider the guidance in paragraphs .90 through .104 in judging the degree of assurance provided by that evidential matter. Although such evidential matter may not provide sufficient assurance to support an assessed level of control risk that is below the maximum level for certain assertions, it may do so for other assertions and thus provide a basis for modifying the nature, timing, or extent of the substantive tests that the auditor plans for those assertions. However, such procedures are not sufficient to support an assessed level of control risk below the maximum level if they do not provide sufficient evidential matter to evaluate the effectiveness of both the design and operation of a control relevant to an assertion.

Further Reduction in the Assessed Level of Control Risk

.87 After obtaining the understanding of internal control and assessing control risk, the auditor may desire to further reduce the assessed level of control risk for certain assertions. In such cases, the auditor considers whether additional evidential matter sufficient to support a further reduction is likely to be available, and whether it would be efficient to perform tests of controls to obtain that evidential matter. The results of the procedures performed to obtain the understanding of internal control, as well as pertinent information from other sources, help the auditor to evaluate those two factors.

.88 In considering efficiency, the auditor recognizes that additional evidential matter that supports a further reduction in the assessed level of control risk for an assertion would result in less audit effort for the substantive tests of that assertion. The auditor weighs the increase in audit effort associated with the additional tests of controls that is necessary to obtain such evidential matter against the resulting decrease in audit effort associated with the reduced substantive tests.

.89 For those assertions for which the auditor performs additional tests of controls, the auditor determines the assessed level of control risk that the results of those tests will support. This assessed level of control risk is used in determining the appropriate detection risk to accept for those assertions and, accordingly, in determining the nature, timing, and extent of substantive tests for such assertions.

Evidential Matter to Support the Assessed Level of Control Risk

.90 When the auditor assesses control risk below the maximum level, he or she should obtain sufficient evidential matter to support that assessed level. The evidential matter[15] that is sufficient to support a specific assessed level of control risk is a matter of judgment. Evidential matter varies substantially in the assurance it provides to the auditor as he or she develops an assessed level of control risk. The type of evidential matter, its source, its timeliness, and the existence of other evidential matter related to the conclusion to which it leads all bear on the degree of assurance evidential matter provides.

.91 These characteristics influence the nature, timing, and extent of the tests of controls that the auditor applies to obtain evidential matter about control risk. The auditor selects such tests from a variety of techniques such as inquiry, observation, inspection, and reperformance of a control that pertains to an assertion. No one specific test of controls is always necessary, applicable, or equally effective in every circumstance.

Type of Evidential Matter

.92 The nature of the particular controls that pertain to an assertion influences the type of evidential matter that is available to evaluate the effectiveness of the design or operation of those controls. For some controls, documentation of design or operation may exist. In such circumstances, the auditor may decide to inspect the documentation to obtain evidential matter about the effectiveness of design or operation.

.93 For other controls, however, such documentation may not be available or relevant. For example, documentation of design or operation may not exist for some factors in the control environment, such as assignment of authority and responsibility, or for some types of control activities, such as undocumented monitoring controls or control activities performed by a computer. In such circumstances, evidential matter about the effectiveness of design or operation may be obtained through such methods as observation, inquiry, or the use of computer-assisted audit techniques.

Source of Evidential Matter

.94 Generally, evidential matter about the effectiveness of the design and operation of controls obtained directly by the auditor, such as through observation, provides more assurance than evidential matter obtained indirectly or by inference, such as through inquiry. For example, evidential matter that is obtained by the auditor's direct personal observation of the individual who applies a control generally provides more assurance than making inquiries about the application of the control. The auditor should consider, however, that the observed application of a control might not be performed in the same manner when the auditor is not present.

.95 Inquiry alone generally will not provide sufficient evidential matter to support a conclusion about the effectiveness of design or operation of a specific control. When the auditor determines that a specific control may have

[15] See also section 326 for guidance on evidential matter.

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a significant effect in reducing control risk to a low level for a specific assertion, he or she ordinarily needs to perform additional tests to obtain sufficient evidential matter to support the conclusion about the effectiveness of the design or operation of that control.

Timeliness of Evidential Matter

.96 The timeliness of the evidential matter concerns when it was obtained and the portion of the audit period to which it applies. In evaluating the degree of assurance that is provided by evidential matter, the auditor should consider that the evidential matter obtained by some tests of controls, such as observation, pertains only to the point in time at which the auditing procedure was applied. Consequently, such evidential matter may be insufficient to evaluate the effectiveness of the design or operation of controls for periods not subjected to such tests. In such circumstances, the auditor may decide to supplement those tests with other tests of controls that are capable of providing evidential matter about the entire audit period. For example, for an application control performed by a computer program, the auditor may test the operation of the control at a particular point in time to obtain evidential matter about whether the control is operating effectively at that point in time. The auditor may then perform tests of controls directed toward obtaining evidential matter about whether the application control operated consistently during the audit period, such as tests of general controls pertaining to the modification and use of that computer program during the audit period.

.97 Evidential matter about the effective design or operation of controls that was obtained in prior audits may be considered by the auditor in assessing control risk in the current audit. To evaluate the use of such evidential matter for the current audit, the auditor should consider the significance of the assertion involved, the specific controls that were evaluated during the prior audits, the degree to which the effective design and operation of those controls were evaluated, the results of the tests of controls used to make those evaluations, and the evidential matter about design or operation that may result from substantive tests performed in the current audit. The auditor should also consider that the longer the time elapsed since tests of controls were performed to obtain evidential matter about control risk, the less assurance they may provide.

.98 When considering evidential matter obtained from prior audits, the auditor should obtain evidential matter in the current period about whether changes have occurred in internal control, including its policies, procedures, and personnel, subsequent to the prior audits, as well as the nature and extent of any such changes. For example, in performing the prior audit, the auditor may have determined that an automated control was functioning as intended. The auditor should obtain evidence to determine whether changes to the automated control have been made that would affect its continued effective functioning. Consideration of evidential matter about these changes, together with the considerations in the preceding paragraph, may support either increasing or decreasing the evidential matter about the effectiveness of design and operation to be obtained in the current period.

.99 When the auditor obtains evidential matter about the design or operation of controls during an interim period, he or she should determine what additional evidential matter should be obtained for the remaining period. In making that determination, the auditor should consider the significance of the assertion involved, the specific controls that were evaluated during the interim period, the degree to which the effective design and operation of those

controls were evaluated, the results of the tests of controls used to make that evaluation, the length of the remaining period, and the evidential matter about design or operation that may result from the substantive tests performed in the remaining period. The auditor should obtain evidential matter about the nature and extent of any significant changes in internal control, including its policies, procedures, and personnel, that occur subsequent to the interim period.

Interrelationship of Evidential Matter

.100 The auditor should consider the combined effect of various types of evidential matter relating to the same assertion in evaluating the degree of assurance that evidential matter provides. In some circumstances, a single type of evidential matter may not be sufficient to evaluate the effective design or operation of a control. To obtain sufficient evidential matter in such circumstances, the auditor may perform other tests of controls pertaining to that control. For example, an auditor may observe the procedures for opening the mail and processing cash receipts to evaluate the operating effectiveness of controls over cash receipts. Because an observation is pertinent only at the point in time at which it is made, the auditor may supplement the observation with inquiries of entity personnel and inspection of documentation about the operation of such controls at other times during the audit period.

.101 In addition, when evaluating the degree of assurance provided by evidential matter, the auditor should consider the interrelationship of an entity's control environment, risk assessment, control activities, information and communication, and monitoring. Although an individual internal control component may affect the nature, timing, or extent of substantive tests for a specific financial statement assertion, the auditor should consider the evidential matter about an individual component in relation to the evidential matter about the other components in assessing control risk for a specific assertion.

.102 Generally, when various types of evidential matter support the same conclusion about the design or operation of a control, the degree of assurance provided increases. Conversely, if various types of evidential matter lead to different conclusions about the design or operation of a control, the assurance provided decreases. For example, based on the evidential matter that the control environment is effective, the auditor may have reduced the number of locations at which auditing procedures will be performed. If, however, when evaluating specific control activities, the auditor obtains evidential matter that such activities are ineffective, he or she may re-evaluate his or her conclusion about the control environment and, among other things, decide to perform auditing procedures at additional locations.

.103 Similarly, evidential matter indicating that the control environment is ineffective may adversely affect an otherwise effective control for a particular assertion. For example, a control environment that is likely to permit unauthorized changes in a computer program may reduce the assurance provided by evidential matter obtained from evaluating the effectiveness of the program at a particular point in time. In such circumstances, the auditor may decide to obtain additional evidential matter about the design and operation of that program during the audit period. For example, the auditor might obtain and control a copy of the program and use computer-assisted audit techniques to compare that copy with the program that the entity uses to process data.

.104 An audit of financial statements is a cumulative process; as the auditor assesses control risk, the information obtained may cause him or her to modify the nature, timing, or extent of the other planned tests of controls for

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assessing control risk. In addition, information may come to the auditor's attention as a result of performing substantive tests or from other sources during the audit that differs significantly from the information on which his or her planned tests of controls for assessing control risk were based. For example, the extent of misstatements that the auditor detects by performing substantive tests may alter his or her judgment about the assessed level of control risk. In such circumstances, the auditor may need to re-evaluate the planned substantive procedures, based on a revised consideration of the assessed level of control risk for all or some of the financial statement assertions.

Correlation of Control Risk With Detection Risk

.105 The ultimate purpose of assessing control risk is to contribute to the auditor's evaluation of the risk that material misstatements exist in the financial statements. The process of assessing control risk (together with assessing inherent risk) provides evidential matter about the risk that such misstatements may exist in the financial statements. The auditor uses this evidential matter as part of the reasonable basis for an opinion referred to in the third standard of field work, which follows:

> Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

.106 After considering the level to which he or she seeks to restrict the risk of a material misstatement in the financial statements and the assessed levels of inherent risk and control risk, the auditor performs substantive tests to restrict detection risk to an acceptable level. As the assessed level of control risk decreases, the acceptable level of detection risk increases. Accordingly, the auditor may alter the nature, timing, and extent of the substantive tests performed.

.107 Although the inverse relationship between control risk and detection risk may permit the auditor to change the nature or the timing of substantive tests or limit their extent, ordinarily the assessed level of control risk cannot be sufficiently low to eliminate the need to perform any substantive tests to restrict detection risk for all of the assertions relevant to significant account balances or transaction classes. Consequently, regardless of the assessed level of control risk, the auditor should perform substantive tests for significant account balances and transaction classes.

.108 The substantive tests that the auditor performs consist of tests of details of transactions and balances, and analytical procedures. In assessing control risk, the auditor also may use tests of details of transactions as tests of controls. The objective of tests of details of transactions performed as substantive tests is to detect material misstatements in the financial statements. The objective of tests of details of transactions performed as tests of controls is to evaluate whether a control operated effectively. Although these objectives are different, both may be accomplished concurrently through performance of a test of details on the same transaction. The auditor should recognize, however, that careful consideration should be given to the design and evaluation of such tests to ensure that both objectives will be accomplished.

Effective Date

.109 This amendment is effective for audits of financial statements for periods beginning on or after June 1, 2001. Earlier application is permissible.

.110

Appendix

Internal Control Components

1. This appendix discusses the five internal control components set forth in paragraph .07 and further described in paragraphs .34 through .57 as they relate to a financial statement audit.

Control Environment

2. The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.
3. The control environment encompasses the following factors:
   a. *Integrity and ethical values.* The effectiveness of controls cannot rise above the integrity and ethical values of the people who create, administer, and monitor them. Integrity and ethical values are essential elements of the control environment, affecting the design, administration, and monitoring of other components. Integrity and ethical behavior are the product of the entity's ethical and behavioral standards, how they are communicated, and how they are reinforced in practice. They include management's actions to remove or reduce incentives and temptations that might prompt personnel to engage in dishonest, illegal, or unethical acts. They also include the communication of entity values and behavioral standards to personnel through policy statements and codes of conduct and by example.
   b. *Commitment to competence.* Competence is the knowledge and skills necessary to accomplish tasks that define the individual's job. Commitment to competence includes management's consideration of the competence levels for particular jobs and how those levels translate into requisite skills and knowledge.
   c. *Board of directors or audit committee participation.* An entity's control consciousness is influenced significantly by the entity's board of directors or audit committee. Attributes include the board or audit committee's independence from management, the experience and stature of its members, the extent of its involvement and scrutiny of activities, the appropriateness of its actions, the degree to which difficult questions are raised and pursued with management, and its interaction with internal and external auditors.
   d. *Management's philosophy and operating style.* Management's philosophy and operating style encompass a broad range of characteristics. Such characteristics may include the following: management's approach to taking and monitoring business risks; management's attitudes and actions toward financial reporting (conservative or aggressive selection from available alternative accounting principles, and conscientiousness and conservatism with which accounting estimates are developed); and management's attitudes toward information processing and accounting functions and personnel.

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e. *Organizational structure.* An entity's organizational structure provides the framework within which its activities for achieving entity-wide objectives are planned, executed, controlled, and monitored. Establishing a relevant organizational structure includes considering key areas of authority and responsibility and appropriate lines of reporting. An entity develops an organizational structure suited to its needs. The appropriateness of an entity's organizational structure depends, in part, on its size and the nature of its activities.

f. *Assignment of authority and responsibility.* This factor includes how authority and responsibility for operating activities are assigned and how reporting relationships and authorization hierarchies are established. It also includes policies relating to appropriate business practices, knowledge and experience of key personnel, and resources provided for carrying out duties. In addition, it includes policies and communications directed at ensuring that all personnel understand the entity's objectives, know how their individual actions interrelate and contribute to those objectives, and recognize how and for what they will be held accountable.

g. *Human resource policies and practices.* Human resource policies and practices relate to hiring, orientation, training, evaluating, counseling, promoting, compensating, and remedial actions. For example, standards for hiring the most qualified individuals—with emphasis on educational background, prior work experience, past accomplishments, and evidence of integrity and ethical behavior—demonstrate an entity's commitment to competent and trustworthy people. Training policies that communicate prospective roles and responsibilities and include practices such as training schools and seminars illustrate expected levels of performance and behavior. Promotions driven by periodic performance appraisals demonstrate the entity's commitment to the advancement of qualified personnel to higher levels of responsibility.

Application to Small and Midsized Entities

4. Small and midsized entities may implement the control environment factors differently than larger entities. For example, smaller entities might not have a written code of conduct but, instead, develop a culture that emphasizes the importance of integrity and ethical behavior through oral communication and by management example. Similarly, smaller entities may not have an independent or outside member on their board of directors.

Risk Assessment

5. An entity's risk assessment for financial reporting purposes is its identification, analysis, and management of risks relevant to the preparation of financial statements that are fairly presented in conformity with generally accepted accounting principles. For example, risk assessment may address how the entity considers the possibility of unrecorded transactions or identifies and analyzes significant estimates recorded in the financial statements. Risks relevant to reliable financial reporting also relate to specific events or transactions.

6. Risks relevant to financial reporting include external and internal events and circumstances that may occur and adversely affect an entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. Once risks are identified, management considers their significance, the likelihood of their occurrence, and how they should be managed. Management may initiate plans, programs, or actions to address specific risks or it may decide to accept a risk because of cost or other considerations. Risks can arise or change due to circumstances such as the following:

- *Changes in operating environment.* Changes in the regulatory or operating environment can result in changes in competitive pressures and significantly different risks.
- *New personnel.* New personnel may have a different focus on or understanding of internal control.
- *New or revamped information systems.* Significant and rapid changes in information systems can change the risk relating to internal control.
- *Rapid growth.* Significant and rapid expansion of operations can strain controls and increase the risk of a breakdown in controls.
- *New technology.* Incorporating new technologies into production processes or information systems may change the risk associated with internal control.
- *New business models, products, or activities.* Entering into business areas or transactions with which an entity has little experience may introduce new risks associated with internal control.
- *Corporate restructurings.* Restructurings may be accompanied by staff reductions and changes in supervision and segregation of duties that may change the risk associated with internal control.
- *Expanded foreign operations.* The expansion or acquisition of foreign operations carries new and often unique risks that may affect internal control, for example, additional or changed risks from foreign currency transactions.
- *New accounting pronouncements.* Adoption of new accounting principles or changing accounting principles may affect risks in preparing financial statements.

Application to Small and Midsized Entities

7. The basic concepts of the risk assessment process should be present in every entity, regardless of size, but the risk assessment process is likely to be less formal and less structured in small and midsized entities than in larger ones. All entities should have established financial reporting objectives, but they may be recognized implicitly rather than explicitly in smaller entities. Management may be able to learn about risks related to these objectives through direct personal involvement with employees and outside parties.

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Control Activities

8. Control activities are the policies and procedures that help ensure that necessary actions are taken to address risks to achievement of the entity's objectives. Control activities, whether automated or manual, have various objectives and are applied at various organizational and functional levels.

9. Generally, control activities that may be relevant to an audit may be categorized as policies and procedures that pertain to the following:

   - *Performance reviews.* These control activities include reviews of actual performance versus budgets, forecasts, and prior period performance; relating different sets of data—operating or financial—to one another, together with analyses of the relationships and investigative and corrective actions; and review of functional or activity performance, such as a bank's consumer loan manager's review of reports by branch, region, and loan type for loan approvals and collections.

   - *Information processing.* A variety of controls are performed to check accuracy, completeness, and authorization of transactions. The two broad groupings of information systems control activities are application controls and general controls. Application controls apply to the processing of individual applications. These controls help ensure that transactions occurred, are authorized, and are completely and accurately recorded and processed. General controls commonly include controls over data center and network operations; system software acquisition and maintenance; access security; and application system acquisition, development, and maintenance. These controls apply to mainframe, miniframe, and end-user environments. Examples of such general controls are program change controls, controls that restrict access to programs or data, controls over the implementation of new releases of packaged software applications, and controls over system software that restrict access to or monitor the use of system utilities that could change financial data or records without leaving an audit trail.

   - *Physical controls.* These activities encompass the physical security of assets, including adequate safeguards such as secured facilities, over access to assets and records; authorization for access to computer programs and data files; and periodic counting and comparison with amounts shown on control records. The extent to which physical controls intended to prevent theft of assets are relevant to the reliability of financial statement preparation, and therefore the audit, depends on circumstances such as when assets are highly susceptible to misappropriation. For example, these controls would ordinarily not be relevant when any inventory losses would be detected pursuant to periodic physical inspection and recorded in the financial statements. However, if for financial reporting purposes management relies solely on perpetual inventory records, the physical security controls would be relevant to the audit.

   - *Segregation of duties.* Assigning different people the responsibilities of authorizing transactions, recording transactions, and

maintaining custody of assets is intended to reduce the opportunities to allow any person to be in a position to both perpetrate and conceal errors or fraud in the normal course of his or her duties.

Application to Small and Midsized Entities

10. The concepts underlying control activities in small or midsized organizations are likely to be similar to those in larger entities, but the formality with which they operate varies. Further, smaller entities may find that certain types of control activities are not relevant because of controls applied by management. For example, management's retention of authority for approving credit sales, significant purchases, and draw-downs on lines of credit can provide strong control over those activities, lessening or removing the need for more detailed control activities. An appropriate segregation of duties often appears to present difficulties in smaller organizations. Even companies that have only a few employees, however, may be able to assign their responsibilities to achieve appropriate segregation or, if that is not possible, to use management oversight of the incompatible activities to achieve control objectives.

Information and Communication

11. An information system consists of infrastructure (physical and hardware components), software, people, procedures (manual and automated), and data. Infrastructure and software will be absent, or have less significance, in systems that are exclusively or primarily manual. Many information systems make extensive use of information technology.

12. The information system relevant to financial reporting objectives, which includes the accounting system, consists of the procedures, whether automated or manual, and records established to initiate, record, process, and report entity transactions (as well as events and conditions) and to maintain accountability for the related assets, liabilities, and equity. Transactions may be initiated manually or automatically by programmed procedures. Recording includes identifying and capturing the relevant information for transactions or events. Processing includes functions such as edit and validation, calculation, measurement, valuation, summarization, and reconciliation, whether performed by automated or manual procedures. Reporting relates to the preparation of financial reports as well as other information, in electronic or printed format, that the entity uses in monitoring and other functions. The quality of system-generated information affects management's ability to make appropriate decisions in managing and controlling the entity's activities and to prepare reliable financial reports.

13. Accordingly, an information system encompasses methods and records that—

    - Identify and record all valid transactions.
    - Describe on a timely basis the transactions in sufficient detail to permit proper classification of transactions for financial reporting.

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- Measure the value of transactions in a manner that permits recording their proper monetary value in the financial statements.
- Determine the time period in which transactions occurred to permit recording of transactions in the proper accounting period.
- Present properly the transactions and related disclosures in the financial statements.

14. Communication involves providing an understanding of individual roles and responsibilities pertaining to internal control over financial reporting. It includes the extent to which personnel understand how their activities in the financial reporting information system relate to the work of others and the means of reporting exceptions to an appropriate higher level within the entity. Open communication channels help ensure that exceptions are reported and acted on.

15. Communication takes such forms as policy manuals, accounting and financial reporting manuals, and memoranda. Communication also can be made electronically, orally, and through the actions of management.

Application to Small and Midsized Entities

16. Information systems in small or midsized organizations are likely to be less formal than in larger organizations, but their role is just as significant. Smaller entities with active management involvement may not need extensive descriptions of accounting procedures, sophisticated accounting records, or written policies. Communication may be less formal and easier to achieve in a small or midsized company than in a larger enterprise due to the smaller organization's size and fewer levels as well as management's greater visibility and availability.

Monitoring

17. Monitoring is a process that assesses the quality of internal control performance over time. It involves assessing the design and operation of controls on a timely basis and taking necessary corrective actions. This process is accomplished through ongoing monitoring activities, separate evaluations, or a combination of the two.

18. Ongoing monitoring activities are built into the normal recurring activities of an entity and include regular management and supervisory activities. Managers of sales, purchasing, and production at divisional and corporate levels are in touch with operations and may question reports that differ significantly from their knowledge of operations.

19. In many entities, internal auditors or personnel performing similar functions contribute to the monitoring of an entity's activities through separate evaluations. They regularly provide information about the functioning of internal control, focusing considerable attention on evaluating the design and operation of internal control. They communicate information about strengths and weaknesses and recommendations for improving internal control.

20. Monitoring activities may include using information from communications from external parties. Customers implicitly corroborate billing data by paying their invoices or complaining about their charges. In addition, regulators may communicate with the entity concerning matters that affect the functioning of internal control, for example, communications concerning examinations by bank regulatory agencies. Also, management may consider communications relating to internal control from external auditors in performing monitoring activities.

Application to Small and Midsized Entities

21. Ongoing monitoring activities of small and midsized entities are more likely to be informal and are typically performed as a part of the overall management of the entity's operations. Management's close involvement in operations often will identify significant variances from expectations and inaccuracies in financial data.

[The next page is 381.]

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EXHIBIT 43

APPENDIX B-1

SAMPLE INDEPENDENT CONTRACTOR LANGUAGE

A CONSULTANT IS AN INDEPENDENT CONTRACTOR

A. The selected consultant shall perform the services outlined in the contract as an independent contractor and will not be an agent or employee of the City. The consultant shall not represent or otherwise hold out itself or any of its subcontractors, sub-subcontractors, directors, officers, partners, employees, or agents to be an agent or employee of the City. The selected consultant agrees to defend, indemnify, protect and hold the City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to consultant's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the consultant, and its agents, officers, or employees, in performing the work or services herein, and all expenses of investigating and defending against same; provided, however, that consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

B. The selected consultant shall expressly warrant that the work is based upon its expertise and shall be done in accordance with good (audit, professional, etc.) practices. Where approval by the City, or representatives of the City is indicated, it is understood to be conceptual approval only and does not relieve the consultant of responsibility for complying with all laws, codes and good (audit, professional, etc.) practices. Any provisions of this agreement that may appear to give the City the right to direct the consultant as to the details of doing the work or to exercise a measure of control over the work, means that the consultant shall follow the direction of the City as to end results of the work only.

APPENDIX F

SAMPLE AUDIT CLAUSE CONTRACT LANGUAGE

AUDIT AND INSPECTION OF RECORDS

At any time during normal business hours and as often as the City deems necessary, Contractor shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this agreement and Contractor will permit City to audit, examine, and make excerpts or transcripts from such data and records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this agreement. Contractor shall maintain such data and records for a period of not less than three years following receipt of final payment under this agreement unless City agrees in writing to an earlier disposition. If Contractor does not make all records available in City/County of San Diego, then Contractor shall pay all the City's travel related costs to audit the records associated with this agreement at the location where the records are maintained.

EXHIBIT 44

SAN DIEGO CITY ATTORNEY'S OFFICE

BILLING GUIDELINES FOR OUTSIDE COUNSEL

Introduction

These guidelines describe your responsibilities as a lawyer or law firm retained by the City of San Diego. Every effort has been made to be clear and reasonable, so that you can provide excellent legal services for the lowest possible cost to the taxpayers.

Each invoice you submit will be reviewed by the City's representative with these guidelines in mind. We expect your compliance and invite any questions or comments you may have about these new processes. We look forward to a closer and more productive relationship, based on this foundation.

Billing Format

Each invoice shall list the billing and expenses separately.

Each bill shall include an invoice showing the amount of services rendered during the billing period, the fee for such services and the amount of reimbursable expenses. The invoice shall be accompanied by a separate invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work and itemized reimbursable expenses. The invoice support statement shall be marked "Confidential -- Attorney-Client Privilege." The invoice may be subject to disclosure pursuant to the California Public Records Act."

The billing entries on the support statement must be complete, discrete, and appropriate.

Invoice Support Statement: Complete

- The statement should first identify the matter or the person represented, with all billing and expenses incurred as to that matter or representation following.
- Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.
- The date the work was performed must be included
- Travel related fees and costs must be itemized
- The hours should be billed in .10 hour increments
- The specific task performed should be described, and the related work product should be referenced ("telephone call re: trial brief," "interview in preparation for deposition").
- The biller's professional capacity (partner, associate, paralegal, etc.) should be included

- All expenses charged to the City should be accompanied by a receipt or invoice.

Discrete

Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

Appropriate

- The City does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the City will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
- Neither will the City pay for outside expenses such as delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail, unless prior approval is given in writing.
- Due to the nature of the City's payment process, the City will not pay any late charges. Every effort will be made to pay bills promptly.

Staffing

Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is a City decision, and the City's representative may review staffing to insure that it is optimal to achieve the goals of the engagement at the least cost.

Paralegals are to be used to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered associate work should be considered for assignment to a paralegal.

Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the firm. The City will not pay the costs of bringing a new attorney up to speed.

If more than one attorney is going to perform the same task, prior approval from the City must be had. This includes document review.

Written Memoranda

If legal research results in a written memorandum, whether formal or informal, a hard copy **and** a digital copy should be forwarded to the City.

Internal Conferencing

Regardless of how many people from your firm attend a meeting, only one may bill the time.

Travel

Mileage will be reimbursed at the current IRS rate.

Air travel will be reimbursed at coach or lower rate.

Overnight accommodations shall not exceed $110/night without prior approval.

Meals while traveling must be reasonably priced.

Travel fees must be itemized as to place of travel and reason, and costs must be supported by receipts and/or invoices.

Hourly Rates

Hourly rates may not be increased without the written approval of the City.

Out-of-Pocket Disbursements

The City agrees to reimburse the Firm, in accordance with the procedures set out here, for telephone, facsimile, mail, messengers, federal express deliveries, and similar out-of-pocket expenses charged by the Firm as a standard practice to its clients. In any billing for disbursements, the Firm shall provide the City with a statement breaking down the amounts by category of expense.

The following items will not be reimbursed, unless the City has specifically agreed to accept the following expenses:

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

(2) Storage of open or closed files, rent, electricity, air conditioning, local telephone, postage, receipt or local transmission of facsimile documents, rental of equipment including computers, meals served at meetings, or any other items traditionally associated with overhead.

(3) Litigation support or any other service in excess of the amount actually expended by the Firm for such service. The City will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.

(4) In-house photocopy charges in excess of $.10 (ten cents) per page. **The number of pages copied must be stated on the invoice.**

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

(6) Overtime compensation. Where case requirements demand overtime, the City will consider reimbursement on a case-by-case basis. The City will not reimburse overtime incurred for the convenience of the Firm where the deadline was known in advance.

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

(8) Express charges, overnight mail charges, messenger services or the like, without the City's prior consent. The City expects these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, the City will consider reimbursement on a case-by-case basis.

(9) Air travel fares in excess of economy or coach class fares; lodging, meals, and ground transportation expenses in excess of $250 per day.

(10) Videotaping of depositions, investigative services, and computer litigation support services unless the City gives prior written approval.

Records

The individual disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the City in support of bills rendered by the Firm.

Invoices

The Firm agrees to forward to the City a statement of account for each one month (or, if requested by the City, two-week) period of services under this Agreement, and the City agrees to compensate the Firm on this basis.

The Firm will submit monthly invoices to the City Attorneys' Office to the hiring deputy and/or to the attention of Chief Deputy City Attorney Maria (Mia) Severson by the 15th of each month for services rendered the previous month. Invoices shall include a distinct identification number. Both the amount invoiced for the billing period and the total amount then owed (the balance forward) shall be set forth. Invoices shall provide detailed billing information including, but not limited to, a detailed description of the service rendered, date of service, attorney time devoted to service, attorney name, billing rate, and total amount billed for each service. Invoices will also include a breakdown of all Disbursements by category of expense. A receipt or vendor invoice for each expense must accompany the invoice to qualify for reimbursement by the City. The parties agree that if the City questions any item on an invoice, the Firm will provide all supporting information to substantiate the billing and will make any appropriate adjustments.

Media Inquiries

Media inquiries should be immediately communicated to the Office of the City Attorney.

EXHIBIT 45

Kroll
The Risk Consulting Company

660 South Figueroa Street
9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

RECEIVED
APR 11 2005
City Manager

March 30, 2005

Matter No. 0005948-0002
Invoice No. 1310719

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From February 1, 2005 through February 28, 2005 (Troy Dahlberg)

RE Financial Review & Evaluation
Internal Controls Assessment

For Professional Services Rendered	$ 71,417.50
Out-of-Pocket Disbursements	2,617.91
Total Due:	$ 74,035.41

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310719

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
David M. Cogan	19.75	$350.00	$6,912.50
Laurie E. Capen	3	$175.00	$525.00
Lynn Turner	25	$750.00	$18,750.00
Troy Dahlberg	55.5	$450.00	$24,975.00
Jennifer Arnini	48.5	$300.00	$14,550.00
Regina Israel	3	$85.00	$255.00
Rachel Laybourn	9	$250.00	$2,250.00
David Callaghan	8	$400.00	$3,200.00
Total	171.75		$71,417.50

Detail of Out-of-Pocket Expenses

T&E - Air Transportation	$734.40
T&E - Ground Transportation	$50.00
T& E - Meals	$140.74
T&E - Mileage Reimbursement	$50.63
T&E - Travel & Lodging	$1,248.93
Telephone	$5.30
Reproduction Expense	$145.65
Office Supplies	$242.26
Total	$2,617.91

Original to Lisc
4/15

Kroll
The Risk Consulting Company

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9th Floor
Los Angeles, CA 90017-3453
Phone: (213) 443-6090
Fax: (213) 443-6050
www.krollworldwide.com

RECEIVED
APR 15 2005
City Manager

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310722

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005 (Troy Dahlberg)

RE Internal Investigation

For Professional Services Rendered	$ 135,100.00
Out-of-Pocket Disbursements	8,938.46
Total Due:	$ 144,038.46

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310722

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	42	$750.00	$31,500.00
Troy Dahlberg	79	$450.00	$35,550.00
Jennifer Arnini	92	$300.00	$27,600.00
Regina Israel	10	$85.00	$850.00
David Callaghan	99	$400.00	$39,600.00
Total	322		$135,100.00

Detail of Out-of-Pocket Expenses

Air Transportation	$1,280.60
Ground Transportation	$781.27
Hotel Charges	$4,319.49
Meals	$1,546.68
Misc	$53.67
Electronic Research	$956.75
Total	$8,938.46

Kroll
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Fax: (213) 443-6050
www.krollworldwide.com

RECEIVED
APR 0 8 2005
City Manager

April 5, 2005

Matter No. 0005948-0002
Invoice No. 1310721

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 1, 2005 through March 15, 2005 (Troy Dahlberg)

RE Research Pension Board Nominees.

For Professional Services Rendered	$ 104,608.75
Out-of-Pocket Disbursements	4,216.70
Total Due:	$ 108,825.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310721

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Marcia R. Berss	20.25	$285.00	$5,771.25
Gary W. Hoffman	0.50	$235.00	$117.50
Kenneth W. Mate	85.00	$315.00	$26,775.00
Arnold G. Contreras	25.00	$240.00	$6,000.00
David M. Cogan	2.00	$350.00	$700.00
Adrian Maher	90.00	$250.00	$22,500.00
Alexis Keefe	5.00	$200.00	$1,000.00
Brandon Sprague	40.50	$220.00	$8,910.00
Theo Gragg	48.50	$220.00	$10,670.00
Richard Lucia	3.00	$250.00	$750.00
Giles G. Miller	31.50	$260.00	$8,190.00
Erin L. Walker	0.50	$50.00	$25.00
Kim M. Christensen	44.00	$300.00	$13,200.00
	395.75		$104,608.75

Detail of Out-of-Pocket Expenses

T& E - Meals	$141.03
Off-Line Databases	$2,039.75
On-line Database	$560.00
On-line Database	$1,063.64
Postage & Courier	$14.28
Off-Line Databases	$370:00
Telephone	$14.00
Reproduction Expense	$14.00
TOTAL	$4,216.70

Kroll

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

www.krollworldwide.com

RECEIVED
APR 2 0 2005
City Manager

April 18, 2005

Matter No. 0005948-0002
Invoice No. 1310781

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From March 16, 2005 through March 31, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 123,650.00
Out-of-Pocket Disbursements	6,052.37
Total Due:	$ 129,702.37

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310781

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	1	$750.00	$750.00
Roger Siefert	4	$615.00	$2,460.00
Troy Dahlberg	67.5	$450.00	$30,375.00
Jennifer Arnini	87	$300.00	$26,100.00
Regina Israel	9	$85.00	$765.00
David Callaghan	102	$400.00	$40,800.00
Jenny Dominguez	64	$350.00	$22,400.00
Total	334.5		$123,650.00

Detail of Out-of-Pocket Expenses

Air Transportation	$0.00
Ground Transportation	$563.32
Hotel Charges	$3,079.93
Meals	$1,269.42
Misc	$905.62
Electronic Research	$234.08
Total	$6,052.37

Kroll

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

www.krollworldwide.com

RECEIVED
MAY 2 2005
City Manager

April 27, 2005

Matter No. 0005948-0002
Invoice No. 1310787

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From April 1, 2005 through April 15, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 135,405.00
Out-of-Pocket Disbursements	8,789.17
Total Due:	$ 144,194.17

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310787

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	4.5	$900.00	$4,050.00
Lynn Turner	9.5	$750.00	$7,125.00
Troy Dahlberg	73.5	$450.00	$33,075.00
Jennifer Arnini	97.5	$300.00	$29,250.00
Regina Israel	6	$85.00	$510.00
David Callaghan	31	$400.00	$12,400.00
Jenny Dominguez	99.5	$350.00	$34,825.00
Rachel Laybourn	48.7	$250.00	$12,175.00
Justin Bird	10.5	$190.00	$1,995.00
Total	380.7		$135,405.00

Detail of Out-of-Pocket Expenses

Air Transportation	$215.20
Ground Transportation	$736.26
Hotel Charges	$4,496.10
Meals	$2,711.80
Misc	$629.81
Electronic Research	$0.00
Total	$8,789.17

Kroll

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

www.krollworldwide.com

RECEIVED
MAY 11 2005
City Manager

May 9, 2005

Matter No. 0005948-0002
Invoice No. 1310822

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From April 15, 2005 through April 30, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 160,005.00
Out-of-Pocket Disbursements	33,880.16
Total Due:	$ 193,885.16

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310822

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	4	$900.00	$3,600.00
Lynn Turner	19.5	$750.00	$14,625.00
Troy Dahlberg	82.5	$450.00	$37,125.00
Jennifer Arnini	92	$300.00	$27,600.00
Regina Israel	8	$85.00	$680.00
David Callaghan	62	$400.00	$24,800.00
Jenny Dominguez	92	$350.00	$32,200.00
Rachel Laybourn	77.5	$250.00	$19,375.00
Total	437.5		$160,005.00

Detail of Out-of-Pocket Expenses

Air Transportation	$5,485.79
Ground Transportation	$2,538.06
Hotel Charges	$16,451.48
Meals	$6,840.11
Misc	$2,077.79
Electronic Research	$486.93
Total	$33,880.16

Kroll

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

www.krollworldwide.com

RECEIVED
MAY 23 2005
City Manager

May 20, 2005

Matter No. 0005948-0002
Invoice No. 1310854

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 1, 2005 through May 15, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 198,525.00
Out-of-Pocket Disbursements	16,632.22
Total Due:	$ 215,157.22

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310854

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Arthur Levitt	25.5	$900.00	$22,950.00
Lynn Turner	28.5	$750.00	$21,375.00
Troy Dahlberg	71.5	$450.00	$32,175.00
Jennifer Arnini	97.5	$300.00	$29,250.00
David Callaghan	73	$400.00	$29,200.00
Jenny Dominguez	93.5	$350.00	$32,725.00
Rachel Laybourn	110	$250.00	$27,500.00
David Cogan	4.5	$350.00	$1,575.00
Craig Resnick	3	$300.00	$900.00
Justin Bird	3.5	$250.00	$875.00
Total	510.5		$198,525.00

Detail of Out-of-Pocket Expenses

Air Transportation	$3,271.80
Ground Transportation	$1,644.81
Hotel Charges	$7,625.79
Meals	$3,373.10
Misc	$716.72
Electronic Research	$0.00
Total	$16,632.22

TO: Martin
6/6/05

Kroll

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

www.krollworldwide.com

JUN. 6 2005

June 3, 2005

Matter No. 0005948-0002
Invoice No. 1310863

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 16, 2005 through May 27, 2005 (Troy Dahlberg)

RE Internal Investigations

For Professional Services Rendered	$ 167,745.00
Out-of-Pocket Disbursements	29,966.53
Total Due:	$ 197,711.53

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310863

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	6	$750.00	$4,500.00
Arthur Levitt	6	$900.00	$5,400.00
Troy Dahlberg	70	$450.00	$31,500.00
Jennifer Arnini	34	$300.00	$10,200.00
Jeffrey Klein	71.7	$300.00	$21,510.00
David Callaghan	89	$400.00	$35,600.00
Jenny Dominguez	92	$350.00	$32,200.00
Rachel Laybourn	94.3	$250.00	$23,575.00
David Cogan	6.5	$350.00	$2,275.00
Arnold Contreras	2	$240.00	$480.00
Justin Bird	1	$250.00	$250.00
Regina Israel	3	$85.00	$255.00
Total	475.5		$167,745.00

Detail of Out-of-Pocket Expenses

Air Transportation	$6,681.60
Ground Transportation	$3,644.29
Hotel Charges	$14,656.10
Meals	$3,779.65
Misc	$1,204.89
Electronic Research	$0.00
Total	$29,966.53

EXHIBIT 46

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005	$ 25,406.50
Total this Statement	$ 25,406.50

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005 as set forth in the attached client statement	$ 25,406.50
Total this Statement	$ 25,406.50

AUDIT COMMITTEE INVESTIGATION

Date	Timekeeper	Description	Hours	Amount
3/3/05	B R	TCW Jack Nusbaum re: San Diego project; meeting L B.	0.40	$ 324.00
4/5/05	LMM	O/c with M. Young re possible representation of A. Levitt in his investigation of San Diego pension fund underfunding matters.	0.50	405.00
4/5/05	B R	Tcw M. Young; review various e-mails	0.40	324.00
4/6/05	B R	Review various e-mails from L. Turner; tcw Young; ocw Young. Review written material.	2.00	1,620.00
4/8/05	B R	Review documents received from L. Turner.	3.00	2,430.00
4/8/05	LMM	Read article and City Attorney Third Interim Report; begin preparing issues list, timeline, etc.	3.50	2,835.00
4/10/05	B R	Review engagement letter. Read materials.	2.20	1,782.00
4/11/05	T M	Conf B. Romano re: new case/assignment; review reports.	0.70	416.50
4/11/05	MBK	(San Diego) Conf. Romano re: case (.5). Review of Vinson & Elkins report (1.3).	1.80	1,170.00
4/12/05	T M	Review reports and correspondence.	1.50	892.50
4/13/05	MBK	(San Diego) Review of Vinson & Elkins report.	3.00	1,950.00
4/14/05	MBK	(San Diego) Review of KPMG corres.	0.80	520.00
4/15/05	T M	Review docs.	0.50	297.50
4/15/05	B R	Review engagement letter; tcw Young re: indemnity.	0.40	324.00
4/18/05	LMM	Email to M. Young re documents/due diligence and read news story re waiver attorney/client privilege.	0.10	81.00
4/18/05	B R	Redraft engagement letter to include indemnity. Tcw Klotz; review U&E materials.	4.00	3,240.00
4/19/05	MBK	(San Diego) Review of memo re: legal framework for investigation.	0.80	520.00
4/20/05	LMM	Begin reading Luce, Forward report 2/22/05.	0.50	405.00

Date	Timekeeper	Description	Hours	Amount
4/22/05	MRY	Matters as to recent developments and audit committee investigation.	1.30	1,053.00
4/23/05	MRY	Matters as to audit committee investigation and work needed to satisfy auditors.	0.40	324.00
4/26/05	LMM	Reviewing background materials.	3.50	2,835.00
4/28/05	LMM	Continue reading background materials.	1.50	1,215.00
4/29/05	MRY	Conference with Lynn Turner re upcoming trip to San Diego and issues to be addressed; related e-mail traffic; conference with Benito Romano re same; related activity; conference with KPMG.	0.40	324.00
4/30/05	T M	E-mail BR, review LT e-mail.	0.20	119.00

Timekeeper	Hours	Amount
KLOTZ, MARTIN	6.40	$ 4,160.00
MAZZA, LESLIE	9.60	7,776.00
MUNDIYA, TARIQ	2.90	1,725.50
ROMANO, BENITO	12.40	10,044.00
YOUNG, MICHAEL	2.10	1,701.00

Professional Fees	$ 25,406.50
Total this Statement	$ 25,406.50

EXHIBIT 47

MR. LEVITT
THAT IS CORRECT.

COUNCILMEMBER YOUNG:
AND THAT REPORT AND THAT ASSESSMENT COULD TAKE MONTHS

MR. LEVITT:
OUR ESTIMATE IS IF THEY PUT OUT FOR AN RFP RIGHT AWAY, WE ARE TALKING ABOUT THREE OR FOUR MONTHS TO COMPLETE THE WORK OF THE ACTUARY BEING HIRED AND DOING HIS WORK.

COUNCILMEMBER YOUNG:
AND THERE WILL BE ANDTHERE IS ACTUALLY MORE WORK THAT HAS TO HAPPEN AFTER THAT, AFTER THAT REPORT IS COMPLETED. IS THERE A SUBSTANTIAL AMOUNT OF WORK THAT NEEDS TO HAPPEN AFTER THAT REPORT IS COMPLETED?

MR. LEVITT:
I WOULDN'T LOOK UPON THE ACTUARIAL EFFORT AS DELAYING US. I THINK THERE IS ENOUGH TO BE DONE DURING THAT PERIOD OF TIME FOR ME TO SAY THAT I'M VERY HOPEFUL THAT WE WILL BE COMPLETE AND OUT OF HERE BY THE END OF THE YEAR.

COUNCILMEMBER YOUNG:
OKAY. A FEW OTHER QUESTIONS.I KNOW WE HAVE SOME OTHER FOLKS THAT HAVE TO HAVE SOME QUESTIONS ALSO, BUT YOU REMEMBER YOU ARE ALSO SPEAKING TO SOME LAYMEN HERE AND ALSO MANY LAYMEN OUT IN THE AUDIENCE AND ON TV TODAY. SO COULD YOU JUST GIVE US A LAYMAN'S EXPLANATION OF WHAT NEEDS TO BE DONE FROM TODAY TO THE END OF THE AUDIT THE END OF OUR THIS WHOLE PROCESS

MR. LEVITT:
THE GOAL OF THIS EXERCISE IS TO PERSUADE KPMG THAT AN INDEPENDENT AUDIT COMMITTEE HAS EXAMINED ALL OF THE ASSUMPTIONS UNDERLYING THE FINANCIALS OF THE COMMUNITY, UNDERLYING THE PROBLEMS THAT HAVE BEEN HIGHLIGHTED IN THE OCCASION FOR SEPARATE INVESTIGATIONS BY TWO GOVERNMENT AGENCIES, ADDRESS THOSE ISSUES, REMEDIATE THOSE ISSUES IN TERMS OF BRINGING ABOUT

EXHIBIT 48

THAT. THE OTHER CONCERN I HAVE ABOUT KPMG IS I THINK THEY NEED TO COME AND BE A PART OF SOME KIND OF REPORTING AT SOME POINT SO WE CAN HEAR DIRECTLY FROM THEM. I DON'T QUITE UNDERSTAND WHY IF THEY ARE OUR AUDITORS THEY CAN'T COME AND REPORT TO US DIRECTLY SO THAT WE CAN UNDERSTAND EXACTLY WHERE THEY ARE. I DON'T KNOW OF ANY AUDIT PROCEDURE THAT PROHIBITS AN AUDITOR FROM REPORTING TO THE COUNCIL AND THEN WE COULD ASK THEM QUESTIONS. AND I'M NOT SUGGESTING THAT WE INTERFERE WITH ANY OF YOUR DIRECTIVES TO THEM. BUT I DO THINK THAT IT WOULD BE A USEFUL EXERCISE.

MR. LEVITT:
I SEE NO REASON WHY WE CAN'T GIVE YOU A REPORT, A WRITTEN REPORT ON OUR PLAN OF ACTION WITH THE UNDERSTANDING, OF COURSE, THAT THERE ARE MOVING PARTS TO IT. BUT I THINK THAT CLEARLY WE CAN DO THAT AS TO THE ABILITY TO ASK KPMG TO MEET WITH YOU. I SIMPLY....

CITY ATTORNEY MIKE AGUIRRE:
I THINK WHAT YOU HAVE DONE, MR. LEVITT, IN TERMS OF THE COMMENTS THAT YOU HAVE MADE AND THE EFFORTS THAT YOU HAVE MADE WITH REGARD TO THE WAIVER OF
THE ATTORNEY CLIENT PRIVILEGE HAS BEEN VERY VERY USEFUL, VERY HELPFUL. I THINK THE WORK THAT YOU HAVE DONE ON THE ACTUARY HAS BEEN VERY VERY HELPFUL AND VERY VERY USEFUL IN MOVING THINGS FORWARD. AND SO I DON'T WANT TO HAVE YOU MISINTERPRET. BUT I DO THINK THAT THE COUNCIL ARE SUPPOSED TO BE PRUDENT MANAGERS OF PUBLIC FUNDS. $800,000 A MONTH IS AN ENORMOUS AMOUNT OF MONEY TO SPEND IN VIEW OF THE KIND OF HARD TRADEOFFS THAT THEY HAVE HAD TO MAKE WITH REGARD TO BUDGET PRIORITIES. AND I THINK THAT AT THIS POINT, GIVEN THE LACK OF COMMUNICATION THAT TOOK PLACE BETWEEN V AND E AND KPMG THAT WE OUGHT TO HAVE SOME SORT OF AGREED UPON WORK PLAN SO THAT WE CAN SEE HOW THIS IS ALL GOING TO COME TOGETHER. MAYBE WE ALL INCLUDING THE CITY ATTORNEYS OFFICE CAN WORK TO HELP PUT THAT TOGETHER WITH YOU.

COUNCILMEMBER YOUNG:
I WOULD BE SUPPORTIVE OF SOMETHING LIKE THAT. THAT WOULD BE VERY HELPFUL IN . REGARDS TO HAVING
[MULTIPLE VOICES]

MR. LEVITT:

EXHIBIT 49

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

2901883.1

20505598-02
CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not paid
SIGNED: Linnie Dance
balance of 8,131.56

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728-8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: distillation of financial reporting issues into discrete areas based on preliminary review of materials relating to the City's pension fund and finances, including the various reports prepared by the City Attorney and Vinson & Elkins; working with Vinson & Elkins as to preparation of summary memoranda and binders as to each issue area; efforts directed to the board of the San Diego City Employees' Retirement System concerning waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preliminary research of municipal bankruptcy law and cases relating to the rejection under Chapter 9 of employee benefits, including pension obligations, and preparation of a list of issues that the City should consider in deciding whether to seek Chapter 9 protection; projects directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and complete production of relevant documents to those authorities and KPMG, such projects including review of the relevant subpoenas and records of the City's past compliance efforts, discussions with the SEC, U.S. Attorney's Office, and the City's outside counsel concerning the status of the City's production, and preparation of a memorandum to City employees and others concerning document

tention and production obligations; consideration issues raised in fourth report of the City Attorney.	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

EXHIBIT 50

Kroll

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

www.krollworldwide.com

June 24, 2005

Matter No. 0005948-0002
Invoice No. 1310917

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From May 28, 2005 through June 10, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered	$ 162,197.00
Out-of-Pocket Disbursements	31,997.05
Total Due:	$ 194,194.05

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310917

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	9.5	$750.00	$7,125.00
Arthur Levitt	6.48	$900.00	$5,832.00
Troy Dahlberg	68.5	$450.00	$30,825.00
Jennifer Arnini	84.5	$300.00	$25,350.00
Jeffrey Klein	15.9	$300.00	$4,770.00
David Callaghan	91	$400.00	$36,400.00
Jenny Dominguez	74	$350.00	$25,900.00
Rachel Laybourn	87.7	$250.00	$21,925.00
David Cogan	4.5	$350.00	$1,575.00
Arnold Contreras	1	$240.00	$240.00
John Seeley Jr.	10	$200.00	$2,000.00
Regina Israel	3	$85.00	$255.00
Total	456.08		$162,197.00

Detail of Out-of-Pocket Expenses

Air Transportation	$6,382.60
Ground Transportation	$3,745.57
Hotel Charges	$14,987.66
Meals	$5,495.49
Misc	$1,060.71
Electronic Research	$325.02
Total	$31,997.05

EXHIBIT 51

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

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

ITEM-205: Second Amendment to Agreement with Kroll, Inc., for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and First Amendment to Agreement with Willkie, Farr & Gallagher, to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) ADOPTED AS RESOLUTION R-300629

Authorizing a second amendment to the agreement with Kroll, Inc. in the amount of $200,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution; and

Authorizing a first amendment to agreement with Willkie, Farr & Gallagher, LLP in the amount of $550,000 for provision of independent legal counsel to the City Audit Committee and Kroll in connection with the above matters, and directing the City Attorney to prepare applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see agreement with Kroll). The original agreement was for a not-to-exceed amount of $250,000. A subsequent amendment in May of 2005 increased the not-to-exceed amount to $1,750,000.
The scope of Kroll's engagement, as memorialized in the original agreement, is two-phased, the first phase being to serve as an Independent Investigator for matters relating to the unfunded liability of the SDCERS and for errors discovered in the footnotes of the City's audited financial

statements. This phase includes working with KPMG to understand their concerns and identify a satisfactory work program to assist them in obtaining the necessary evidence and documentation required by applicable accounting, auditing and professional services. This phase also includes review and evaluation of the investigation reports issued by V&E and the City Attorney.

The second phase includes consultation with City personnel to establish internal controls that, if implemented and properly operated by the City, could provide reasonable assurance that the transactions identified in the reports in Phase One are properly reported and disclosed in the City's financial statements. This work is to be coordinated with the City Auditor and Comptroller, the internal audit department manager, and the City's outside independent auditors as to the scope and nature of internal controls that the City would need to assess, document, implement, and test.

By this action, the agreement with Kroll will be increased by $200,000, for a total not-to-exceed amount of $1,950,000, to cover estimated additional Fiscal Year 2005 expenses.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP ("Willkie, Farr"). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation (see agreement with Willkie, Farr). Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of $500,000 was approved by the Mayor and City Council in May of 2005. This first amendment to the agreement will bring the total not-to-exceed amount to $1,050,000 and will be used to cover estimated additional Fiscal Year 2005 expenses.

Ewell/Irvine

Aud. Cert. 2501100 and 2501101.

FILE LOCATION: MEET

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

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

ITEM-206: Third Amendment to Agreement with Kroll, Inc. for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and Second Amendment to Agreement with Willkie, Farr, Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) ADOPTED AS AMENDED AS RESOLUTION R-300630

Authorizing a third amendment to the agreement with Kroll Inc., in the amount of $1,000,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution and contract award contingent upon certification of funds by City Auditor and Comptroller;

Authorizing a second amendment to agreement with Willkie, Farr, & Gallagher LLP, in the amount of $800,000 for provision of independent legal counsel to the City Audit Committee in connection with the above matters, and directing the City Attorney to prepare applicable resolution and contract award contingent upon fund certification by the City Auditor and Comptroller.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego (City) entered into an agreement with Kroll, Inc. (Kroll) to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins (V&E) and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see agreement with

Kroll). The original agreement was for a not-to-exceed amount of $250,000. A subsequent amendment in May of 2005 increased the not-to-exceed amount to $1,750,000, and another

amendment is before the Mayor and City Council today requesting an additional amount of $200,000 for the final part of Fiscal Year 2005, bringing the total not-to-exceed amount to $1,950,000.

The scope of Kroll's engagement, as memorialized in the original agreement, is two-phased, the first phase being to serve as an Independent Investigator for matters relating to the unfunded liability of the SDCERS and for errors discovered in the footnotes of the City's audited financial statements.

This phase includes working with KPMG to understand their concerns and identify a satisfactory work program to assist them in obtaining the necessary evidence and documentation required by applicable accounting, auditing and professional services. This phase also includes review and evaluation of the investigation reports issued by V&E and the City Attorney.

The second phase includes consultation with City personnel to establish internal controls that, if implemented and properly operated by the City, could provide reasonable assurance that the transactions identified in the reports in Phase One are properly reported and disclosed in the City's financial statements. This work is to be coordinated with the City Auditor and Comptroller, the internal audit department manager, and the City's outside independent auditors as to the scope and nature of internal controls that the City would need to assess, document, implement, and test.

By this action, the agreement with Kroll will be increased by $1,000,000, for a total not-to-exceed amount of $2,950,000, to cover expenses for the first portion of Fiscal Year 2006.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP (Willkie, Farr). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation (see agreement with Willkie, Farr). Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of $500,000 was approved by the Mayor and City Council in May of 2005. Another amendment is before the Mayor and City Council today requesting an additional 550,000 to cover estimated additional Fiscal Year 2005 expenses, bringing the total not-to-exceed amount to $1,050,000. This second amendment for $800,000 is to cover expenses for the first portion of Fiscal Year 2006 and would bring the total not-to-exceed amount to $1,850,000.
Ewell/Irvine

FILE LOCATION: MEET

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

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

ITEM-207: Retention of Outside Legal Services for Matters related to Government Code Section 1090 and the Political Reform Act in Connection with the Fiscal Year 2006 Salary Ordinance and Appropriation Ordinance.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) ADOPTED AS RESOLUTION R-300631

Authorizing the City Manager to execute an Agreement with Luce Forward Hamilton & Scripps, LLP, in an amount up to $45,000, for outside legal services associated with advising the City Council, as a whole, on matters related to Government Code Section 1090 and the Political Reform Act in connection with the Fiscal Year 2006 Salary Ordinance and Appropriation Ordinance, and directing the City Attorney to prepare the applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

On May 24, 2005, the City Council approved the retention of outside legal counsel, under Section 40 of the City Charter, to advise the Mayor and City Council, as a whole, on Government Code Section 1090 with respect to the Salary Ordinance, Appropriation Ordinance as well as on votes on pension related issues.

Due to the immediate need for legal counsel, the City Manager engaged Luce Forward Hamilton & Scripps, LLP, based on their expertise with relevant case law, to serve as legal adviser to the Mayor and City Council, as a whole.

Council authorization is required to execute a retainer agreement with the firm because of the cumulative level of activity the City has with the firm in the current fiscal year (over $250,000).

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

V&E was retained to perform the additional investigation by the City Manager. The initial contract amount was not to exceed $250,000, which was amended by the City Council in November 2004, for an additional $350,000, and again in February 2005, for an additional $1,200,000. The City continues to work cooperatively with KPMG on progress of the additional investigation. In addition, the City Attorney is also conducting an investigation of these allegations of wrongdoing. In order to complete the additional investigation, additional funding for V&E's services is required. An additional $1,800,000 is needed to continue with the additional investigation. Additional sums may be necessary in the future depending on any additional scope and requirements as a result of the ongoing investigation.

Ewell

Aud. Cert. 25001112.

FILE LOCATION: MEET

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

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

ITEM-S412: Authorization of Funding for Kroll, Inc. for Services Related to Research of Pension Board Nominees.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) REFERRED TO THE CITY ATTORNEY AND THE CITY MANAGER, WITH DIRECTION

Authorizing the expenditure of $108,825.45, for research of Pension Board nominees on behalf of the City of San Diego from March 1 through March 15, 2005, and directing the City Attorney to prepare the applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:
In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review, and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports.
In addition to this work, a special request was placed with Kroll to conduct research on Pension Board nominees on the City's behalf. The expenses incurred for this activity totaled $108,825.45.

Ewell/Irvine

Aud. Cert. 25001117.

FILE LOCATION: MEET

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

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

ITEM-S415: First Amendment to Agreement with Luce, Forward, Hamilton & Scripps to Provide Support to Vinson & Elkins with Respect to the Ongoing Financial Investigation and Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

EXHIBIT 52

Kroll

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

www.krollworldwide.com

June 29, 2005

Matter No. 0005948-0002
Invoice No. 1310933

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From June 13, 2005 through June 24, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered	$ 207,732.50
Out-of-Pocket Disbursements	28,548.95
Total Due:	$ 236,281.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Case #0005948-0002
Invoice #1310933

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	21	$750.00	$15,750.00
Arthur Levitt	33.85	$900.00	$30,465.00
Troy Dahlberg	33	$450.00	$14,850.00
Jennifer Amini	86.5	$300.00	$25,950.00
Jeffrey Klein	105	$300.00	$31,500.00
David Callaghan	79	$400.00	$31,600.00
Jenny Dominguez	67.5	$350.00	$23,625.00
Rachel Laybourn	110.7	$250.00	$27,675.00
David Cogan	3	$350.00	$1,050.00
Lisa Han	2	$300.00	$600.00
Lisa Jordan	14	$300.00	$4,200.00
Regina Israel	5.5	$85.00	$467.50
Total	561.05		$207,732.50

Detail of Out-of-Pocket Expenses

Air Transportation	$8,912.30
Ground Transportation	$2,256.91
Hotel Charges	$11,763.11
Meals	$2,999.44
Misc	$2,463.19
Electronic Research	$154.00
Total	$28,548.95

EXHIBIT 53

CITY IS SUBSTANTIALLY COMPLETE. WE BELIEVE THIS IS AN OPPORTUNE TIME TO RECOMMEND TO THE CITY AS BEING IN THE CITY'S BEST INTEREST THAT IT SELECT NEW COUNSEL TO REPRESENT THE CITY BEFORE THE SEC. WE WOULD BE GLAD TO ASSIST THE CITY IN IDENTIFYING SUCH COUNSEL. WE ARE ALSO GLAD TO CONTINUE OUR SEC REPRESENTATION UNTIL NEW COUNSEL IS SELECTED AND TO PROVIDE FOR SMOOTH TRANSITION. WE ARE HONORED TO HAVE SERVED THE CITY IN THESE MOST IMPORTANT MATTERS AND THANK YOU FOR ALLOWING US THAT PRIVILEGE.

ATKINS:
THANK YOU, MR. MACO. MR. EWELL, DO YOU WANT TO INTRODUCE THE NEXT SPEAKER?

EWELL:
YES, YOU'RE HONOR. MEMBERS OF THE COUNCIL. I WILL LIKE TO INTRODUCE YOUR AUDIT COMMITTEE AND I THINK MR. LEVITT IS GOING TO FIRST ADDRESS YOU, IF IM NOT MISTAKEN.

LEVITT:
MADAM MAYOR, MEMBERS OF THE CITY COUNCIL, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO APPEAR BEFORE YOU AND REPORT ON OUR COMMITTEES PROGRESS. WE COME TOGETHER THIS AFTERNOON UNDER EXCEEDINGLY DIFFICULT AND TRYING CIRCUMSTANCES. FROM THE RECENT DOWNGRADING OF THE RATING OF THE CITY'S BONDS TO THE ONGOING INVESTIGATIONS OF VARIOUS CITY OFFICIALS. THE FISCAL AND POLITICAL CRISIS FACING SAN DIEGO HAS ONLY DEEPENED. AMERICA'S FINEST CITY HAS BEEN TARNISHED BEYOND ALMOST ALL RECOGNITION. REALIZING THE EXTENT OF THE PROBLEMS FACING SAN DIEGO AND THE NECESSITY FOR INDEPENDENT ASSESSMENT OF ITS FINANCES, THE CITY'S OUTSIDE AUDITORS KPMG SUGGESTED THAT THIS BODY ESTABLISH AN INDEPENDENT AUDIT COMMITTEE IN THE MODEL OF THOSE REQUIRED BY PUBLIC COMPANIES UNDER THE SARBANES OXLEY ACT. IN ESTABLISHING THE AUDIT COMMITTEE, THE CITY COUNCIL WISELY RECOGNIZED THE IMPORTANT ROLE THAT QUALIFIED, COMMITTED, INDEPENDENT AND TOUGH MINDED AUDIT COMMITTEES PLAY AS GUARDIANS

OF THE PUBLIC INTEREST. YOU MADE OUR MISSION CRYSTAL CLEAR. TO ACT AS A FREESTANDING COMMITTEE, SEPARATE AND APART FROM THE BODY POLITIC, TO REVIEW THE INVESTIGATIVE ACTIVITY UNDERWAY, TO TAKE THE STEPS NECESSARY TO CORRECT THE CITY'S FINANCIAL DISCLOSURES AND PROVIDE A REMEDIATION PLAN TO PREVENT THE DEFICIENCIES FROM RECURRING. AND TO OTHERWISE SATISFY THE CITY'S AUDITORS. SO SAN DIEGO MAY THEN ISSUE CREDIBLE AND TRANSPARENT FINANCIAL STATEMENTS. THIS PAST WEEK, THE SEC CONFIRMED THE WISDOM OF THIS APPROACH AND REGAINING ACCESS TO THE SOURCES OF PUBLIC SOURCES NEEDED TO RESTORE THE CITY'S FINANCIAL VIABILITY AND THE VIABILITY IN PARTICULAR OF ITS PENSION SYSTEM. YET, IN THE MONTHS SINCE THESE DEVELOPMENTS, WE ARE AT A LOG JAM, BATTLES OVER POLITICAL TURF, OVERWHELM THE PUBLIC INTEREST. OPENNESS IN THE PURSUIT OF A CREDIBLE, EFFECTIVE INVESTIGATION IS BEING FRUSTRATED AND UNDERMINED BY LEGAL MANEUVERINGS AND POLITICAL SHOW MAN SHIP. SOME MAY SAY THAT THE ISSUES FACING SAN DIEGO ARE TOO COMPLEX SIMPLY TO BE PAINTED AS A CHOICE BETWEEN RIGHT AND WRONG. MY COLLEAGUES AND I ON THE AUDIT COMMITTEE DISAGREE WITH THAT JUDGMENT. THE CHOICE COULDN'T BE CLEARER. BEFORE YOU TODAY IS THE CHOICE EITHER TO REJECT THE POLITICS, THE PERSONAL AVARICE AND MISGUIDED POLICIES THAT HAVE PUT SAN DIEGO IN THE POSITION IT FINDS ITSELF IN. OR TO EXCUSE THEM, GRANT THEM A PASS TO CAUSE FURTHER DISARRAY, DIVISION, AND DISTRUST. IT IS A CHOICE BETWEEN PERSONAL GRUDGES AND THE COMMUNITY'S WELLBEING. BETWEEN ARGUING ABOUT THE PAST AND FINDING SOLUTIONS FOR THE FUTURE. BETWEEN THE CYNICISM, SKEPTICISM, AND HOPE. MY TESTIMONY TODAY I WILL REVIEW HOW WE ARRIVED AT THIS CHOICE. THE WORK THE AUDIT COMMITTEE HAS DONE, THE ROADBLOCKS WE HAVE ENCOUNTERED AND HOW ALL OF YOU CAN HELP US OVERCOME THEM. OVER THE PAST FIVE MONTHS SINCE YOU ESTABLISHED AN INDEPENDENT AUDIT COMMITTEE, WE HAVE MADE SOME SIGNIFICANT PROGRESS. FIRST WE HAVE ENGAGED IN EXTENSIVE DIALOGUE WITH THE CITY'S INVESTIGATORS AND VINSON AND ELKINS AND EVALUATED THE EXTENT OF ADDITIONAL WORK NECESSARY SO THAT THE

INVESTIGATION MAY BE BROUGHT TO A CONCLUSION. SECOND, WE HAVE MET WITH THE CITY'S OUTSIDE AUDITORS OF KPMG, DISCUSSED WITH THEM AT GREAT LENGTH THE INVESTIGATIVE MATERIAL AND ARE IN THE PROCESS OF IMPLEMENTING AN AGREED UPON PLAN WHICH, AT ITS CONCLUSION, WOULD ALLOW KPMG TO ISSUE AN AUDIT REPORT ON THE CITY'S FINANCIAL STATEMENTS. THIRD, WE HAVE BEGUN THE WORK ON REMEDIATION EFFORTS, INCLUDING THE REMOVAL OF THE CITY RETIREMENT SYSTEMS ACTUARY AND WORKING WITH A NEW CITY AUDITOR AND CONTROLLER WHO IS APPROPRIATELY IMPROVING INTERNAL CONTROLS. FOURTH, WE HAVE ORGANIZED AND ARE OVERSEEING THE PRODUCTION OF DOCUMENTS AT BOTH THE U.S. ATTORNEY AND SEC SUBPOENA MORE THAN A YEAR AGO. FIFTH, OVER THE COURSE OF OUR WORK THESE LAST FIVE MONTHS, WE HAVE HAD SEVERAL DISCUSSIONS AND MEETINGS WITH THE INDEPENDENT AUDITORS WHO SUPPORT OUR APPROACH AND OUR EFFORTS. FINALLY, WE HAVE UPDATED AND WILL CONTINUE TO UPDATE THE COUNCIL ON THE PROGRESS OF OUR WORK PLAN. AS WE PROCEED THROUGH SEGMENTS OF OUR PLAN, WE WILL ALSO ISSUE REGULARLY WRITTEN REPORTS TO THE COUNCIL, APPRISING YOU OF OUR PROGRESS AND ALERTING YOU TO ANY IMPEDIMENTS TO THAT PROGRESS THAT WE MAY BE ENCOUNTERING. PART OF THE AUDIT COMMITTEES INVESTIGATION IS REMEDIATION OF THE CAUSES OF THE DEFICIENCIES THAT ARE FOUND TO EXIST. IN DOING SO, THE AUDIT COMMITTEE HAS MET WITH CITY OFFICIALS, LEADERS IN THE BUSINESS COMMUNITY AND LABOR WHO SUPPORT WHOSE COMMITMENT, WHOSE COOPERATION ARE ESSENTIAL TO EVENTUALLY RESOLVING THE PENSION AND OTHER LONG TERM ISSUES THAT THREATEN THE COMMUNITY. INDEED FROM THE OUTSET OF THIS PROJECT, WE HAVE BEEN CLEAR THAT WE CANNOT COMPLETE THE TASK AT HAND WITHOUT THE ACTIVE SUPPORT AND COOPERATION OF KEY MEMBERS OF THE SAN DIEGO COMMUNITY. WE APPROACHED OUR MISSION KNOWING THAT WE COULD ONLY SUCCEED IF THE LEADERS OF THIS COMMUNITY WANTED US TO SUCCEED. UNFORTUNATELY, TIME AND TIME AGAIN, KEY FIGURES IN THE LEADERSHIP OF SAN DIEGO HAVE FRUSTRATED, IMPEDED AND EVEN THWARTED OUR EFFORT. IN JUST FIVE MONTHS OF WORK, WE HAVE ENCOUNTERED A

REFUSAL BY THE PENSION BOARD TO MAKE AVAILABLE TO THE U.S. ATTORNEY, THE SEC OR THE AUDIT COMMITTEE DOCUMENTS CRITICAL TO ASCERTAINMENT OF THE TRUTH AND CRITICAL TO THE COMPLETION OF AN INVESTIGATION SATISFACTORY BOTH TO US AND THE AUDITOR. WE HAVE ENCOUNTERED AN UNRELENTING DRUM BEAT OF ALMOST NONSTOP PUBLIC ACCUSATIONS BY THE CITY ATTORNEYS OFFICE, WHICH HAS ONLY SERVED TO CAUSE DIVISION, UNCERTAINTY, AND OBSTACLES TO PROGRESS. WE HAVE ENCOUNTERED THE DISTRACTION OF LITIGATION, OSTENSIBLY BEGUN ON BEHALF OF THE CITY, WHICH IS HAS RESULTED IN INCREASED ACRIMONY AND DELAY, IS NOW THE JUDICIARY MUST SPEND MONTHS OR YEARS WORKING THROUGH THE COUNTLESS CHARGES AND COUNTER CHARGES. THIS IN TURN HAS CREATED RELUCTANCE ON THOSE BEING SUED TO COOPERATE WITH THE AUDIT COMMITTEE AND ITS INVESTIGATIVE EFFORTS. WE HAVE ENCOUNTERED PUBLIC PLEDGES OF COOPERATION, BY THE CITY ATTORNEY WHO BEHIND THE SCENES HAS, IN FACT, FAILED TO FULFILL THOSE PLEDGES AND WHO TO THIS DAY HAS STILL NOT MADE AVAILABLE RELATED INVESTIGATIVE MATERIAL CRUCIAL TO OUR EFFORTS THAT WE REQUESTED MONTHS AGO. WE HAVE ENCOUNTERED QUESTIONS EVEN AMONG SOME OF THE MEMBERS OF THE CITY COUNCIL ITSELF AS TO WHETHER THE AUDIT COMMITTEE THAT IT FORMED SHOULD BE PERMITTED TO COMPLETE ITS TASK. THE AUDIT COMMITTEE IS GRAPPLING WITH AN EXTRAORDINARILY COMPLEX SITUATION. COMBING THROUGH HUNDREDS OF THOUSANDS OF RECORDS, SCORES OF ALLEGATIONS OF POSSIBLE VIOLATION OF CRIMINAL AND CIVIL LAW. WE HAVE A TEAM OF 15 LAWYERS AND ACCOUNTANTS WORKING LONG DAYS, LONG WEEKS TRYING EFFICIENTLY TO UNCOVER THE FACTS AND PREPARE A REPORT. THE HOSTILE ENVIRONMENT WE ARE OPERATING IN ONLY ADDS TO THE TIME AND IN TURN THE COSTS OF OUR REVIEW. BUT MORE THAN THAT, THIS CONTENTIOUSNESS ALSO FLIES IN THE FACE OF TWO CALLS BY THE SEC STAFF FOR THE LEADERSHIP OF THIS CITY TO COOPERATE. IGNORING THESE CALLS WILL ONLY ADD TO THE COSTS INCURRED BY THE PEOPLE OF SAN DIEGO. NOT JUST IN TERMS OF REPUTATION LOST, POTENTIALLY IN THE SIZE OF THE SANCTIONS HANDED OUT BY VARIOUS LAW ENFORCEMENT

AGENCIES. LET ME BE CRYSTAL CLEAR. THERE IS NO WAY SAN DIEGO CAN GET THE FUNDS IT NEEDS FROM PUBLIC CAPITAL MARKETS WITHOUT AN ADEQUATE AUDIT REPORT. THERE IS NO WAY TO GET SUCH A REPORT WITHOUT A THOROUGH INVESTIGATION BY A BODY UNENCUMBERED, UNTAINTED, AND UNABASHEDLY INDEPENDENT FROM THOSE INVOLVED IN THE SITUATION. OF COURSE, SOME HAVE SUGGESTED DISBAND THE AUDIT COMMITTEE, FIRE KPMG, SEEK AN AUDITOR WHO WOULD BE LESS RIGOROUS IN ITS REQUIREMENTS. WITHOUT GETTING INTO THE WRATH THAT MAY BE EXPECTED FROM REGULATORY OFFICIALS, IN RESPONSE TO SUCH AN IRRESPONSIBLE APPROACH IT IS INCONCEIVABLE TO ME THAT ANY REPUTABLE AUDITOR WOULD SIMPLY TURN A BLIND EYE TO THE LEGAL AND FACTUAL ISSUES THAT MUST BE INVESTIGATED AND RESOLVED BEFORE AN AUDIT REPORT MAY BE ISSUED. OTHERS HAVE ARGUED, ALMOST NAIVELY, THAT THE BANKRUPTCY OF THIS CITY IS A VIABLE ALTERNATIVE. YET, IT IS FAR FROM CLEAR THAT THE CITY WOULD EVEN QUALIFY FOR A BANKRUPTCY. BEYOND THAT, EVEN WITH BANKRUPTCY, EVEN WITH BANKRUPTCY THE CITY WOULD STILL NEED TO GET AN AUDIT REPORT. EVEN WITH BANKRUPTCY, THE CITY WOULD STILL NEED A THOROUGH INDEPENDENT INVESTIGATION. EVEN WITH BANKRUPTCY, THE CITY WOULD STILL NEED WAIVER OF THE ATTORNEY CLIENT PRIVILEGES BY THE PENSION BOARD. A BANKRUPTCY FILING WOULD DO NOTHING TO RESOLVE THE CITY'S PRESENT DIFFICULTIES. IT WOULD ONLY ADD NEW LAYERS OF COST AND DELAY AS ALL MEANINGFUL ACTIVITY WOULD HAVE TO BE ARGUED ABOUT BY LAWYERS, SUBJECT TO THE SCRUTINY OF VARIOUS COMMITTEES, ALL CONVENED AT CITY EXPENSE AND THEN SEPARATELY APPROVED BY THE BANKRUPTCY COURT. RESPONSIBLE OFFICIALS COULD EVEN RAISE THE POSSIBILITY OF BANKRUPTCY SPEAKS TO THE TRAGIC CIRCUMSTANCES OF THE CURRENT SITUATION. SAN DIEGO'S PROBLEMS ARE AT THEIR ROOT POLITICAL PROBLEMS, NOT ECONOMIC ONES. THIS IS A CITY WITH ABSOLUTELY EXTRAORDINARY ASSETS, MAGNIFICENT NATURAL BEAUTY AND RESOURCES, A FIRST RATE CULTURAL ENVIRONMENT, A COMMITTED PUBLICITY CITIZENRY, A HARD WORKING POPULOUS AND AND AN EXTREME STREAMLINE ROBUST ECONOMIC BASE. HOW TRAGIC IT IS THAT INFIGHTING, INTEMPERATE POLITICAL

DIATRIBE, PREMATURE PUBLIC CHARGES HAVE SO DRIVEN US UNDER THE MEMBERS OF THIS MAGNIFICENT COMMUNITY WITH NO OTHER NAVIGABLE PATH OUT OF THIS FISCAL CRISIS. I COME TODAY TO ASK YOU, THE MEMBERS OF THE CITY COUNCIL, FOR YOUR UNQUALIFIED SUPPORT. I CAN SAY IT IN NO OTHER WAY BUT THAT THE AUDIT COMMITTEE YOU ESTABLISHED CANNOT GUARANTEE ITS INDEPENDENCE WITHOUT YOUR SOLID BACKING. WE CANNOT FULFILL OUR MISSION WITHOUT A VOTE OF CONFIDENCE. TODAY YOU'VE GOT A CHOICE. YOU CAN DECIDE TO GIVE THE AUDIT COMMITTEE THE SUPPORT IT NEEDS TO COMPLETE ITS WORK OR EFFECTIVELY DISBAND. IT IS AN IMPORTANT DECISION. MAYBE ONE OF THE MOST IMPORTANT YOU'LL MAKE THIS TERM. AND AS YOU MAKE THIS DECISION, YOU SHOULD DO SO WITH FULL KNOWLEDGE AND AWARENESS THAT A DECISION TO DISBAND THE AUDIT COMMITTEE THROUGH LACK OF ACTIVE SUPPORT AND NECESSARY FUNDING WILL ALL BUT GUARANTEE THAT SAN DIEGO SINKS FURTHER INTO THE MORASS OF FISCAL CHAOS. AS YOU CONSIDER THE COURSE TO TAKE, ALLOW ME TO REITERATE THIS KEY POINT. THE INDEPENDENCE OF THIS AUDIT COMMITTEE IS CRITICAL TO ITS WORK. AND THAT CAN ONLY BE GUARANTEED BY YOUR SUPPORT. WE CANNOT, WE WILL NOT CONTINUE THE AUDIT COMMITTEES WORK WITHOUT YOUR BACKING. MEMBERS OF THE CITY COUNCIL, YOU ARE THE CUSTODIANS OF THE FUTURE OF THIS CITY AND THE MILLIONS OF PEOPLE WHO CALL IT HOME. YOU HAVE IT IN YOUR POWER TO ADDRESS THE MISTAKES OF THE PAST AND GIVE THIS CITY A BRIGHTER FUTURE. TO SET A TONE OF COOPERATION, NOT ACRIMONY... NEGOTIATION, NOT LITIGATION, DISCUSSION, NOT DIATRIBE. IT IS NOT AN IMPOSSIBLE TASK. FROM MY HOMETOWN IN NEW YORK IN THE 70'S, TO ORANGE COUNTY IN THE 90'S, OTHER LOCALITIES HAVE FACED SIMILAR PROBLEMS AND THEY HAVE OVERCOME THEM. AND I KNOW THAT SAN DIEGO CAN OVERCOME THEM TOO. ALREADY WE HAVE BEEN HEARTENED BY THE COOPERATION AND SHOW OF SUPPORT BY THE BUSINESS AND LABOR COMMUNITIES AND BY MEMBERS OF THIS COUNCIL. IF LEADERS FROM ACROSS SAN DIEGO SHOW THIS TYPE OF PATIENCE AND COOPERATION, IF ALL PARTIES INVOLVED QUICKLY PRODUCE THE DOCUMENTS THAT THIS COMMITTEE NEEDS, THE AUDIT COMMITTEE CAN WRAP UP ITS WORK BY THE

WRAP UP ITS WORK BY THE END OF THE YEAR, WE CAN BEGIN TO PUT THIS CITY BACK ON THE PATH TOWARD FISCAL HEALTH. I WOULD NOW LIKE TO CALL ON MY ASSOCIATE, MR. BENITO ROMANO.

ROMANO:
DEPUTY MAYOR ATKINS, MEMBERS OF THE CITY COUNCIL, I WOULD LIKE TO REVIEW BRIEFLY THE PROGRESS WE HAVE MADE SINCE OUR LAST PROGRESS REPORT, AND THEN MAKE A FEW OBSERVATIONS ABOUT WHERE I THINK WE ARE. SINCE OUR LAST REPORT TO THE COUNCIL, WE HAVE IDENTIFIED FROM ALL SORTS OF SOURCES APPROXIMATELY 140 ALLEGATIONS OF ILLEGAL ACTS OR MISCONDUCT. AND AS TO EACH, WE ARE GOING TO BE REQUIRED TO GAIN A COMPLETE UNDERSTANDING OF WHAT THOSE ACTS ARE AND WHAT INVESTIGATIVE PROCEDURES HAVE BEEN APPLIED TO THOSE ACTS BY EITHER MR. AGUIRRE OR MR. MACO. WE ARE GOING TO HAVE TO EVALUATE THE THOROUGHNESS AND ADEQUACY OF THE INVESTIGATIONS THAT HAVE GONE ON UP TO NOW AND WE ARE GOING TO HAVE TO MAKE SUBSTANCE ASSESSMENT OF THE CONCLUSIONS THAT HAVE BEEN DRAWN BY THE INVESTIGATIONS THAT HAVE GONE ON SO FAR. EVEN TO THE EXTENT NECESSARY, WE ARE GOING TO HAVE TO CONDUCT AN INVESTIGATION OF OUR OWN. THERE HAVE BEEN TWO INVESTIGATIONS OF SOME OF THESE ALLEGATIONS. ONE BY VINSON AND ELKINS AND ONE BY THE CITY ATTORNEY. AND WE HAVE FIRST REORGANIZED AND SYNTHESIZED THE MATERIAL FROM VINSON AND ELKINS SO THAT WE COULD UNDERSTAND IT. THE 140 ALLEGATIONS HAVE BEEN SYNTHESIZED INTO 17 STANTIVE SUBJECT AREAS. FOR EXAMPLE, ALL ISSUES RELATED TO THE USE OF SURPLUS EARNINGS HAVE BEEN LUMPED TOGETHER AND ALL THE RELEVANT MATERIAL RELATED TO THAT ISSUE HAS BEEN GROUPED. AS TO EACH, WE HAVE REQUESTED AND RECEIVED FROM VINSON AND ELKINS A SUMMARY MEMORANDA AND RELATED KEY DOCUMENTS SO THAT WE CAN UNDERSTAND THE CONCLUSIONS THAT THEY REACHED AND EVALUATE THEM. VINSON AND ELKINS HAS CONCLUDED ITS WORK. WE HAD HOPED FOR THE SAME LEVEL OF COOPERATION FROM THE CITY ATTORNEY, BUT UNFORTUNATELY, THAT HAS NOT HAPPENED. WE HAVE REQUESTED TWICE ACCESS

EXHIBIT 54

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

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ITEM-331: Two actions related to Fourth Amendment to Agreement with Kroll, Inc. for Services related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and Third Amendment to Agreement with Willkie, Farr and Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters 15

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FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:46 a.m. – 11:46 a.m.)

ITEM-330: Progress Reports from Kroll (the Audit Committee), Willkie, Farr, Vinson & Elkins, and KPMG, regarding the Audit and Financial Investigation of the City of San Diego's Pension System and Disclosure Practices.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-300778

Accepting the status reports provided by Kroll (the Audit Committee), Willkie, Farr, Vinson & Elkins and KPMG, regarding their respective progress in the matter of the audit and financial investigation of the City of San Diego's pension system and disclosure practices;

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

At the City Council meeting of June 28, 2005, the Mayor and City Council directed the City Manager to return on August 9, 2005, with progress reports to be presented by Kroll (the Audit Committee), Willkie, Farr, Vinson & Elkins, and KPMG regarding their respective work on the audit and financial investigation of the City of San Diego's pension system and disclosure practices.

Ewell/Villa

Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:28 p.m. – 4:56 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-331: Two actions related to Fourth Amendment to Agreement with Kroll, Inc. for Services related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); and Third Amendment to Agreement with Willkie, Farr and Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on These Matters.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2006-) ADOPTED AS RESOLUTION R-300779, WITH DIRECTION

Authorizing a Fourth Amendment to the Agreement with Kroll, Inc., in the amount of $1,200,000, for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson and Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution.

Subitem-B: (R-2006-) ADOPTED AS RESOLUTION R-300780

Authorizing a Third Amendment to Agreement with Willkie, Farr & Gallagher LLP in the amount of $1,200,000, for provision of independent legal counsel to the City Audit Committee and Kroll in connection with the above matters, and directing the City Attorney to prepare the applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see agreement with Kroll). The original agreement was for a not-to-exceed amount of $250,000. Three subsequent amendments, one in May and two in June of 2005 (one each for FY 2005 and

FY 2006), increased the not-to-exceed amount to $2,350,000, and another amendment is before the Mayor and City Council today requesting an additional amount of $1,200,000, bringing the total not-to-exceed amount to $3,550,000.

The scope of Kroll's engagement, as memorialized in the original agreement, is two-phased, the first phase being to serve as an Independent Investigator for matters relating to the unfunded liability of the SDCERS and for errors discovered in the footnotes of the City's audited financial statements. This phase includes working with KPMG to understand their concerns and identify a satisfactory work program to assist them in obtaining the necessary evidence and documentation required by applicable accounting, auditing and professional services. This phase also includes review and evaluation of the investigation reports issues by V&E and the City Attorney.

The second phase includes consultation with City personnel to establish internal controls that, if implemented and properly operated by the City, could provide reasonable assurance that the transactions identified in the reports in Phase One are properly reported and disclosed in the City's financial statements. This work is to be coordinated with the City Auditor and Comptroller, the internal audit department manager, and the City's outside independent auditors as to the scope and nature of internal controls that the City would need to assess, document, implement, and test.

By this action, the agreement with Kroll will be increased by $1,200,000, for a total not-to-exceed amount of $3,550,000, to cover estimated expenses for August through October of Fiscal Year 2006.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP ("Willkie, Farr"). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation (see agreement with Willkie, Farr). Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of $500,000 was approved by the Mayor and City Council in May of 2005. Two subsequent amendments in June of 2005 (one each for FY 2005 and FY 2006) increased the not-to-exceed amount to $1,450,000. An additional amendment is before the Mayor and City Council today, requesting an additional $1,200,000 to cover estimated expenses for August through October of Fiscal Year 2006, and would bring the total not-to-exceed amount to $2,650,000. General Fund portion of expense will be paid from Public Liability Fund. Other expenses will be paid from operating allocations or fund balance.

Ewell/Villa
Aud. Certs. 2600090 and 2600091.

Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: Subitems A-B: MEET

COUNCIL ACTION: (Time duration: 5:03 p.m.– 5:24 p.m.)

MOTION BY MADAFFER TO ADOPT, WITH DIRECTION THAT THE CITY MANAGER AND CITY ATTORNEY WORK TOGETHER, WITH THE ASSISTANCE OF VINSON & ELKINS, TO IDENTIFY AND RECOMMEND APPROPRIATE OUTSIDE COUNSEL TO REPRESENT THE CITY BEFORE THE SECURITIES AND EXCHANGE COMMISSION AND TO RETURN TO THE COUNCIL WITH THOSE RECOMMENDATIONS.

ACCEPT COUNCIL MEMBER YOUNG'S RECOMMENDATION THAT THE CITY MANAGER WORK WITH REPRESENTATIVES OF THE AUDIT COMMITTEE AND ASK THEM TO PROVIDE DETAILED REPORTING OF THEIR SERVICES AND THEIR RECORDS, IN ADDITION TO THEIR INVOICES, AND TO DETERMINE WHETHER THERE ARE OTHER METHODS THAT CAN BE USED TO PROVIDE MORE ACCURATE REPORTING OF THEIR SERVICES. THE CITY MANAGER IS REQUESTED TO PROVIDE A MEMORANDUM BY THE END OF THE WEEK, EXPLAINING THE NEW REPORTING PRACTICES THAT MIGHT BE INSTITUTED, AS REQUESTED BY COUNCIL MEMBER YOUNG.

Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-332: Seventh Amendment to Retention Agreement with KPMG, LLP to Perform an Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-300781, WITH DIRECTION

EXHIBIT 55

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: August 9, 2005

TO: City Auditor

FROM: City Attorney

SUBJECT: Insufficiency of Documentation for Payments to Kroll and Willkie, Farr

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My office has reviewed the documentation provided by the City Manager to the Auditor seeking authorization to pay Kroll and its outside legal counsel, Willkie, Farr. The documentation consists primarily of the total amounts owed without any detailed descriptions of the services actually rendered, who incurred expenses sought for reimbursement, and whether the rates were in compliance with the contract terms. It is impossible for the Auditor to verify these amounts are justified without sufficient documentation. In order to protect taxpayer monies, we request that the Auditor demand and review more detailed documentation before paying any further invoices.

MICHAEL J. AGUIRRE, City Attorney

By

Michael J. Aguirre
City Attorney

MJA:jb
cc: P. Lamont Ewell, City Manager

ROLL INC.

CWCV #	DATE	AMOUNT	
8471041	3/18/2005	75,000.00	MANUAL
8471088	5/23/2005	650,642.56	MANUAL
8471089	5/23/2005	144,038.46	MANUAL
8502804	6/27/2005	215,157.22	
8503822	6/29/2005	197,711.53	
8513348	8/2/2005	194,194.05	
8513969	8/3/2005	236,281.45	

WILLKIE FARR & GALLAGHER LLP

CWCV #	DATE	AMOUNT	
8471087	5/23/2005	250,000.00	MANUAL
8502805	6/27/2005	25,406.50	
8507421	7/13/2005	8,131.56	
8507422	7/13/2005	224,593.50	

NSON & ELKINS L.L.P

WCV #	DATE	AMOUNT
8273535	5/19/2003	18,506.29
8282316	6/16/2003	3,065.00
8290695	7/14/2003	1,322.57
8329658	11/17/2003	2,935.58
8342620	12/25/2003	4,170.56
8354651	2/5/2004	16,013.25
8360032	3/8/2004	7,577.07
8369632	4/12/2004	149,987.22
8371468	4/15/2004	212.50
8376951	5/3/2004	3,197.18
8376952	5/3/2004	12.78
8376953	5/3/2004	3,781.74
8387467	6/7/2004	346,195.37
8393597	6/24/2004	307,735.03
8403582	7/26/2004	236,891.85
8409479	8/16/2004	255,396.01
8424666	10/4/2004	484,924.58
8438208	11/16/2004	141,622.43
8439831	11/17/2004	215,057.42
8441879	11/23/2004	108,377.57
8450495	12/27/2004	282,970.19
8473798	3/16/2005	67029.81
8473799	3/16/2005	723,426.13
8477907	3/30/2005	368,121.40
506121	7/7/2005	1418105.5

EXHIBIT 56

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Via Facsimile and U.S. Mail

August 11, 2005

Arthur Levitt
Kroll Associates, Inc.
660 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Troy Dahlberg
Kroll Associates, Inc.
660 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Lynn Turner
Kroll Associates, Inc.
660 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Dear Messrs. Levitt, Dahlberg, and Turner:

In 1931, by their enactment of Charter section 40, San Diego citizens established that an independently elected City Attorney would be "the chief legal advisor of, and attorney for the City" and would "perform all services incident to the legal department," including the defense of "all suits or cases to which the City may be a party." This mandate is a clear expression of the will of the people to confer on the City Attorney broad powers to protect their collective interests.

As is widely known, from February 2004, until at least August 2005, City officials retained the law firm of Vinson & Elkins (V&E) for the ostensible purpose of conducting an independent investigation into illegal acts in connection with the City of San Diego's financial statements and of representing the City before the United States Securities & Exchange Commission (SEC). In fact, V&E served as the de facto defense counsel for City officials.

On Tuesday, 9 August 2005, after having charged City of San Diego taxpayers more than $6 million, V&E announced their withdrawal from the case. They left the City of San Diego without an outside counsel in the SEC investigation and with an investigative report widely

regarded as a useless "whitewash." Kroll Associates (Kroll), assisted by its legal counsel, apparently is attempting to occupy the dual role abandoned by V&E by becoming investigator of and de facto defense counsel for City officials.

This letter is to inform you that pursuant to Charter section 40, following the departure of Vinson & Elkins, the San Diego City Attorney will be assuming the role of defending the City of San Diego before the SEC.

This letter is also to inform you that the San Diego City Attorney considers neither Kroll nor you to be independent with respect to any review of illegal acts investigations involving the City of San Diego. The standard of independence that is used to judge your actions is expressed in AU § 230.07 as "the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence."

Since at least March 2005, Kroll and each of you by your own actions have demonstrated that you are not independent. These actions include the following:

First, you have failed to provide the City Attorney with appropriate detail for or to answer relevant questions about over a million of dollars of billings that Kroll has submitted to the City of San Diego. (See attached billings.) The failure to allow review by the City Attorney, who under Charter section 40 has an absolute right to this information, raises the concern that the billings might show activities that illustrate a lack of independence.

Second, Kroll has violated the scope and terms of its engagement with the City of San Diego by establishing an inappropriate working relationship with V&E. (See attached engagement letter.) As was made clear in a series of detailed billing statements sent to the City by V&E, you regularly and repeatedly met with, advised, and consulted V&E principals regarding their work. (See attached billings.) In doing so prior to the issuance of V&E's second report on 15 July 2005, you not only failed to perform the independent investigator role that you agreed to but also breached the AICPA auditing principles pertaining to independent review.

Third, Kroll, Mr. Levitt, and Mr. Dahlberg failed to prevent or adequately justify the apparent involvement of Kroll personnel in the drafting of V&E's second "whitewash" report. (See attached summary of relevant billings.)

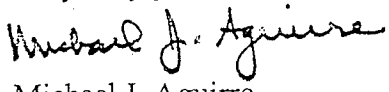
Based on these facts, the San Diego City Attorney has determined that Kroll, Arthur Levitt, Troy Dahlberg, and Lynn Turner, are not independent for purposes of evaluating the illegal acts reports issued either by the San Diego City Attorney or by V&E.

Notwithstanding the foregoing, the City Attorney will in good faith respond to any questions and provide any writings concerning the illegal acts reports issued by the San Diego City Attorney's office. However, any such discussions must be held in the presence of a court reporter.

The San Diego City Attorney again requests that Kroll and its legal counsel provide a detailed billing for all amounts thus far billed to or paid by the City of San Diego. Although such billings are required under applicable City contract provisions and policies, they have not been provided.

Finally, the San Diego City Attorney requests that Kroll make available a log of all documents or sets of documents provided to it by V&E in connection with the investigation into possible illegal acts, including any individual evaluations of possible liability on the part of City of San Diego personnel and officials.

Very truly yours,



Michael J. Aguirre
San Diego City Attorney

MJA:meb

Attachments

cc: Ms. Sandy Harris
Mr. Kelly Bowers

EXHIBIT 57

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

September 6, 2005

Troy Dahlberg
Kroll
660 S. Figueroa, 9th Floor
Los Angeles, CA 90017

Dear Mr. Dahlberg:

It is critical that your firm provide detailed bills to the City. I have attached a sample of the summary type of billing that we have recently received from Kroll. This style of billing is unacceptable.

I have also attached an example of an acceptable billing format from your colleague Vinson & Elkins. These billings allow the reader to know what tasks have been performed.

Perhaps you were unaware that there are Billing Guidelines for the City's outside counsel. These guidelines were put in place several years ago. I am attaching a copy of the guidelines for your use in the future. I am sure your firm tries to accommodate the desires of its clients, with respect to billing form. You adherence to the Billing Guidelines will provide needed transparency and avoid costly litigation.

I look forward to your compliance with this request.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By Michael J. Aguirre

Michael J. Aguirre
City Attorney

MJA:jb
Enclosures

Case #0005948-0002
Invoice #1310781

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	1	$750.00	$750.00
Roger Slefert	4	$615.00	$2,460.00
Troy Dahlberg	67.5	$450.00	$30,375.00
Jennifer Amini	87	$300.00	$26,100.00
Regina Israel	9	$85.00	$765.00
David Callaghan	102	$400.00	$40,800.00
Jenny Dominguez	64	$350.00	$22,400.00
Total	334.5	-	$123,650.00

March 16 - 31 2005

Detail of Out-of-Pocket Expenses

Air Transportation	$0.00
Ground Transportation	$563.32
Hotel Charges	$3,079.93
Meals	$1,269.42
Misc	$905.62
Electronic Research	$234.08
Total	$6,052.37

120

Client/Matter Number SAN068 36000
Invoice Number 25148417
Billing Attorney Paul S. Maco

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

Date	Initials	Description	Hours
06/01/05	KAF	Document review.	7.25
06/01/05	BFF	Perform due diligence review of Michael Uberagua emails.	7.75
06/01/05	PSM	Call with audit committee, coordinate document review, continue drafting.	6.00
06/01/05	DKG	Respond to audit committee requests; conferences with Paul Maco.	13.25
06/01/05	JMSH	Review Uberuaga emails; email conferences with David Godschalk, Tegan Flynn, and other attorney group members regarding substantive and procedural review issues.	1.25
06/01/05	CAS	Review email correspondence from document review team.	0.25
06/01/05	LJO	Participate in conference call regarding document review; review and code documents.	3.00
06/01/05	GHR	Conference call with Paul Maco and others regarding document review; review memoranda regarding same.	1.50
06/01/05	VLNO	Participate in working group call regarding document review; review background memoranda; document review.	7.75
06/01/05	NEVA	Document review.	7.00
06/01/05	STFU	Participate in conference call and review memoranda regarding online document review project; begin reviewing documents.	5.75
06/01/05	RCSA	Document review; edit memos; draft disclosure memo.	6.50
06/01/05	CMCI	Participate in conference call regarding document review; review memoranda in preparation for document review; review correspondence from San Diego review team for same purpose; review documents for privilege and relevance.	1.25
06/01/05	CACU	Conference call regarding San Diego document review.	0.50
06/01/05	DJKE	Participate in telephone conference call with team regarding electronic document review; begin to review memorandum regarding document review and numerous e-mail correspondence with team regarding review.	1.50
06/01/05	DBKE	Telephone conference regarding document review; review Stephanie Webster e-mails.	6.50
06/01/05	NDBO	Review Mike Uberuaga groupwise documents; review Alison Glennon documents; meeting with Jennifer Arnini to discuss document review procedures; update Audit Committee Log.	6.75

Client/Matter Number SAN068 36000
Invoice Number 25148417
Billing Attorney Paul S. Maco

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

Date	Initials	Description	Hours
05/01/05	MLWE	Conference call regarding San Diego Internal Investigation.	0.50
05/01/05	WWOL	Review documents electronically to determine responsiveness to document production and coding issues.	7.25
05/01/05	VMLA	Assist Paul Maco and David Godschalk with the assembly and organization of folder topic binders.	2.00
06/01/05	KMLA	Arrange for package of documents and binders to be sent to Willkie Farr; arrange for copying of Gleason settlement agreement for Kroll; continue to assist David Godschalk and Paul Maco with creation of issue binders.	2.00
06/02/05	TMF	Conference with Paul Maco, Rick Sauer, David Godschalk; communication with team; address document review; communications with document reviewers; communications with David Godschalk; discussion with Bill Lawler; discussion with Ben Lippard; communication to Ben Lippard.	7.75
06/02/05	WMB	Continue review of memoranda related to document review and case status; review and respond to correspondence regarding same.	1.25
06/02/05	BSL	Confer with Tegan Flynn regarding discovery issues; respond to document production questions.	0.50
06/02/05	LMEH	Correspondence with Tegan Flynn regarding status of review; correspondence with Sarina Quiddos regarding review; conference with Sarina Quiddos regarding document review; telephone conference with Sarina Quiddos and Dan Kelly; review of documents; review procedures; correspondence regarding log in and review and code documents; correspondence regarding status.	3.75
06/02/05	KAF	Document review.	6.00
06/02/05	BFF	Perform due diligence review of Michael Uberagua and Mary Vattimo emails.	5.50
06/02/05	PSM	Calls with SEC, continue to draft summary memoranda and organize files with Kroll.	10.00
06/02/05	DKG	Respond to audit committee requests; conferences with Kroll staff; conferences with Paul Maco; telephone conference with Catherine Wimberly at SEC.	13.00
06/02/05	SAQ	Review background materials in preparation for document review; conference with Leila El-Hakem, Dan Kelley, and Scott Fuqua regarding documents to review.	1.75
06/02/05	CAS	Review documents for responsiveness to various issues.	2.25

SAN DIEGO CITY ATTORNEY'S OFFICE

BILLING GUIDELINES FOR OUTSIDE COUNSEL

Introduction

These guidelines describe your responsibilities as a lawyer or law firm retained by the City. Every effort has been made to be clear and reasonable, so that you can provide excellent legal services for the lowest possible cost to the taxpayers.

Each invoice you submit will be reviewed by the City's representative with these guidelines in mind. We expect your compliance and invite any questions or comments you may have about these new processes. We look forward to a closer and more productive relationship, based on this foundation.

Billing Format

Each invoice shall list the billing and expenses separately.

Each bill shall include an invoice showing the amount of services rendered during the billing period, the fee for such services and the amount of reimbursable expenses. The invoice shall be accompanied by a separate invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work and itemized reimbursable expenses. The invoice support statement shall be marked "Confidential -- Attorney-Client Privilege." The invoice may be subject to disclosure pursuant to the California Public Records Act."

The billing entries on the support statement must be complete, discrete, and appropriate.

Invoice Support Statement: Complete

- The statement should first identify the matter or the person represented, with all billing and expenses incurred as to that matter or representation following.
- Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.
- The date the work was performed must be included
- The hours should be billed in .10 hour increments
- The specific task performed should be described, and the related work product should be referenced ("telephone call re: trial brief," "interview in preparation for deposition").
- The biller's professional capacity (partner, associate, paralegal, etc.) should be included

Discrete

Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

Appropriate

- The City does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the City will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
- Neither will the City pay for outside expenses such as delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail, unless prior approval is given in writing.
- Due to the nature of the City's payment process, the City will not pay any late charges. Every effort will be made to pay bills promptly.

Staffing

Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is a City decision, and the City's representative may review staffing to insure that it is optimal to achieve the goals of the engagement at the least cost.

Paralegals are to be used to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered associate work should be considered for assignment to a paralegal.

Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the firm. The City will not pay the costs of bringing a new attorney up to speed.

If more than one attorney is going to perform the same task, prior approval from the City must be had. This includes document review.

Written Memoranda

If legal research results in a written memorandum, whether formal or informal, a hard copy and a digital copy should be forwarded to the City.

Internal Conferencing

Regardless of how many people from your firm attend a meeting, only one may bill the time.

Travel

Mileage will be reimbursed at the current IRS rate.

Air travel will be reimbursed at coach or lower rate.

Overnight accommodations shall not exceed $110/night without prior approval.

Meals while traveling must be reasonably priced.

Hourly Rates

Hourly rates may not be increased without the written approval of the City.

Out-of-Pocket Disbursements

The City agrees to reimburse the Firm, in accordance with the procedures set out here, for telephone, facsimile, mail, messengers, federal express deliveries, and similar out-of-pocket expenses charged by the Firm as a standard practice to its clients. In any billing for disbursements, the Firm shall provide the City with a statement breaking down the amounts by category of expense.

The following items will not be reimbursed, unless the City has specifically agreed to accept the following expenses:

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

(2) Storage of open or closed files, rent, electricity, air conditioning, local telephone, postage, receipt or local transmission of facsimile documents, rental of equipment including computers, meals served at meetings, or any other items traditionally associated with overhead.

(3) Litigation support or any other service in excess of the amount actually expended by the Firm for such service. The City will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.

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

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

(6) Overtime compensation. Where case requirements demand overtime, the City will consider reimbursement on a case-by-case basis. The City will not reimburse overtime incurred for the convenience of the Firm where the deadline was known in advance.

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

(8) Express charges, overnight mail charges, messenger services or the like, without the City's prior consent. The City expects these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, the City will consider reimbursement on a case-by-case basis.

(9) Air travel fares in excess of economy or coach class fares; lodging, meals, and ground transportation expenses in excess of $250 per day.

(10) Videotaping of depositions, investigative services, outside photocopying, and computer litigation support services unless the City gives prior written approval.

Records

The individual disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the City in support of bills rendered by the Firm.

Invoices

The Firm agrees to forward to the City a statement of account for each one month (or, if requested by the City, two-week) period of services under this Agreement, and the City agrees to compensate the Firm on this basis.

The Firm will submit monthly invoices to the City Attorneys' Office to the attention of Assistant City Attorney Keri Katz by the 15th of each month for services rendered the previous month. Invoices shall include a distinct identification number. Both the amount invoiced for the billing period and the total amount then owed (the balance forward) shall be set forth. Invoices shall provide detailed billing information including, but not limited to, a detailed description of the service rendered, date of service, attorney time devoted to service, attorney name, billing rate, and total amount billed for each service. Invoices will also include a breakdown of all Disbursements by category of expense. A receipt for each category of expense must accompany the invoice to qualify for reimbursement by the City. The parties agree that if the City questions any item on an invoice, the Firm will provide all supporting information to substantiate the billing and will make any appropriate adjustments.

Media Inquiries

Media inquiries should be immediately communicated to the Office of the City Attorney.

EXHIBIT 58

Kroll

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

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Lynne Dance

September 23, 2005

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

Matter No. 0005948-0002
Invoice No. 1311127

CONFIDENTIAL

Professional Fees From August 20, 2005 through September 2, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	4.00 hrs @ $ 750.00 per hour	3,000.00	
Troy Dahlberg	34.50 hrs @ $ 450.00 per hour	15,525.00	
David Cogan	2.25 hrs @ $ 350.00 per hour	787.50	
Lisa Jordan	38.50 hrs @ $ 300.00 per hour	11,550.00	
Phil Mennona	65.90 hrs @ $ 350.00 per hour	23,065.00	
Michael Archibald	9.00 hrs @ $ 300.00 per hour	2,700.00	
Jennifer Amini	73.50 hrs @ $ 300.00 per hour	22,050.00	
Jeffrey Klein	95.20 hrs @ $ 300.00 per hour	28,560.00	
Rachel Laybourn	70.00 hrs @ $ 250.00 per hour	17,500.00	
Justin Bird	3.00 hrs @ $ 250.00 per hour	750.00	
Jenny Dominguez	83.50 hrs @ $ 350.00 per hour	29,225.00	
Jessie Ting	23.00 hrs @ $ 250.00 per hour	5,750.00	
Lisa Han	82.00 hrs @ $ 300.00 per hour	24,600.00	
David Callaghan	87.00 hrs @ $ 400.00 per hour	34,800.00	
Regina Israel	20.00 hrs @ $ 85.00 per hour	1,700.00	
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00	
			$ 231,912.50

Total Due: $ 231,912.50

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

EXHIBIT 59

AGUIRRE:
ALL RIGHT. SO HAVING COME AS PART OF THE PACKAGE, LET ME ASK YOU, WHERE IS HE TODAY? WHY IS HE NOT HERE?

ROMANO:
HE IS PRESUMABLY ENGAGED IN PRODUCTIVE ACTIVITIES AND I THINK HE IS NOT HERE BECAUSE WE THOUGHT WE COULD HANDLE THIS.

AGUIRRE:
OK BUT IN THE FUTURE I WOULD RECOMMEND TO THE COUNCIL BECAUSE WE ARE PAYING HIM NINE HUNDRED DOLLARS AND HOUR AND BECAUSE HIS FIRM IS CHARGING AND HOPEFULLY EARNING ONE MILLION DOLLARS A MONTH IT WOULD BE AN EXPECTATION AT LEAST IN THE PART OF THE CITY ATTORNEY'S OFFICE THAT THE PERSON WHO IS ESSENTIALLY THE HEAD PERSON BE HERE TO BE AVAILABLE TO PROVIDE THE INFORMATION THAT WE NEED. LET ME ASK IF WE COULD TURN ON THE COMPUTER AND I'D LIKE TO INVITE YOUR ATTENTION TO THE BILL FROM VINSON AND ELKIN, THE DETAILED BILL. DO YOU SEE THAT ON THE MONITOR WE HAVE A BILL FROM VINSON AND ELKIN THAT IS JUST AN EXAMPLE AND IT HAS THE DATE, THE PERSON WHO DID THE WORK, A DESCRIPTION OF THE WORK AND THE AMOUNT INVOLVED IN DOING THAT WORK. DO YOU SEE THAT MR. DAHLBERG?

DAHLBERG:
YES.

AGUIRRE:
OK. NOW MAY WE GO TO THE BILL FROM KROLL? THANK YOU VERY MUCH. THIS IS AN EXAMPLE OF THE BILL WE RECEIVED FROM THE KROLL FIRM AND FOR EXAMPLE IF YOU COULD LOOK AT YOUR OWN ENTRY THERE MR. DAHLBERG, THIS IS FROM A PERIOD OF HALF A MONTH IN MARCH, IN WHICH YOU BILLED 87.5 HOURS I BELIEVE IF I AM NOT READING THAT CORRECTLY, AM I READING THAT RIGHT? 67.5. THANK YOU. YOUR HOURLY RATE IS

FOUR HUNDRED AND FIFTY DOLLARS FOR A TOTAL COST OF THIRTY THOUSAND THREE SEVENTY FIVE. IS THAT CORRECT?

DAHLBERG:
YES.

AGUIRRE:
IT IS MY UNDERSTANDING, NOW MR. ROMANO YOU CAN CORRECT ME BUT IT IS MY UNDERSTANDING THAT THE FORMAT THAT HIS BILL HAS BEEN PROVIDED TO THE CITY WITHOUT A DESCRIPTION OF THE SPECIFIC WORK OR A BREAK DOWN OF TIME IN SMALLER INCREMENTS THAT, THAT WAS SOMETHING THAT WAS ARRANGED WITH THE CITY MANAGER, IS THAT TRUE?

ROMANO:
YOU SHOULD DIRECT THIS QUESTION TO MR. DAHLBERG BUT I THINK THAT IS ACCURATE. YES.

AGUIRRE:
OK, NOW THE CITY MANAGER TOLD YOU MR. DAHLBERG THAT IT WAS OK TO SUBMIT YOUR BILL IN THE FORM THAT IS BEFORE US, WHICH HAS JUST THE NAME OF THE PERSON THE TOTAL HOURS OF THE MONTH, THE RATE, AND THEN THE TOTAL BILL AMOUNT FOR THAT PERIOD OF THE MONTH THAT IS BEING BILLED. IS THAT CORRECT OR INCORRECT?

DAHLBERG:
WELL, I WOULD SAY THAT TO BE COMPLETELY CORRECT WE SUBMITTED THIS FIRST AND THEN SAID WHATEVER LEVEL OF MORE DETAIL YOU NEED, IF YOU NEED ANY MORE DETAIL PLEASE LET US KNOW. WE INITIATED THIS TYPE OF BILLING FORMAT.

AGUIRRE:
FAIR ENOUGH, NOW HAS THE CITY MANAGER ASKED YOU FOR A MORE DETAILED BILL? BEYOND THIS AND MORE ALONG THE LINE OF THE VINSON AND ELKIN BILL WHICH IN OTHER WORDS INSTEAD OF PROVIDING A BILL THAT JUST GIVES US THE NAME OF THE

PERSON, THE TOTAL NUMBER OF HOURS WORKED IN THE MONTH, THE HOURLY RATE AND THE TOTAL BILL WHERE YOU ACTUALLY BROKE IT DOWN BY SPECIFIC TASK AND TIME, PERSON AND HOURS AND TIME SPENT. HAS THE CITY MANAGER ASKED YOU FOR A MORE DETAILED BILL?

DAHLBERG:
THEY RESERVE THE RIGHT TO AUDIT ON OCCASION IF THERE WAS ANYTHING THAT CAME UP ON OUR BILLS AND THEY WANTED TO SEE MORE DETAIL, THEY DESERVE THAT RIGHT AND WE WOULD SAY YES YOU CAN HAVE IT IF YOU WANTED IT AND WE AGREED THAT THIS WOULD BE THE GENERAL WAY WE WOULD DO BILLING.

AGUIRRE:
AND I KNOW, YOU BEING AN ATTORNEY THAT THE QUESTION BEFORE YOU IS NOT THAT QUESTION THAT YOU JUST ANSWERED BUT THE QUESTION BEFORE YOU IS; HAS THE CITY MANAGER REQUESTED A MORE DETAILED BILL INSTEAD OF PROVIDING THE JUST THE PERSONS NAME, THE HOURS WORKED, THE HOURLY RATE AND THE TOTAL AMOUNT CHARGED FOR THE MONTH. HE ACTUALLY PROVIDED A BREAKDOWN SPECIFYING THE AMOUNT OF TIME, SPECIFIC TASK, SOMETHING ALONG THE LINES OF THE EARLIER BILL. CAN WE GO BACK TO THE EARLIER BILL AGAIN HAVE YOU BEEN REQUESTED BY THE CITY MANAGER TO PROVIDE THE KIND OF DETAIL THAT IS IN THE BILL BEFORE YOU? NOW, YOU HAVE BEEN REQUESTED TO PROVIDE THAT BY THE CITY ATTORNEY'S OFFICE, IS THAT CORRECT?

DAHLBERG:
THAT IS CORRECT.

AGUIRRE:
AND YOU HAVE DECLINED TO DO SO?

DAHLBERG:
YES.

AGUIRRE:
BEFORE I GO ANY FURTHER MAY I ASK THE CITY MANAGER WHY IT IS THAT YOU HAVE NOT ASKED FOR THE BILLING THAT PROVIDES THE KIND OF DETAIL THAT VINSON AND ELKIN BROKE DOWN MR. CITY MANAGER FROM THE KROLL FIRM?

EWELL:
AM I PART OF THIS CROSS EXAMINATION?

AGUIRRE:
WELL YOU ARE PART OF THE NEED TO ANSWER QUESTIONS TO THE PEOPLE OF SAN DIEGO.

EWELL:
I THINK THEN THAT YOU SHOULD LEARN HOW TO ASK THE CORRECT QUESTION. MR. DAHLBERG THE QUESTION IS THEN OR SHOULD BE; DO WE HAVE ACCESS TO ALL THE DETAILS NECESSARY TO ENSURE THEIR PROPERLY BEING BILLED AT THE RATES ACCORDING TO THE AGREEMENT THAT HAS BEEN SET FORTH BY THE CITY?

AGUIRRE:
EXCUSE ME MR. CITY MANAGER THAT IS NOT THE QUESTION I ASKED YOU.

EWELL:
I DON'T NEED TO BE PART OF YOUR CROSS EXAMINATION.

AGUIRRE:
YOU DON'T WANT TO ANSWER THE QUESTION THAT IS FINE WE WILL SIT DOWN....

EWELL:
MR. DAHLBERG FOR THE BENEFIT OF THE COUNCIL, DOES THE CITY, DOES OUR FINANCE DEPARTMENT AND THE CITY'S AUDITOR AND COMPTROLLER HAVE ACCESS TO ALL THE DETAIL NECESSARY TO ENSURE THAT WE ARE BEING PROPERLY CHARGED

AT THE RATES THE WE AGREED TO WHEN WE ENTERED THIS AGREEMENT?

DAHLBERG:
WE'VE SAID WE WOULD PROVIDE THAT TO YOU, YES.

AGUIRRE:
BUT THEY DON'T HAVE IT IN THEIR POSSESSION, DO THEY?

EWELL:
DOES THAT INCLUDE THAT AT ANYTIME THAT THE CITY SAYS UNANNOUNCED THAT WE WOULD LIKE TO SIT DOWN WITH YOU AND DO A DETAILED AUDITING. DO YOU HAVE THOSE BILLS AVAILABLE UPON REQUEST?

DAHLBERG:
WE DO.

EWELL:
PERIODICALLY HAVE WE GONE BACK TO YOU AND ASKED FOR CERTAIN RECORDS AND ASKED FOR ADJUSTMENTS SINCE WE BEGAN THIS?

DAHLBERG:
YOU HAVE.

EWELL:
THANK YOU VERY MUCH.

AGUIRRE:
WOULD YOU...

EWELL:
ONE OTHER QUESTION IF I MAY, IN THOSE REVIEWS HAVE WE FOUND ANY LIMOUSINES BEING CHARGED TO THE CITY AS ALLEGED BY THE CITY ATTORNEY?

DAHLBERG:
NOT A ONE.

EWELL:
THANK YOU VERY MUCH SIR AND AGAIN I THINK THIS IS SO INAPPROPRIATE.

AGUIRRE:
EXCUSE ME; WHAT IS INAPPROPRIATE IS THE CITY MANAGER IS NOT DOING HIS JOB. HE HAS NO LEGAL AUTHORITY, NO LEGAL AUTHORITY, NO LEGAL AUTHORITY TO RELIEVE YOU OF THE OBLIGATION TO PROVIDE A DETAILED BILLING THAT I HAVE REQUESTED YOU FOR AND AS EVERY OTHER FIRM WITH THE EXCEPTION OF YOU AND NOW WILLKIE FARR, EVERY OTHER FIRM HAS PROVIDED DETAILED BILLING. CAN WE GO TO THE WILLKIE FARR ORIGINAL BILLING IF WE COULD?

MADAFFER:
MR. AGUIRRE JUST AS A QUESTION. HOW MUCH MORE OF THIS BECAUSE I HAVE MR. YOUNG AND MR. PETERS.

AGUIRRE:
WELL its 4:30 AND I HAVE ABOUT ANOTHER TEN MINUTES.

MADAFFER:
HOW ABOUT ANOTHER FIVE MORE MINUTES, OK?

AGUIRRE:
WELL THIS IS INVOLVING MILLIONS OF DOLLARS. THE CITY MANAGER IS NOT REQUIRING THEM TO PROVIDE PROPER BILLING IN MY JUDGMENT AS THE LEGAL ADVISOR AS ELECTED BY THE PEOPLE OF SAN DIEGO. THE ONLY CITYWIDE CITY OFFICIAL SITTING HERE TODAY ELECTED BY THE MAJORITY OF VOTERS OF THE CITY OF SAN DIEGO TO DO THIS SPECIFIC JOB.

MADAFFER:
MR. AGUIRRE JUST AS A RULING FROM THE CHAIR THEN LET ME JUST MAKES THIS STATEMENT. WE ARE HERE TO GET A STATUS REPORT FROM THE KPMG FIRM. I AM GOING TO SAY WE HAVE HAD ENOUGH OF THIS AND I AM GOING TO CALL ON MR. YOUNG.

AGUIRRE:
IM SORRY. I AM NOT DONE WITH MY QUESTIONING,

MADAFFER:
MR. AGUIRRE. MR. AGUIRRE I AM GOING TO CALL ON MR. YOUNG AND THEN ON MR. PETERS. AND IF THE PLEASURE OF THE COUNCIL WANTS TO HAVE MORE OF YOUR QUESTIONS TO BE ASKED, SO BE IT.

AGUIRRE:
THIS IS IMPROPER, YOU JUST SAID FIVE MINUTES AGO OR JUST ONE SECOND AGO THAT I HAD FIVE MORE MINUTES. NOW YOU'VE BACKED TRACKED ON EVEN THAT.

MADAFFER:
YOU ARE GETTING THROUGH A PROCESS THAT I FIND IS EXTREMELY INAPPROPRIATE.

AGUIRRE:
RIGHT. IT IS INAPPROPRIATE BECAUSE THERE IS AN EFFORT TO TRY AND NOT HAVE THE DETAIL THAT IS REQUIRED...

MADAFFER:
MR. AGUIRRE IT'S TO GET THE CITY'S AUDIT COMPLETED. MR. AGUIRRE, MR. AGUIRRE, IF WE AT ANY TIME TERMINATE THE KROLL COMPANY OR KPMG I GUARANTEE YOU EIGHTEEN MORE MONTHS OF ANARCHY IN THE CITY, I GUARANTEE YOU ANOTHER TEN MILLION DOLLARS OF MONEY DOWN THE RAT HOLE AND I'M NOT GOING TO SIT HERE ANYMORE AND SPEND IT. ..

AGUIRRE:
WELL YOU ARE INCORRECT.

MADAFFER:
WELL MR. AGUIRRE YOUR DECLARATIONS ARE NOT GOING TO BE SATISFACTORY TO THE SECURITIES EXCHANGE COMMISSION, OR THE U.S ATTORNEY, OR ANYBODY ELSE. THE REASON THESE INDEPENDENT PEOPLE WHO ARE DOING THE WORK THAT IS WHAT WE NEED.

AGUIRRE:
THE PEOPLE OF SAN DIEGO NEED TO HAVE A RIGHT TO KNOW AND YOU ARE OBSTRUCTING MY EXAMINATION.

MADAFFER:
MR. AGUIRRE YOU ARE NOT GOING TO EXAMINE ANYMORE.

AGUIRRE:
OK, FINE. THEN YOU CAN (MUTE) THE CITY ATTORNEY THEN BECAUSE THIS IS IMPROPER ON YOUR PART.

MADAFFER:
VERY WELL MR. AGUIRRE. MR. YOUNG.

YOUNG:
MOST OF MY QUESTIONS HAVE BEEN ANSWERED ALREADY BY THE PREVIOUS QUESTIONS. THANK YOU.

MADAFFER:
THANK YOU. MR. PETERS.

PETERS:
JUST TO CIRCLE AROUND TO THE 8 DOCUMENTS. I REAL DON'T WANT TO BE POLLYANNA ABOUT THIS, I WANT TO IDENTIFY WHETHER WE HAVE AN OBSTACLE OR NOT. LET ME RESTATE WHAT I THINK HE SAID AND CORRECT ME IF IM WRONG. WE HAVE A NUMBER OF A WHOLE SUITE OF DOCUMENTS THAT WEREN'T

BEING DISCLOSED A WHILE BACK. WE AT THE COUNCIL MADE A NUMBER OF EFFORTS TO TRY TO SHAKE THEM LOOSE, IN FACT IT WAS THE FEDERAL GOVERNMENT THAT SHOOK THEM LOOSE THROUGH A COURT ACTION. AND THEN THE RETIREMENT BOARD AFTER THAT AGREED TO SHARE SOME OF THOSE DOCUMENTS WITH THE AUDIT COMMITTEE SO THEY COULD COMPLETE THEIR WORK.

DAHLBERG:
CORRECT.

PETERS;
AND AS I UNDERSTAND IT NOW, YOU WILL HAVE RECEIVED ALL BUT EIGHT OF THOSE DOCUMENTS, AS YOU UNDERSTAND IT SHORTLY HOPEFULLY. AND DURING THE NEXT FEW WEEKS YOU'LL REVIEW THOSE AND SEE WHETHER THOSE EIGHT DOCUMENTS ARE NECESSARY TO THE COMPLETION OF THE AUDIT COMMITTEES REPORT WHICH WILL BE FOLLOWED BY THE AUDIT, IS THAT CORRECT

ROMANO:
JUST ONE CORRECTION. WE HAVE RECEIVED ALL BUT 400 ALREADY. 400 PLUS MINUS 8 WE WILL RECEIVE SHORTLY. AND THE EIGHT WE HAVE BEEN TOLD WE ARE NOT RECEIVING.

PETERS:
OKAY AND SO YOU HAD MENTIONED THAT THE EIGHT SEEM TO HAVE BEEN CREATED, JUDGING BY THE PRIVILEGE LOG, THE DESCRIPTION THAT YOU DO HAVE OF THEM, AFTER THE MB2 EVENTS AND SO FORTH. AND YOU JUST EXPLAINED WHY THAT MIGHT ALLEVIATE YOUR CONCERN THAT YOU NEED TO SEE THEM.

DAHLBERG:
WELL THEY LOOK LIKE THEY DON'T DIRECTLY WRITE THE FACTS THAT OCCURRED AT THE TIME THEY MAY BE STATEMENTS OR POSITIONS ON THINGS LOOKING BACK IN TIME. ONE APPEARS TO BE AN OPINION LETTER. SO THEY MAY HAVE ASKED OPINION OF

SELTZER KAPLAN ABOUT SOMETHING THAT DID OCCUR IN THE PAST.

PETERS:
AS LONG AS YOU HAVE ACCESS TO ALL OF THE FACTS YOU MAY ACTUALLY COME UP WITH A DIFFERENT OPINION THAN SELTZER KAPLAN WOULD HAVE IN THAT LETTER.

DAHLBERG:
WE WOULD COME UP WITH OUR OWN OPINION.

PETERS;
I THINK IT IS IMPLICIT IN ALL THE DISCUSSIONS IS THAT YOU KNOW LOOK THROUGH THE DOCUMENTS AS QUICKLY AS YOU CAN. I AGREE THAT THE QUICKEST WAY TO GET THESE DOCUMENTS IS THROUGH COOPERATION AND WE'VE HAD FITS AND STARTS FROM THE AUDIT COMMITTEE BUT WE WILL GIVE IT A SHOT SO JUST LET US KNOW IF THERE IS ANYTHING ELSE WE NEED TO DO TO PROVIDE YOU DOCUMENTATION.

DAHLBERG:
I'D SAY WE PLAN TO BE BACK HERE VERY SHORTLY ABOUT OUR WORKING RELATIONSHIP WE HOPE TO DEVELOP WITH NAVIGANT AND HOW THEY WOULD HOPEFULLY WORK WITH US TO EXPEDITE THE PROCESS.

PETERS:
AND FINALLY, I GUESS MR. MAINSCHIEN HAS OFTEN ASKED THIS QUESTION. IS THERE ANYTHING ELSE THAT WE COULD DO AS THE CITY COUNCIL THAT WILL ASSIST YOU IN MOVING THIS ALONG? ANYTHING YOU COULD THINK OF?

DAHLBERG:
WELL AGAIN, I THINK ONE OF OUR MAIN POINTS IS CERS IS A CRITICAL ELEMENT HERE AND IF WE TRY TO EXPLAIN TO PEOPLE AT CERS AND NAVIGANT AS WELL. THE SEC LOOKS AT THE CITY AND CERS TOGETHER; THEY LOOK AT THE INVESTIGATION AS A

COMPLETE ONE TOGETHER AND THEY LOOK AT REMEDIATION AS COMPLETE TOGETHER. AND SO THE BETTER RELATIONSHIP HAS WITH THE BOARD AND THE MORE COOPERATIVE WE CAN BE WITH COMPLETING THE INVESTIGATION DOING WHATEVER THE REMEDIAL ACTION IS THE FASTER THIS IS GOING TO BE DONE.

PETERS:
OK, WELL JUST WITH RESPECT TO CERS, JUST TO DOUBLE BACK, WE UNDERSTAND THAT THERE IS 400 DOCUMENTS YOU ARE ABOUT TO SEE, MINUS EIGHT AND YOU ARE GOING TO TELL US WHAT TO DO IF YOU NEED THEM WITH RESPECT TO CERS AND WITH RESPECTS TO ANYTHING ELSE YOU ARE GETTING SOME ACTUARY ADVISE THAT IS DIFFERENT WHICH IS ONE OF THE THINGS WE ARE LOOKING FOR.

DAHLBERG:
CORRECT.

PETERS:
IS THERE ANYTHING THAT WE NEED TO DO AS A COUNCIL OTHER THAN PRAY SAY THE HAIL MARIES OR WHATEVER WE COULD DO TO GET TO MOVE ALONG.

DAHLBERG:
WELL I THINK THAT ANYTHING YOU CAN DO TO REACH OUT TO BOARD MEMBERS THERE WHICH IS FITTING AND PROPER FOR YOU TO DO TO KEEP THE RELATIONSHIP OPEN. THE MOST YOU CAN DO THAT, THE BETTER WE ARE.

PETERS:
THERE IS NOTHING FIRST TO ASK OF THEM AT THIS MOMENT?

DAHLBERG:
SPECIFICALLY NO. WELL ACTUALLY YES. MAKE SURE THAT NAVIGANT'S INVESTIGATION DOES WORK WITH US AND COOPERATE WITH US BECAUSE THAT IS NOT CLEAR RIGHT NOW HOW ALL OF THAT IS GOING TO WORK OUT.

PETERS:
WELL WE DON'T HAVE THIS AGENDANIZED IN ANY WAY. I DON'T THINK, MAYBE WE CAN ASK THE CITY MANAGER TO DRAFT A LETTER IN OUR BEHALF SAYING THAT WE SUPPORT THAT, MRS. HEUMANN IS NODDING THAT IT IS SOMETHING WE CAN DO. I THINK WE SHOULD EXPRESS ON BEHALF OF THE COUNCIL THAT IS OUR INTENT AND OF COURSE EACH OF US IS FREE AND ENCOURAGED TO DO THAT AS WELL.

DAHLBERG:
ON AN INDIVIDUAL BASIS AS WELL AS A GROUP BASIS THAT WOULD BE HELPFUL.

PETERS;
OK. THANK YOU AGAIN FOR YOUR REPORT.

MADAFFER:
MRS. FRYE AND THEN MRS. ATKINS:

FRYE:
HOW LONG DO YOU... I GUESS WITH THE ENTRANCE OF NAVIGANT INTO THE PROCESS NOW, MY CONCERN IS THAT NAVIGANT CAN SPEND A LONG TIME NOW BEFORE INFORMATION YOU MIGHT NEED IN ORDER TO COMPLETE YOUR INVESTIGATION CAN BE GIVEN TO KPMG. THAT THE ENTRANCE OF THEM INTO THE PROCESS MIGHT ACTUALLY EXTEND THE PROCESS LONGER THEN WHAT WE HAD ORIGINALLY BELIEVED TO BE AND THEN ADDITIONALLY THE PROCESS CAN BE EXTENDED BECAUSE THE DOCUMENTS THAT MAY OR MAY NOT BE PROVIDED, AND I DON'T KNOW ABOUT YOU BUT IT SEEMS TO ME THAT IT IS VERY DIFFICULT TO KNOW EXACTLY WHAT IS IN THE DOCUMENT WITHOUT READING IT. NO MATTER HOW IT IS WRITTEN IN THE ENTRY LOG, YOU CAN WRITE ANYTHING YOU WANT.

ROMANO:
CANDIDLY, IN FACT THAT EIGHT DOCUMENTS RECEIVE SUCH ATTENTION OBVIOUSLY CAUSES ME TO BE INTERESTED.

FRYE:
YES BECAUSE WHEN YOU CAN'T HAVE YOU WANT TO LOOK AT IT BECAUSE THERE IS PROBABLY A REASON WHY THEY DON'T WANT TO GIVE IT TO YOU.

ROMANO:
YES, I WOULD THINK SO.

FRYE:
IT MIGHT BE RELEVANT. THAT WOULD BE MY GUESS. SO I GUESS THAT WOULD BE MY CONCERN TO NOW THAT NAVIGANT IS IN THERE THAT IS GOING TO ADD TO THE AMOUNT OF TIME WE ARE GOING TO NEED TO GET OUR AUDITED FINANCIAL REPORT OUT. IF THEY ARE NOT COOPERATIVE AND DON'T GIVE YOU INFORMATION THEN THAT MIGHT SLOW DOWN YOUR WORK.

ROMANO:
IT'S CONCEIVABLE. IT IS FAIRLY COMPLICATED TO, IF THEY HAVE AN OPEN TRANSPARENT PROCESS AS WE'VE HAD OR TRYING TO HAVE. IF THEY HAVE ONE WITH AN EYE TOWARDS REVELING AND DISCLOSING WHAT THEY FIND AND HOW THEY ARE PROCEEDING I THINK WE CAN ALL LOOK AT THE SAME FACTS EVEN IF WE DON'T AGREE ON EVERYTHING BUT IT WON'T IMPEDE OUR WORK. IF THEY APPROACH IT DIFFERENTLY IT COULD BE A COMPLICATING AND DELAYING FACTOR.

DAHLBERG:
WHAT IS CRITICAL IN AN INVESTIGATION IS NOT NECESSARILY THAT EVERYONE REACHES THE SAME CONCLUSION BUT WHAT IS CRITICAL IS THAT THE EVIDENCE IS AIRED OUT. KPMG CAN POTENTIALLY NOT AGREE WITH OUR FINDINGS ON SOMETHING BUT THAT IS ULTIMATELY NOT WHAT THEY ARE LOOKING FOR.

FRYE:
RIGHT. BUT IT WOULD ULTIMATELY HELP IF EVERYBODY CAN LOOK AT THE SAME DOCUMENTS TO REACH THAT CONCLUSION AS

OPPOSED TO NAVIGANT SAYING FOR EXAMPLE BEING ABLE TO LOOK AT CERTAIN DOCUMENTS THAT YOU COULD NOT LOOK AT.

ROMANO:
WELL THAT IS CORRECT. WE CAN LOOK AT THE SAME DOCUMENTS AND NOT AGREE.

FRYE:
BUT IF YOU CAN'T LOOK AT ALL THEN YOU JUST DON'T KNOW IF YOU AGREE OR NOT BECAUSE THERE COULD BE IMPORTANT INFORMATION. THE OTHER THING IS YOU HAD MENTIONED AND I MEANT TO ASK YOU EARLIER BUT THAT PRICE WATER HOUSE COOPER. WHO EXACTLY ARE THEY AND WHAT EXACTLY ARE THEY DOING?

ROMANO:
THEY ARE PROVIDING ACTUARIAL AND THEY ARE GOING TO PROVIDE US ACTUARIAL ADVISE SO THAT WE COULD UNDERSTAND AND EVALUATE THE ASSUMPTIONS MADE BY THE CERS BOARD. WE NEED AN ACTUARY WHO WAS ABLE TO HELP US EVALUATE THE DECISIONS THAT WHERE MADE BY THE CERS BOARD AND ADOPTING CERTAIN ASSUMPTIONS THAT UNDERLAY THE ACTUARIAL CALCULATIONS DONE BY PRIOR ACTUARIES

DAHLBERG:
WE PUT OUT A LETTER A WHILE BACK ABOUT CERS ACTUARY AND THE CONCERNS WE HAD ABOUT SOME OF THE THINGS THAT WE HAD SEEN AND WE ACTUALLY LISTED OF DOCUMENTS WHICH CAUSED US TO HAVE A LEVEL OF CONCERN ABOUT PERHAPS THE INTERACTION HE HAD WITH THE BOARD. THAT RELATED TO ASSUMPTION IN PARTICULAR ALTHOUGH A FEW OTHER THINGS AS WELL SO WE HAD ALWAYS HAD IN OUR MINDSET THAT WE WERE GOING TO TRY AND FIND SOME PROFESSIONAL ACTUARY THAT WE COULD LOOK TO, TO GIVE US GUIDANCE ABOUT THE ADEQUACY ABOUT THE CERS ACTUARIAL WORK OR WHETHER OR NOT WE CAN GAIN COMFORT IN THE ASSUMPTIONS THAT WHERE MADE BY THE BOARD AND MANY TIMES PUT FORTH BY THE ACTUARY.

FRYE:
AND SO THE WORK THAT WOULD BE DONE BY MERCER WHO WAS ONE OF THE FIRM THAT HAD BEEN HIRED TO DO EXACTLY WHAT YOU ARE TALKING ABOUT SO THAT WOULD NOT BE SUFFICIENT EITHER FOR YOU AS FAR AS YOUR WORK GOES SO THEN YOU NEED ANOTHER . DOESN'T CERS HAVE SOMEONE THAT AUDITS THEM JUST LIKE THE CITY HAS SOMEONE INDEPENDENT THAT AUDITS THE CITY?

DAHLBERG:
THEIR 2003 AUDITOR WAS CAPPER, RITCHIE, AND LARSON WHICH WAS THE ONE THAT THE CITY HAD WHICH THEY DECIDED THEY COULDN'T STAY WITH.

FRYE:
AND WASN'T THERE ANOTHER INVESTIGATION DONE BY ANOTHER OUTSIDE FIRM BESIDES CAPPER, RITCHIE, AND LARSON OR DID SOMEONE ELSE LOOK AT THESE DOCUMENTS OR AT LEAST LOOK AT THE-

EWELL:
IF I CAN INTERJECT HERE. WE HIRED TARS PARENT A SYSTEM. TARS PARENT RECENTLY DECLINED TO CONTINUE OFFERING ANY OF THEIR SUPPORT TO THIS EFFORT. THEY'VE WITHDRAWN AND THEY NEEDED SOMEONE ELSE TO LOOK AT THE ASSUMPTIONS THAT THEY BELIEVED WHERE MORE SUITED TO MEET THE NEEDS OF BOTH THE ACTUARY AND THE CITY.

FRYE:
SAY THAT AGAIN PLEASE.

EWELL:
WE HAD TARS PARENT WORKING WITH THE CITY TO DO, IF YOU MIGHT RECALL THEY WHERE HERE BEFORE YOU ONCE BEFORE IN SPEAKING TO SOME OF THE ACTUARIAL ASSUMPTIONS THAT THEY WERE WORKING WITH THE CITY ON. THEY HAVE RECENTLY

WITHDRAWN THEIR ENGAGEMENT AND DECIDED THAT THEY WERE NO LONGER INTERESTED IN WORKING ON THIS PROJECT AND SO THE AUDIT COMMITTEE ASKED IF WE CAN THEN RETAIN PRICE WATER HOUSE COOPER.

FRYE:
SO THE ACTUARY THAT WE HAD WITHDREW AND WHEN DID THAT HAPPEN?

EWELL:
THIS HAPPENED THIS MONTH, THIS DAY.

FRYE:
TODAY IT HAPPENS?

DAHLBERG:
WELL ACTUALLY, TARS PARENT WAS DOING A NUMBER OF THINGS FOR THE CITY, WE HAD ASKED THEM IF THEY COULD HELP US IN LOOKING ASSESSMENTS AT THE APPRAISALS AND THEY HAD TOLD US PROBABLY IN THE CITY ABOUT A MONTH AGO, SIX WEEKS AGO THAT THEY WEREN'T COMFORTABLE IN THAT ROLE NOW TARS PARENT WAS DOING FOR THE CITY, IF THAT HAS CHANGED, I DON'T KNOW BUT AS IT RELATES JUST WORKING WITH THE AUDIT COMMITTEE AND FOCUSING ON THE ASSUMPTIONS THAT WHERE USED IN THE 03 TIME PERIOD FOR CERS, THAT WAS SOMETHING THEY HAD STARTED TO DO AND THEN DECIDED I GUESS FOR INTERNAL REASONS THAT THEY DID NOT REALLY WANT TO DO THAT ENGAGEMENT.

FRYE:
AN SO YOU JUST FOUND OUT TODAY?

EWELL:
IT SOUNDS LIKE A PORTION, WELL THEY HAVE NOW WITHDRAWN A HUNDRED PERCENT OF THEIR PARTICIPATION IN THIS EFFORT.

FRYE:
AND WHEN DID THAT HAPPEN?

EWELL:
MRS. FRYE I AM EXPLAINING AND LOOKING AT STAFF. APPARENTLY WE WHERE NOTIFIED TODAY OF THE ONE HUNDRED PERCENT WITHDRAW IS THAT CORRECT?

IRVINE:
THAT IS CORRECT. WHEN WE CAME FORWARD WITH OUR PENSION, THIS IS LISA IRVINE, DEPUTY CITY MANAGER. WHEN WE CAME FORWARD LAST WEEK ON OUR PENSION SOLUTION WE HADE LESLIE (MUTE) FROM TARA PARENT THERE WHO PROVIDED THE ACTUARY ANALYSIS AS A RESULT OF THAT PENSION SOLUTION THE COUNSEL DIRECTED STAFF TO GO BACK AND WORK WITH THE ACTUARY TO DEVELOP A MORE LONG TERM ANALYSIS THAT WENT OUT MORE THAN FIFTEEN YEARS. WE ASKED THEM TO CONTINUE AND DO THAT WORK AND THEY SAID THAT WOULD BE VERY DIFFICULT TO DO, AND THEY ASKED THAT THEY NO LONGER WORK ON THIS PROJECT. AND THAT WAS AS OF TODAY, THIS MORNING.

FRYE:
WHEN THEY WERE ASKED TO EXTENDED FOR THE FIFTEEN YEARS THEY LEFT?

EWELL:
I THINK QUITE FRANKLY THAT THERE IS MORE TO THIS THAN JUST THE FIFTEEN YEARS BUT THEY ARE BEING ASKED TO SECOND GUESS OR QUESTION OTHER PROFESSIONAL WORK AND THEY HAD A LEVEL OF DISCOMFORT IN PROCEEDING.

FRYE:
AND SO THE LEVEL OF DISCOMFORT WITH PROCEEDING WITH REVIEWING ANOTHER'S PROFESSIONAL WORK THAT LEVEL OF DISCOMFORT DOES NOT EXIST WITH APPARENTLY PRICE, WATER, HOUSE, COOPER, IS THAT CORRECT?

DAHLBERG:
WE HAVE HAD SOME LONG DISCUSSIONS WITH THE PROFESSIONAL ACTUARY THAT WE ARE GOING TO USE AS WELL AS THE GENERAL COUNSEL FOR PRICE WATER HOUSE BECAUSE WE DID NOT WANT TO STUD OUR FOOT IN THE SAME THING.

FRYE:
I'M GLAD I ASKED THE QUESTION AND LEARNED ABOUT THIS BECAUSE OTHERWISE I WOULDN'T HAVE KNOWN AND THE OTHER THING IS WE WOULD LIKE TO HAVE SOMEONE WHO WILL ACTUALLY STICK AROUND AND DO THE WORK.

DAHLBERG:
IN TERMS OF OUR SITUATION THERE IS SENSITIVITY ABOUT DOING WORK AGAINST OTHER PROFESSIONALS POTENTIALLY AND THAT IS WHETHER IT IS ACCOUNTING, LEGAL, OR ACTUARIAL. I'M NOT SURE THAT WHEN THEY STARTED THE WORK THAT THEY WERE DOING THEY SAW IT GOING DOWN THAT ROAD, WE DIRECTED THEM DOWN THAT ROAD, I'M NOT TALKING ABOUT FOR US, I'M TALKING ABOUT THE CITY AS A WHOLE. THEY WERE DOING OTHER THINGS FOR THE CITY. A LOT OF PROFESSIONALS HAVE CONCERNS OF ABOUT IF THEY BEGIN TO DO WORK THAT THEY THINK COULD BE USED AGAINST OTHER PROFESSIONALS.

FRYE:
SO WHAT OTHER WORK WERE THEY DOING FOR THE CITY?

IRVINE:
THEY ACTUALLY HELPED US DEVELOP THE PENSION SOLUTION ANALYSIS. SO THEY DID THE ACTUARIAL ANALYSIS AND WHAT IFS' TO LOOK OUT THE TEN YEARS. WE ALSO ASKED THEM TO LOOK AT THE FISCAL YEAR 2004 EVALUATION THAT WAS DEVELOPED FROM SCARS AND SEE IF THEY COULD MIRROR THAT WHICH THEY DID SUCCESSFULLY.

FRYE:
SO WAS IT THE FIVE YEAR CHART?

IRVINE:
THE PENSION SOLUTIONS WHICH WHERE 8-9 YEAR CHART, SO THEY DID THAT AND WENT OUT 2014 AND THEY ALSO DID SOME OTHER ACTUARY ANALYSIS ON BEHALF OF THE CITY.

FRYE:
OK THEN DUE TO SOME SENSITIVITY THAT THEY FELT MAYBE HAVING TO ANALYZE OTHER PROFESSIONAL'S WORK THEY DECIDED TO STOP DOING IT. IS THAT RIGHT?

EWELL:
I'M GIVING YOU AN OPINION, MY OPINION BASED ON THE CONVERSATION THAT I HELD BRIEFLY WITH THEM.

FRYE:
OK WELL SOMEONE CAN FIGURE THOSE OUT. ANYWAYS IT WOULD BE NICE TO HAVE A REPORT ABOUT THAT SO THAT WE KNOW. SO THAT THEN I CAN ASK YOU SO THAT IT APPEARS THAT PRICE WATER HOUSE COOPER DOES NOT HAVE THIS SENSITIVITY ISSUE.

DAHLBERG:
WE DIDN'T GET FAR DOWN THE ROAD. WE HAVE GOING OUR LITTLE PIECE OF THIS THING.

FRYE:
I HAVE TWO LAST QUESTIONS. HOW LONG WAS TRASPARENT WITH THE CITY OR WORKING FOR THE CITY WAS IT A YEAR OR YEAR AND A HALF BEFORE THEY GOT SENSITIVE?

IRVINE:
THEY ACTUALLY WORKED ON OTHER PROJECTS, IT WAS ON THE ACTUARY ANALYSIS WITH RESPECT TO THE PENSION SOLUTIONS THAT WE RETAINED THEM, I THINK THEY WORKED FOR US ABOUT SIX MONTHS NOW.

FRYE:
OK SO SIX MONTHS THEN. THAT IS FINE I WOULD LIKE SOME MORE INFORMATION ABOUT THAT AND I ACTUALLY DON'T THINK WITH ALL DUE RESPECT THAT IT IS UNREASONABLE TO HAVE THOUGH ROUGH BILLING RECORD, OF COURSE I DON'T REALLY SEE A PROBLEM WITH THAT. I THINK THAT IS SORT OF REASONABLE, I THINK IT IS STANDARD THAT THE CITY SORT OF HAVE TO LIVE UP TO. JUST FOR THE RECORD I DON'T SEE A PROBLEM WITH ME MAKING SURE THAT THERE IS SOME CONSISTENCY ON HOW THIS CITY DOES BILLING RECORD OR HOW TO SUBMIT BILLING RECORDS.

EWELL:
I KNOW THAT THIS IS AN ISSUE FOR MR. AGUIRRE WHO IS JUST DYING TO GET CERTAIN INFORMATION WHICH TENDS TO FIND ITS WAY TO THE PUBLIC PREMATURELY.

AGUIRRE:
YOU BET IT DOES.

EWELL:
WELL ONLY PORTIONS OF IT NOT THE ENTIRE DOCUMENTS JUST THOSE PORTIONS THAT YOU THINK ARE GOING TO ASSIST YOUR EFFORTS BUT COULD YOU EXPLAIN TO THE COUNCIL WHY IT IS BASED ON YOUR PROFESSION AND YOUR INVESTIGATION YOU HAD SOME RELUCTANCE IN RELEASING THAT INFORMATION.

DAHLBERG:
YES, CAN WE HAVE VINSON AND ELKINS DETAIL POPPED UP ON THE SCREEN AGAIN? THERE IS A COUPLE OF DIFFERENT POINTS. ONE IS THAT VINSON AND ELKIN IS A LAW FIRM THAT IS USED TO DOING QUARTER OF AN HOUR, TENTHS OF AN HOUR, WE ARE BASICALLY ACCOUNTING, I MEAN I AM AN ACCOUNTANT. WE DON'T EVEN HAVE A BILLING SYSTEM THAT HAS THIS. ATTORNEYS BILL THAT WAY ACCOUNTANTS TEND TO BILL MORE ON EITHER TASK LIKE SOME MANY HOURS OF A DAY OR EVEN GENERALLY NUMBERS TYPES OF TASKS AND HOW MANY HOURS YOU HAVE. WE

DON'T REALLY HAVE THE BILLING RECORDS TO SET THIS UP. IT WOULD BE A TITANIC EXPENSE TO DO IT BUT THAT IS NOT WE DO IT. THE MAIN REASON WE DON'T TO IT. ITS BECAUSE OF THE TASK DESCRIPTION RIGHT THERE OUT IN PUBLIC. SEE THE ANALYSIS UP THERE ON THE FIRST DESCRIPTION WHERE IT SAYS PERFORM DUE DILIGENCE REVIEW FOR UBERRUAGA'S E-MAILS? I HAVE DONE INVESTIGATIONS BEFORE AND WE DID NOT SHOW INVESTIGATION IN THE BILLS WHO WE ARE DOING THE INVESTIGATIVE WORK ON BECAUSE UNFORTUNATELY SOMETIMES THERE IS A PRESUMED LEVEL OF GUILT IF YOU JUST LOOK AT SOME BODY'S STUFF. THAT LEVEL OF OTHER PEOPLE ARE GUILTY OR INNOCENT OF ANYTHING COMES OUT IN THE FINAL REPORTS THAT PEOPLE DO. BUT IN FACT, YOU HAVE TO GO THROUGH AND LOOK AT A LOT OF INDIVIDUALS RECORDS TO FIGURE OUT WHAT THE ISSUES ARE. SOMETIMES YOU ARE LOOKING AT SOME INDIVIDUALS RECORDS NOT BECAUSE THEY ARE INDIVIDUALLY SUSPECTED, BUT BECAUSE YOU ARE GETTING INFORMATION THAT EXISTED IN THEIR EMAILS OR WHATEVER ABOUT MG SOMEBODY ELSE OR SOMETHING ELSE. SO IT HAS ALWAYS BEEN MY PRACTICE IT, ERNST YOUNG'S PRACTICE, KPMG'S PRACTICE BEFORE WHEN YOU DID THESE TYPE OF INVESTIGATIONS THAT WE NEVER WENT INTO THE KIND OF DETAIL ABOUT WHOSE EMAIL WE WERE LOOKING AT, WHOSE DOCUMENTS WE WERE LOOKING AT. IN THE NORMAL LEGAL SITUATION, IF YOU WERE BEING REPRESENTED BY MR. LAMONT, HE WASN'T DOING INTERNAL INVESTIGATION, WOULD SAY, I SPOKE WITH SO AND SON ON THE PHONE FOR A QUARTER OF AN HOUR OR I WORK ON THIS MEMO OR TOOK THIS GENTLEMAN'S DECLARATION. BUT THAT IS NOT WHAT IS DONE I HAVE NEVER DONE IT IN ALL MY YEARS OF PUBLIC ACCOUNTING ON THESE TYPES OF INVESTIGATES BECAUSE OF THE SENSITIVE. HEAR NOW IN THE PUBLIC FORUM, WERE LOOKING AT MIKE UBERRUAGA WHETHER HE DID ANYTHING OR NOT. THAT IS WHY WE DON'T PUT THAT KIND OF INFORMATION IN THE BILLING RECORDS.

AGUIRRE:
MR. MADAFFER, IF YOU ARE GOING TO DO THAT AND NOT ALLOW ME TO QUESTION HIM, IT DOES NOT SAY WHETHER MR. DAHLBERG

IS CORRECT OR INCORRECT. THAT IS ONE SIDE OF THE STORY WITHOUT ALLOWING ME TO EXAMINE HIM ON WHAT I CONSIDER TO BE A RATHER INCORRECT STATEMENT ON HIS PAST.

MADAFFER:
MR. AGUIRRE, I APPRECIATE IT. IM GOING TO CALL ON MS. ATKINS. I GUESS THE QUESTION AND PROBLEM I HAVE-

AGUIRRE:
YOU ARE JUST DENYING THE PEOPLE OF SAN DIEGO AN OPPORTUNITY TO GET IT THE TRUTH AND THEY CAN SEE THAT AND THEY KNOW WHAT YOU ARE DOING. THOSE ARE YOUR WORDS YOU JUST SAID TO EXAMINE, THIS IS NOT A COURT OF LAW, YOU ARE NOT SITTING HERE AS AN ATTORNEY IN AN INQUISITION. IF YOU HAVE A QUESTION JUST SIMPLY ASK IT LIKE A NORMAL PERSON. TELL ME ABOUT THE DETAIL BILLING.

AGUIRRE:
NO LISTEN. I HAVE A RIGHT TO CARRY OUT MY RESPONSABILITIES PROFESSIONALLY. IT'S GETTING AT THE TRUTH. THAT IS NOT FOR YOU TO CENSOR, YOU GIVE ME A CERTAIN AMOUNT OF TIME, LET ME, AND LET THE VOTERS, AND THE PEOPLE DECIDE TO GET IT THE TRUTH. WHAT MR. DAHLBERG SAID, I BELIEVE IS COMPLETELY INCONSISTENT WITH WHAT THE CITY MANAGER SAID. THE CITY MANAGER SAID JUST A MOMENT AGO AND MR. DAHLBERG CONFIRMED IT THAT ALL THIS INFORMATION WAS READILY AVAILABLE NOW MR. DAHLBERG HAS MADE THE OPPOSITE EXPRESSION. NOW HE SAYS IT IS NOT AVAILABLE AND NOT ONLY IS IT NOT AVAILABLE IT HAS NEVER BEEN AVAILABLE AND THAT IS HOW WE GET TO THE TRUTH. WHEN PEOPLE ARE PAID HUNDREDS OR DOLLARS AN HOUR AND THEY ARE VERY PROFESSIONAL WHICH BOTH OF THESE GENTLEMEN ARE, YOU HAVE TO EXAMINE THEM IN A WAY THAT GETS PAST ALL OF THE EFFORTS, PERHAPS TO NOT PUT THINGS IN A SHARP AS CONTRAST AS THE PUBLIC IS ENTITLED TO KNOW. THE IDEA THAT SOMEBODY HAD A CONVERSATION WITH UBERRUAGA AND SOMEHOW THAT IS

SOME STATE SECRET, THEREFORE WOULD JUSTIFY NOT BILLING, COME ON, THAT IS A VERY WEAK EXCUSE.

MADAFFER:
MRS. ATKINS WOULD YOU LIKE MR. AGUIRRE TO GO RIGHT NOW? I'M HAPPY TO GIVE HIM FIVE MINUTES. DO YOU HAVE SOME QUESTIONS?

ATKINS:
YOU ARE CHAIRING THE MEETING AND I APPRECIATE THAT VERY MUCH. IM SORRY THAT I ASKED YOU TO DO THIS, BUT DO WHAT YOU FEEL YOU NEED TO DO NEXT.

MADAFFER:
I FEEL THAT YOU WHERE NEXT TO SPEAK AND THAT IS WHY, WELL OK MR. AGUIRRE GO AHEAD FOR ANOTHER FIVE MINUTES.

AGUIRRE:
THANK YOU. GENTLEMEN YOU SAID THAT THE REASON YOU-

ROMANO:
WHO IS THAT QUESTION DIRECTED AT?

AGUIRRE:
I'LL DIRECT IT AT EITHER ONE OF YOU IT IS A TOSS UP. YOU BOTH SAID THAT YOU WERE REVIEWING THE WASTE WATER IN ORDER TO SAVE MONEY. DO YOU REMEMBER SAYING THAT?

ROMANO:
NO.

AGUIRRE:
YOU DIDN'T SAY THAT?

ROMANO:
NO.

EXHIBIT 60

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

MICHAEL J. AGUIRRE

CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 533-5800
FAX (619) 533-5856

October 24, 2005

Delivered via hand delivery

Re Kroll Invoices

Dear Honorable Deputy Mayor Atkins and City Council:

Item 203 on today's docket includes actions related to a fifth amendment to the agreement with Kroll, Inc. for services audit of the City's Comprehensive Annual Financial Audit Report, a fourth amendment to the agreement with Willkie Farr & Gallagher to provide legal services to Kroll and the Audit Committee, and to accept the KPMG/Audit Committee status report.

The City Council first hired Kroll on February 14, 2005, with a $250,000 retainer. The retention cost has mushroomed to $3,525,000 to date. Item 203 includes a request for an additional $1,750,000, bringing the total appropriation for Kroll to $5,275,000.

On May 10, 2005, the City first authorized $500,000 for the law firm Willkie Farr & Gallagher to provide independent legal counsel to Kroll and the Audit Committee. Three subsequent amendments increased the retainer to $2,650,000. To pay for services through November, Item 203 requests an additional $1,250,000, bringing the total retainer for the months of May through June 2005 to $3,900,000.

The City Attorney's Office has repeatedly requested all invoices for Kroll and Willkie Farr & Gallagher. Those requests have been met with resistance. The public's funds and confidence in government are seriously compromised by the practice of bypassing the City Attorney's Office to review these expenses.

The invoices submitted by Kroll for their work are wholly inadequate and contrary to best, let alone acceptable, billing practices. The invoices lack specificity as to work being performed, and accountability for the hours spent on each task. Notwithstanding this breach of fiduciary duty to the City, the City Council continues to reward them with additional appropriations.

I have attached a copy of the following:

1. Billing from Kroll, lacking adequate detail;
2. Billing from Vinson & Elkins detailing the work performed;
3. Billing from Willkie Farr & Gallagher that lacked detail; and
4. Billing from Willkie Farr & Gallagher showing detail.

Because Kroll refuses to submit billing that substantiates the work they are performing for the City, I strongly object to appropriating additional funding to pay for their services. Because Willkie Farr & Gallagher perform services at the request of Kroll, I regrettably must object to additional appropriations for them as well. I have serious questions about whether these two firms performed in a way that would justify additional appropriations. Moreover, their billing to date begs the question as to whether they have satisfied their legal responsibility to the City of San Diego of acting with due care and diligence. For these reasons, I can not endorse this request for funds, and advise the City of San Diego to remove it from the docket.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By
Michael J. Aguirre
City Attorney

MJA:ms

ATTACHMENT 1

Case #0005948-0002
Invoice #1310933

Detail of Professional Fees

	Bill Hours	Rate	Bill Amount
Lynn Turner	21	$750.00	$15,750.00
Arthur Levitt	33.85	$900.00	$30,465.00
Troy Dahlberg	33	$450.00	$14,850.00
Jennifer Amini	86.5	$300.00	$25,950.00
Jeffrey Klein	105	$300.00	$31,500.00
David Callaghan	79	$400.00	$31,600.00
Jenny Dominguez	67.5	$350.00	$23,625.00
Rachel Layboum	110.7	$250.00	$27,675.00
David Cogan	3	$350.00	$1,050.00
Lisa Han	2	$300.00	$600.00
Lisa Jordan	14	$300.00	$4,200.00
Regina Israel	5.5	$85.00	$467.50
Total	561.05		$207,732.50

Detail of Out-of-Pocket Expenses

Air Transportation	$8,912.30
Ground Transportation	$2,256.91
Hotel Charges	$11,763.11
Meals	$2,999.44
Misc	$2,463.19
Electronic Research	$154.00
Total	$28,548.95

ATTACHMENT 2

Client/Matter Number SAN068 36000
Invoice Number 25142627
Billing Attorney Paul S. Maco

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

Date	Initials	Description	Hours
05/14/05	REBA	Assist in compiling exhibits for Issue Coding Reports into notebooks.	6.00
05/14/05	MHIN	Review documents and prepare witness exhibit binders.	7.00
05/14/05	NEVA	Document review.	2.50
05/14/05	RCSA	Draft memorandum regarding disclosure failure.	2.75
05/14/05	RCSA	Draft memorandum regarding disclosure failures.	6.50
05/14/05	NASA	Research and review files regarding Proposition 218 and water rate increase issue.	3.75
05/14/05	VMLA	Assist with the assembly of IC Binders per David Godschalk and Paul Maco.	7.50
05/14/05	KMLA	Finish creating 6 binders of alphabetical listing of all interviews and exhibits per David Godschalk.	7.00
05/15/05	PSM	Work with team on Kroll response, call with Turner.	2.50
05/15/05	DKG	Respond to audit committee requests; conferences with Sean Bukowski.	4.00
05/15/05	SCB	Prepare memo about process of creating issue reports; prepare list of requests from Kroll and whether we have fulfilled those requests.	5.50
05/15/05	MHIN	Prepare exhibits for witness files.	4.00
05/15/05	NEVA	Document review.	1.50
05/16/05	BSL	Respond to David Godschalk questions regarding document production issues.	0.25
05/16/05	PSM	E-mails Turner, City, continue work with group on Kroll requests.	4.50
05/16/05	DKG	Respond to audit committee requests; conferences with Paul Maco.	8.75
05/16/05	SCB	Review documents for responsiveness in Applied Discovery database.	6.00
05/16/05	REBA	Transfer all interview memos to public folder; phone conversation with IT Help Desk in Houston to find out how to search just within public folder.	4.75
05/16/05	MHIN	Prepare exhibits for witness files; prepare issue binders.	8.00

ATTACHMENT 3

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20505598
Client/Matter No. 115662.00001
June 22, 2005

FOR PROFESSIONAL SERVICES RENDERED through May 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: distillation of financial reporting issues into discrete areas based on preliminary review of materials relating to the City's pension fund and finances, including the various reports prepared by the City Attorney and Vinson & Elkins; working with Vinson & Elkins as to preparation of summary memoranda and binders as to each issue area; efforts directed to the board of the San Diego City Employees' Retirement System concerning waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preliminary research of municipal bankruptcy law and cases relating to the rejection under Chapter 9 of employee benefits, including pension obligations, and preparation of a list of issues that the City should consider in deciding whether to seek Chapter 9 protection; projects directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and complete production of relevant documents to those authorities and KPMG, such projects including review of the relevant subpoenas and records of the City's past compliance efforts, discussions with the SEC, U.S. Attorney's Office, and the City's outside counsel concerning the status of the City's production, and preparation of a memorandum to City employees and others concerning document

:tention and production obligations; consideration of issues raised in fourth report of the City Attorney.	$ 226,634.50
Disbursements and Other Charges	6,090.56
Total this Statement	$ 232,725.06

ATTACHMENT 4

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005 as set forth in the attached client statement	$ 25,406.50
Total this Statement	$ 25,406.50

SAN DIEGO AUDIT COMMITTEE
Statement No. 20504613
Client/Matter No. 115662.00001

AUDIT COMMITTEE INVESTIGATION

Date	Timekeeper	Description	Hours	Amount
3/3/05	B R	TCW Jack Nusbaum re: San Diego project; meeting L B.	0.40	$ 324.00
4/5/05	LMM	O/c with M. Young re possible representation of A. Levitt in his investigation of San Diego pension fund underfunding matters.	0.50	405.00
4/5/05	B R	Tcw M. Young; review various e-mails	0.40	324.00
4/6/05	B R	Review various e-mails from L. Turner; tcw Young; ocw Young. Review written material.	2.00	1,620.00
4/8/05	B R	Review documents received from L. Turner.	3.00	2,430.00
4/8/05	LMM	Read article and City Attorney Third Interim Report; begin preparing issues list, timeline, etc.	3.50	2,835.00
4/10/05	B R	Review engagement letter. Read materials.	2.20	1,782.00
4/11/05	T M	Conf B. Romano re: new case/assignment; review reports.	0.70	416.50
4/11/05	MBK	(San Diego) Conf. Romano re: case (.5). Review of Vinson & Elkins report (1.3).	1.80	1,170.00
4/12/05	T M	Review reports and correspondence.	1.50	892.50
4/13/05	MBK	(San Diego) Review of Vinson & Elkins report.	3.00	1,950.00
4/14/05	MBK	(San Diego) Review of KPMG corres.	0.80	520.00
4/15/05	T M	Review docs.	0.50	297.50
4/15/05	B R	Review engagement letter; tcw Young re: indemnity.	0.40	324.00
4/18/05	LMM	Email to M. Young re documents/due diligence and read news story re waiver attorney/client privilege.	0.10	81.00
4/18/05	B R	Redraft engagement letter to include indemnity. Tcw Klotz; review U&E materials.	4.00	3,240.00
4/19/05	MBK	(San Diego) Review of memo re: legal framework for investigation.	0.80	520.00
4/20/05	LMM	Begin reading Luce, Forward report 2/22/05.	0.50	405.00

SAN DIEGO AUDIT COMMITTEE
Statement No. 20504613
Client/Matter No. 115662.00001

Date	Timekeeper	Description	Hours	Amount
4/22/05	MRY	Matters as to recent developments and audit committee investigation.	1.30	1,053.00
4/23/05	MRY	Matters as to audit committee investigation and work needed to satisfy auditors.	0.40	324.00
4/26/05	LMM	Reviewing background materials.	3.50	2,835.00
4/28/05	LMM	Continue reading background materials.	1.50	1,215.00
4/29/05	MRY	Conference with Lynn Turner re upcoming trip to San Diego and issues to be addressed; related e-mail traffic; conference with Benito Romano re same; related activity; conference with KPMG.	0.40	324.00
4/30/05	T M	E-mail BR, review LT e-mail.	0.20	119.00

Timekeeper	Hours	Amount
KLOTZ, MARTIN	6.40	$ 4,160.00
MAZZA, LESLIE	9.60	7,776.00
MUNDIYA, TARIQ	2.90	1,725.50
ROMANO, BENITO	12.40	10,044.00
YOUNG, MICHAEL	2.10	1,701.00

Professional Fees	$ 25,406.50
Total this Statement	$ 25,406.50

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20504613
Client/Matter No. 115662.00001
May 17, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through April 30, 2005	$ 25,406.50
Total this Statement	$ 25,406.50

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

EXHIBIT 61

Kroll

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

www.krollworldwide.com

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Daniel

October 24, 2005

Matter No. 0005948-0002
Invoice No. 1311201-4

P. Lamont Ewell
San Diego City Council
202 "C" Street, 9th Floor
San Diego, CA 92101

CONFIDENTIAL

From September 17, 2005 through September 30, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	5.00 hrs @ $ 750.00 per hour	3,750.00
Troy Dahlberg	87.50 hrs @ $ 450.00 per hour	39,375.00
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50
Lisa Jordan	69.50 hrs @ $ 300.00 per hour	20,850.00
Paul Donato	73.50 hrs @ $ 250.00 per hour	18,375.00
Mary Kreidell	44.00 hrs @ $ 350.00 per hour	15,400.00
Phil Mennona	96.00 hrs @ $ 350.00 per hour	33,600.00
Peter Kyviakidis	58.50 hrs @ $ 400.00 per hour	23,400.00
Michael Archibald	70.00 hrs @ $ 300.00 per hour	21,000.00
Jennifer Arnini	110.50 hrs @ $ 300.00 per hour	33,150.00
Mike Belov	77.00 hrs @ $ 250.00 per hour	19,250.00
Jeffrey Klein	105.50 hrs @ $ 300.00 per hour	31,650.00
Rachel Laybourn	58.30 hrs @ $ 250.00 per hour	14,575.00
Javier Alvarez	89.00 hrs @ $ 300.00 per hour	26,700.00
Noah Blum	11.00 hrs @ $ 300.00 per hour	3,300.00
Jamal Ahmad	64.00 hrs @ $ 350.00 per hour	22,400.00
Jenny Dominguez	112.50 hrs @ $ 350.00 per hour	39,375.00
Jessie Ting	89.50 hrs @ $ 250.00 per hour	22,375.00
Lisa Han	94.00 hrs @ $ 300.00 per hour	28,200.00
Bruce Pixley	9.00 hrs @ $ 350.00 per hour	3,150.00
David Callaghan	88.00 hrs @ $ 400.00 per hour	35,200.00
Arthur Levitt	11.50 hrs @ $ 900.00 per hour	10,350.00

$ 465,862.50
(137,173.19) previous paid
$ 379,645.48

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

See OK to pay from Tony Salmon

Out-of-Pocket Disbursements		
T&E - Air Transportation	13,205.49	
T&E - Ground Transportation	2,787.10	
T&E - Hotel Charges	18,142.00	
T&E - Meals	5,768.66	
T&E - Mileage Reimbursement	1,293.42	
Miscellaneous & Telephone	952.69	
Postage & Courier	233.72	
Reproduction Expense	8,143.86	
Office Supplies	429.23	
		50,956.17
Total Due:		$ 516,818.67

EXHIBIT 62

Kroll

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

www.krollworldwide.com

November 16, 2005

Matter No. 0005948-0002
Invoice No. 1311253

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From October 1, 2005 through October 14, 2005

(Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	6.50 hrs @ $ 750.00 per hour	4,875.00
Troy Dahlberg	93.50 hrs @ $ 450.00 per hour	42,075.00
Ivette Morales	99.50 hrs @ $ 300.00 per hour	29,850.00
David Shapiro	77.50 hrs @ $ 300.00 per hour	23,250.00
David Cogan	2.50 hrs @ $ 350.00 per hour	875.00
Lisa Jordan	53.50 hrs @ $ 300.00 per hour	16,050.00
Glenn Lewis	16.00 hrs @ $ 350.00 per hour	5,600.00
Paul Donato	99.75 hrs @ $ 250.00 per hour	24,937.50
Mary Kreidell	51.50 hrs @ $ 350.00 per hour	18,025.00
Phil Mennona	104.00 hrs @ $ 350.00 per hour	36,400.00
Peter Kyviakidis	68.50 hrs @ $ 400.00 per hour	27,400.00
Ryan Tomme	102.00 hrs @ $ 250.00 per hour	25,500.00
Michael Archibald	52.50 hrs @ $ 300.00 per hour	15,750.00
Jennifer Armini	146.50 hrs @ $ 300.00 per hour	43,950.00
Mike Belov	105.50 hrs @ $ 250.00 per hour	26,375.00
Jeffrey Klein	93.20 hrs @ $ 300.00 per hour	27,960.00
Rachel Laybourn	119.50 hrs @ $ 250.00 per hour	29,875.00
Javier Alvarez	97.50 hrs @ $ 300.00 per hour	29,250.00
Noah Blum	17.00 hrs @ $ 300.00 per hour	5,100.00
Jamal Ahmad	80.00 hrs @ $ 350.00 per hour	28,000.00
Jenny Dominguez	119.00 hrs @ $ 350.00 per hour	41,650.00
Rex Homme	33.00 hrs @ $ 350.00 per hour	11,550.00
Jessie Ting	101.50 hrs @ $ 250.00 per hour	25,375.00
Lisa Han	91.00 hrs @ $ 300.00 per hour	27,300.00
Richard Cheng	15.00 hrs @ $ 250.00 per hour	3,750.00
Bruce Pixley	6.00 hrs @ $ 350.00 per hour	2,100.00
David Callaghan	97.00 hrs @ $ 400.00 per hour	38,800.00
Arthur Levitt	32.25 hrs @ $ 900.00 per hour	29,025.00

$ 640,647.50
(See Schedule A)

Out-of-Pocket Disbursements 44,761.18
(See Schedule B)

Total Due: $ 685,408.68

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	30,660.00
8)	Accounting and other research related to investigation.	875.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation.	75,975.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	62,750.00
13)	Perform accounting analysis related to investigative workplan.	89,475.00
14)	Perform electronic forensic procedures and analyses.	32,300.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	81,225.00
16)	Review electronic documents.	267,387.50
	Total Professional Fees	$640,647.50

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 3,704.95
T&E - Ground Transportation[2]	1,842.50
T&E - Hotel Charges[3]	27,113.28
T&E - Meals[4]	6,480.00
T&E – Mileage Reimbursement[5]	1,857.51
Miscellaneous & Telephone	1,183.67
Electronic Research	106.89
Postage & Courier	323.90
Reproduction Expense[6]	1,551.60
Office Supplies	596.88
Total Out-of-Pocket Disbursements	$44,761.18

[1] Air Transportation includes the following full-fare economy class tickets:

- 2 roundtrip tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Chicago, IL and San Diego, CA
- 1 one-way ticket between New York, NY and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[3] Hotel Charges include costs for 90 nights of hotel accommodations in San Diego, CA (45 nights) and New York, NY (45 nights) for 11 professionals. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. The rate in New York, NY averaged approximately $409.52 per night, including applicable taxes. The rate, before taxes, ranged between $349.00 and $369.00 per night.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to San Diego, CA. Traveling professionals spent a total of approximately 108 days out of town during this billing period. This equates to an average meal cost per day of $60.00 ($6,480 ÷ 108).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this engagement. A majority of the costs incurred for this period were for 5 professionals that drove from the greater Los Angeles area to San Diego each week. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

[6] Reproduction Expense includes costs paid to an outside vendor used to provide reproduction services directly related to this engagement. For this billing period, there were 2 invoices paid to this vendor.

EXHIBIT 63

Kroll

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

www.krollworldwide.com

November 18, 2005

Matter No. 0005948-0002
Invoice No. 1311256

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From October 15, 2005 through October 28, 2005

(Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	20.00 hrs @ $ 750.00 per hour	15,000.00	
Troy Dahlberg	64.95 hrs @ $ 450.00 per hour	29,227.50	
Ivette Morales	35.00 hrs @ $ 300.00 per hour	10,500.00	
David Shapiro	37.00 hrs @ $ 300.00 per hour	11,100.00	
David Cogan	2.00 hrs @ $ 350.00 per hour	700.00	
Glenn Lewis	108.50 hrs @ $ 350.00 per hour	37,975.00	
Paul Donato	34.75 hrs @ $ 250.00 per hour	8,687.50	
Mary Kreidell	45.50 hrs @ $ 350.00 per hour	15,925.00	
Phil Mennona	48.00 hrs @ $ 350.00 per hour	16,800.00	
Peter Kyviakidis	23.00 hrs @ $ 400.00 per hour	9,200.00	
Ryan Tomme	40.90 hrs @ $ 250.00 per hour	10,225.00	
Michael Archibald	50.30 hrs @ $ 300.00 per hour	15,090.00	
Andrew D'Amico	33.50 hrs @ $ 300.00 per hour	10,050.00	
Jennifer Arnini	89.50 hrs @ $ 300.00 per hour	26,850.00	
Mike Belov	35.00 hrs @ $ 250.00 per hour	8,750.00	
Jeffrey Klein	84.30 hrs @ $ 300.00 per hour	25,290.00	
Rachel Laybourn	86.00 hrs @ $ 250.00 per hour	21,500.00	
Javier Alvarez	22.00 hrs @ $ 300.00 per hour	6,600.00	
Noah Blum	32.00 hrs @ $ 300.00 per hour	9,600.00	
Jamal Ahmad	40.00 hrs @ $ 350.00 per hour	14,000.00	
Jenny Dominguez	67.50 hrs @ $ 350.00 per hour	23,625.00	
Rex Homme	59.00 hrs @ $ 350.00 per hour	20,650.00	
Jessie Ting	35.00 hrs @ $ 250.00 per hour	8,750.00	
Lisa Han	57.00 hrs @ $ 300.00 per hour	17,100.00	
Richard Cheng	66.75 hrs @ $ 250.00 per hour	16,687.50	
Peter Smith	43.50 hrs @ $ 300.00 per hour	13,050.00	
Sara Halligan	19.00 hrs @ $ 250.00 per hour	4,750.00	
Thomas Avery	7.00 hrs @ $ 350.00 per hour	2,450.00	
David Callaghan	72.00 hrs @ $ 400.00 per hour	28,800.00	
Regina Israel	1.00 hrs @ $ 85.00 per hour	85.00	
Arthur Levitt	9.00 hrs @ $ 900.00 per hour	8,100.00	
			$ 447,117.50
			(See Schedule A)
Out-of-Pocket Disbursements			37,709.51
			(See Schedule B)
Total Due:			$ 484,827.01

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	19,740.00
8)	Accounting and other research related to investigation.	700.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	30,500.00
11)	Audit Committee oversight and management of investigation	52,327.50
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	33,735.00
13)	Perform accounting analysis related to investigative workplan.	84,915.00
14)	Perform electronic forensic procedures and analyses.	84,512.50
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	36,200.00
16)	Review electronic documents.	104,487.50
	Total Professional Fees	$447,117.50

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 4,440.79
T&E - Ground Transportation[2]	3,510.82
T&E - Hotel Charges[3]	18,960.64
T&E - Meals[4]	5,550.00
T&E – Mileage Reimbursement[5]	1,904.16
Miscellaneous & Telephone	2,095.69
Electronic Research	-
Postage & Courier	801.91
Reproduction Expense[6]	445.50
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 37,709.51

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Los Angeles, CA and Washington, DC
- 1 roundtrip ticket between Chicago, IL and San Diego, CA
- 1 roundtrip ticket between New York, NY and San Diego, CA
- 1 roundtrip ticket between Oakland, CA and Los Angeles, CA
- 1 roundtrip ticket between Oakland, CA and San Diego, CA
- 1 one-way ticket between New York, NY and Los Angeles, CA
- 1 one-way ticket between San Diego, CA and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[3] Hotel Charges include costs for 73 nights of hotel accommodations in San Diego, CA (49 nights), New York, NY (22 nights), and Washington, DC (2 nights) for 15 professionals. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax. The rate in New York averaged approximately $399.53 per night, including applicable taxes. Before taxes, the New York rate ranged between $349.00 and $369.00 per night. In Washington DC, the rate was $357.00 per night including applicable taxes.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to San Diego, New York, or Washington DC. Traveling professionals spent a total of approximately 93 days out of town during this billing period. This equates to an average meal cost per day of $59.68 ($5,550 ÷ 93).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this engagement. A majority of the costs incurred for this period were for 7 professionals that drove from the greater Los Angeles area to San Diego at least once during this billing period. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

[6] Reproduction Expense includes reproduction costs directly related to this engagement.

Kroll

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

www.krollworldwide.com

January 10, 2006

Matter No. 0005948-0002
Invoice No. 1311401

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From October 29, 2005 through November 11, 2005

(Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	9.50 hrs @ $ 750.00 per hour	7,125.00	
Troy Dahlberg	10.00 hrs @ $ 450.00 per hour	4,500.00	
David Cogan	1.50 hrs @ $ 350.00 per hour	525.00	
Glenn Lewis	4.00 hrs @ $ 350.00 per hour	1,400.00	
Mary Kreidell	9.50 hrs @ $ 350.00 per hour	3,325.00	
Peter Kyviakidis	4.00 hrs @ $ 400.00 per hour	1,600.00	
Jennifer Arnini	31.50 hrs @ $ 300.00 per hour	9,450.00	
Jeffrey Klein	28.70 hrs @ $ 300.00 per hour	8,610.00	
Noah Blum	18.00 hrs @ $ 300.00 per hour	5,400.00	
Jamal Ahmad	11.50 hrs @ $ 350.00 per hour	4,025.00	
Peter Smith	25.00 hrs @ $ 300.00 per hour	7,500.00	
David Callaghan	7.00 hrs @ $ 400.00 per hour	2,800.00	
			$ 56,260.00
			(See Schedule A)

Out-of-Pocket Disbursements 2,714.07
(See Schedule B)

Total Due: $ 58,974.07

Okay to pay
GVT
2/1/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	525.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	11,625.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	20,860.00
13)	Perform accounting analysis related to investigative workplan.	8,950.00
14)	Perform electronic forensic procedures and analyses.	14,300.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	0.00
16)	Review electronic documents.	0.00
	Total Professional Fees	$ 56,260.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 1,100.03
T&E - Ground Transportation[2]	200.00
T&E - Hotel Charges[3]	380.85
T&E - Meals	(69.79)
T&E – Mileage Reimbursement[4]	331.59
Miscellaneous & Telephone	629.94
Electronic Research	-
Postage & Courier	327.15
Reproduction Expense	-
Office Supplies	(185.70)
Total Out-of-Pocket Disbursements	$ 2,714.07

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 one-way ticket between San Francisco, CA and San Diego, CA
- 1 one-way ticket between Tucson, AZ and San Diego, CA
- 2 one-way tickets between San Diego, CA and Denver, CO

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[3] Hotel Charges include costs for 2 nights of hotel accommodations in San Diego, CA for 2 professionals. The rate in San Diego was approximately $190.43 per night, including a 10.5% Occupancy Tax.

[4] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this engagement. A majority of the costs incurred for this period were for 1 professional that drove from the greater Los Angeles area to San Diego on two occasions during this billing period. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

Kroll

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

www.krollworldwide.com

January 19, 2006

Matter No. 0005948-0002
Invoice No. 1311412

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From November 12, 2005 through November 25, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	0.50 hrs @ $ 750.00 per hour	375.00
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50
Mary Kreidell	10.00 hrs @ $ 350.00 per hour	3,500.00
Peter Kyviakidis	2.00 hrs @ $ 400.00 per hour	800.00
Jennifer Arnini	28.00 hrs @ $ 300.00 per hour	8,400.00
Jeffrey Klein	53.90 hrs @ $ 300.00 per hour	16,170.00
Jamal Ahmad	8.00 hrs @ $ 350.00 per hour	2,800.00
Peter Smith	8.00 hrs @ $ 300.00 per hour	2,400.00
Tom Avery	4.00 hrs @ $ 350.00 per hour	1,400.00
David Callaghan	7.00 hrs @ $ 400.00 per hour	2,800.00
Arthur Levitt	1.00 hrs @ $ 900.00 per hour	900.00

$ 39,982.50
(See Schedule A)

Out-of-Pocket Disbursements 1,277.01
(See Schedule B)

Total Due: $ 41,259.51

okay to pay
PVA
2/1/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	437.50
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	1,275.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	27,370.00
13)	Perform accounting analysis related to investigative workplan.	7,100.00
14)	Perform electronic forensic procedures and analyses.	3,800.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
	Total Professional Fees	$39,982.50

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 502.00
T&E - Ground Transportation[2]	38.00
T&E - Hotel Charges[3]	193.00
T&E - Meals[4]	77.29
T&E – Mileage Reimbursement[5]	280.33
Miscellaneous & Telephone	186.39
Electronic Research	-
Postage & Courier	-
Reproduction Expense	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 1,277.01

[1] Air Transportation includes 1 roundtrip, full-fare economy class ticket between San Francisco, CA and Los Angeles, CA.

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[3] Hotel Charges include the cost for 1 night of hotel accommodations in San Diego, CA. The rate in San Diego was $193.00 per night, including a 10.5% Occupancy Tax.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to San Diego. Traveling professionals spent a total of approximately 3 days out of town during this billing period. This equates to an average meal cost per day of approximately $25.76 ($77.29 ÷ 3).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The costs incurred for this period were for 2 professionals that drove from the greater Los Angeles area to San Diego during this billing period. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

Kroll

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

www.krollworldwide.com

January 23, 2006

Matter No. 0005948-0002
Invoice No. 1311413

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From November 26, 2005 through December 9, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	7.00 hrs @ $ 750.00 per hour	5,250.00
Troy Dahlberg	18.00 hrs @ $ 450.00 per hour	8,100.00
David Cogan	4.00 hrs @ $ 350.00 per hour	1,400.00
Glenn Lewis	4.00 hrs @ $ 350.00 per hour	1,400.00
Peter Kyviakidis	2.00 hrs @ $ 400.00 per hour	800.00
Jennifer Arnini	50.50 hrs @ $ 300.00 per hour	15,150.00
Jeffrey Klein	68.10 hrs @ $ 300.00 per hour	20,430.00
Jenny Dominguez	3.00 hrs @ $ 350.00 per hour	1,050.00
Peter Smith	7.00 hrs @ $ 300.00 per hour	2,100.00
David Callaghan	3.00 hrs @ $ 400.00 per hour	1,200.00
Arthur Levitt	25.50 hrs @ $ 900.00 per hour	22,950.00

$ 79,830.00
(See Schedule A)

Out-of-Pocket Disbursements 1,752.86
(See Schedule B)

Total Due: $ 81,582.86

Okay to pay
LVT
2/1/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017-3453

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	1,400.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	36,300.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	37,830.00
13)	Perform accounting analysis related to investigative workplan.	800.00
14)	Perform electronic forensic procedures and analyses.	3,500.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
	Total Professional Fees	$ 79,830.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation	$ -
T&E - Ground Transportation[1]	116.75
T&E - Hotel Charges	-
T&E - Meals[2]	316.82
T&E – Mileage Reimbursement[3]	426.40
Miscellaneous & Telephone	805.97
Electronic Research	-
Postage & Courier	86.92
Reproduction Expense	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 1,752.86

[1] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[2] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to San Diego. Traveling professionals spent a total of approximately 8 days out of town during this billing period. This equates to an average meal cost per day of approximately $39.60 ($316.82 ÷ 8).

[3] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The costs incurred for this period were for 2 professionals that drove from the greater Los Angeles area to San Diego during this billing period. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

Kroll

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

www.krollworldwide.com

January 30, 2006

Matter No. 0005948-0002
Invoice No. 1311441

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From December 10, 2005 through December 23, 2005 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	2.50 hrs @ $ 750.00 per hour	1,875.00	
Kevin Cantwell	4.50 hrs @ $ 350.00 per hour	1,575.00	
David Cogan	2.00 hrs @ $ 350.00 per hour	700.00	
Jennifer Arnini	53.00 hrs @ $ 300.00 per hour	15,900.00	
Jeffrey Klein	44.10 hrs @ $ 300.00 per hour	13,230.00	
Jenny Dominguez	6.00 hrs @ $ 350.00 per hour	2,100.00	
Peter Smith	10.00 hrs @ $ 300.00 per hour	3,000.00	
David Callaghan	18.00 hrs @ $ 400.00 per hour	7,200.00	
Arthur Levitt	7.00 hrs @ $ 900.00 per hour	6,300.00	
			$ 51,880.00 (See Schedule A)

Out-of-Pocket Disbursements 562.27 (See Schedule B)

Total Due: $ 52,442.27

okay to pay
TV
2/1/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	700.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	8,175.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	38,430.00
13)	Perform accounting analysis related to investigative workplan.	-
14)	Perform electronic forensic procedures and analyses.	4,575.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
	Total Professional Fees	$ 51,880.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation	$ -
T&E - Ground Transportation[1]	261.45
T&E - Hotel Charges	-
T&E - Meals	-
T&E – Mileage Reimbursement[2]	137.74
Miscellaneous & Telephone	-
Electronic Research	-
Postage & Courier	163.08
Reproduction Expense	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 562.27

[1] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[2]Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The costs incurred for this period were for 1 professional that drove from the greater Los Angeles area to San Diego during this billing period. The current reimbursement rate is $0.485 per mile, which is consistent with IRS tax regulations.

Kroll

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

www.krollworldwide.com

February 3, 2006

Matter No. 0005948-0002
Invoice No. 1311452

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From December 24, 2005 through January 13, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	4.00 hrs @ $ 750.00 per hour	3,000.00	
Troy Dahlberg	29.50 hrs @ $ 450.00 per hour	13,275.00	
David Cogan	1.25 hrs @ $ 350.00 per hour	437.50	
Jennifer Arnini	16.50 hrs @ $ 300.00 per hour	4,950.00	
Jennifer Arnini	56.00 hrs @ $ 350.00 per hour	19,600.00	
Jeffrey Klein	42.30 hrs @ $ 350.00 per hour	14,805.00	
Rachel Laybourn	40.00 hrs @ $ 250.00 per hour	10,000.00	
Peter Smith	52.50 hrs @ $ 300.00 per hour	15,750.00	
Tom Avery	1.00 hrs @ $ 350.00 per hour	350.00	
David Callaghan	64.00 hrs @ $ 400.00 per hour	25,600.00	
Arthur Levitt	8.00 hrs @ $ 900.00 per hour	7,200.00	
			$ 114,967.50
			(See Schedule A)

Out-of-Pocket Disbursements 3,299.09
(See Schedule B)

Total Due: $ 118,266.59

okay to pay
LA
2/10/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 1,996.40
T&E - Ground Transportation[2]	355.00
T&E - Hotel Charges[3]	397.68
T&E – Meals	-
T&E – Mileage Reimbursement	-
Miscellaneous & Telephone	131.39
Electronic Research	-
Postage & Courier	418.62
Reproduction Expense	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 3,299.09

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 one-way between Newark, NJ and San Diego, CA
- 1 roundtrip between Palm Beach, FL and San Diego, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, and toll roads.

[3] Hotel Charges include costs for 2-nights of hotel accommodation in San Diego, CA for 1 professional at an average rate of 189.35 per night. The hotel charge includes $18.98 of meal expenses.

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	437.50
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	23,475.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	74,955.00
13)	Perform accounting analysis related to investigative workplan.	-
14)	Perform electronic forensic procedures and analyses.	16,100.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	-
	Total Professional Fees	$ 114,967.50

Kroll

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

www.krollworldwide.com

February 9, 2006

Matter No. 0005948-0002
Invoice No. 1311482

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From January 14, 2006 through January 27, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	8.50 hrs @ $ 750.00 per hour	6,375.00	
Troy Dahlberg	47.00 hrs @ $ 450.00 per hour	21,150.00	
David Cogan	1.00 hrs @ $ 350.00 per hour	350.00	
Glenn Lewis	18.00 hrs @ $ 350.00 per hour	6,300.00	
Paul Donato	34.50 hrs @ $ 300.00 per hour	10,350.00	
Jennifer Arnini	86.00 hrs @ $ 350.00 per hour	30,100.00	
Jeffrey Klein	66.50 hrs @ $ 350.00 per hour	23,275.00	
Rachel Laybourn	81.00 hrs @ $ 250.00 per hour	20,250.00	
Jenny Dominguez	55.50 hrs @ $ 350.00 per hour	19,425.00	
Peter Smith	50.00 hrs @ $ 300.00 per hour	15,000.00	
Sarah Halligan	11.50 hrs @ $ 250.00 per hour	2,875.00	
David Callaghan	52.00 hrs @ $ 400.00 per hour	20,800.00	
Arthur Levitt	0.50 hrs @ $ 900.00 per hour	450.00	
			$ 176,700.00
			(See Schedule A)

Out-of-Pocket Disbursements 11,485.45
(See Schedule B)

Total Due: $ 188,185.45

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

okay to pay
LM
2/21/06

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	350.00
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	27,975.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	40,925.00
13)	Perform accounting analysis related to investigative workplan.	13,200.00
14)	Perform electronic forensic procedures and analyses.	61,325.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	32,925.00
	Total Professional Fees	$176,700.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 6,615.30
T&E - Ground Transportation[2]	434.86
T&E - Hotel Charges[3]	3,147.84
T&E – Meals[4]	687.70
T&E – Mileage Reimbursement[5]	381.77
Miscellaneous & Telephone	143.16
Electronic Research	-
Postage & Courier	74.82
Reproduction Expense	-
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 11,485.45

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 4 roundtrip tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Los Angeles, CA and Newark, NJ

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 8 nights of hotel accommodation in New York, NY for 4 professionals at an average rate of $369.36 per night, including applicable taxes, and costs for 1 night of hotel accommodations in San Diego, CA for 1 professional at a rate of $193.00 per night, including a 10.5% Occupancy Tax.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY and San Diego, CA. Traveling professionals spent approximately 14 days out of town during this billing period. This equates to an average meal cost per day of approximately $49.07 ($687.70 ÷ 14).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. A majority of the costs incurred for this period were for 2 professionals that drove from the greater Los Angeles area to San Diego, CA during this billing cycle. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

Kroll

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

www.krollworldwide.com

February 21, 2006

Matter No. 0005948-0002
Invoice No. 1311506

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From January 28, 2006 through February 10, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	7.00 hrs @ $ 750.00 per hour	5,250.00	
Troy Dahlberg	43.00 hrs @ $ 450.00 per hour	19,350.00	
David Cogan	16.50 hrs @ $ 350.00 per hour	5,775.00	
La Tanya Squires	65.50 hrs @ $ 250.00 per hour	16,375.00	
Glenn Lewis	53.00 hrs @ $ 350.00 per hour	18,550.00	
Paul Donato	75.75 hrs @ $ 300.00 per hour	22,725.00	
David Fielder	36.00 hrs @ $ 450.00 per hour	16,200.00	
Pavel Pribylovskiy	25.50 hrs @ $ 300.00 per hour	7,650.00	
Jennifer Arnini	95.50 hrs @ $ 350.00 per hour	33,425.00	
Jeffrey Klein	110.90 hrs @ $ 350.00 per hour	38,815.00	
Rachel Laybourn	128.00 hrs @ $ 250.00 per hour	32,000.00	
Jenny Dominguez	93.50 hrs @ $ 350.00 per hour	32,725.00	
Lisa Han	55.00 hrs @ $ 300.00 per hour	16,500.00	
William Knoedelseder	48.00 hrs @ $ 350.00 per hour	16,800.00	
Harold Cord Nuoffer	96.00 hrs @ $ 300.00 per hour	28,800.00	
Jason Thomas Wright	62.40 hrs @ $ 250.00 per hour	15,600.00	
Candice Hirsch	65.50 hrs @ $ 300.00 per hour	19,650.00	
Morgan Brazil	37.50 hrs @ $ 250.00 per hour	9,375.00	
David Callaghan	72.00 hrs @ $ 400.00 per hour	28,800.00	
Arthur Levitt	4.00 hrs @ $ 900.00 per hour	3,600.00	
			$ 387,965.00
			(See Schedule A)

Out-of-Pocket Disbursements 27,803.64
(See Schedule B)

Total Due: $ 415,768.64

okay to pay – 3/2/06

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	28,200.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	33,035.00
13)	Perform accounting analysis related to investigative workplan.	18,400.00
14)	Perform electronic forensic procedures and analyses.	59,350.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	248,980.00
	Total Professional Fees	$387,965.00

Schedule B

Out-of-Pocket Disbursements

T&E - Air Transportation[1]	$ 4,791.89
T&E - Ground Transportation[2]	1,778.77
T&E - Hotel Charges[3]	7,733.02
T&E – Meals[4]	1,704.60
T&E – Mileage Reimbursement[5]	48.51
Miscellaneous & Telephone	574.74
Electronic Research	-
Postage & Courier	2,530.07
Reproduction Expense[6]	8,642.04
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 27,803.64

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 1 roundtrip ticket between Nashville, TN and Los Angeles, CA
- 3 roundtrip tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Washington, D.C. and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 28 nights of hotel accommodations in San Diego, CA (4 nights), New York, NY (16 nights), and Los Angeles, CA (8 nights) for 9 professionals. The rate in San Diego was $170.00 per night, not including a 10.5% Occupancy Tax (to be included in a subsequent invoice). The rate in New York averaged $342.09 per night, including applicable taxes. Before taxes, the New York rate ranged between $299.00 and $345.00 per night. In Los Angeles, CA, the rate was $193.08 per night including applicable taxes. Hotel Charges also includes telephone and parking charges totaling $34.95 that were not separated from the hotel costs.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 36 days out of town during this billing period. This equates to an average meal cost per day of approximately $47.35 ($1,704.60 ÷ 36).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[6] Reproduction Expense includes reproduction costs directly related to this project.

Kroll

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

www.krollworldwide.com

March 8, 2006

Matter No. 0005948-0002
Invoice No. 1311529

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From February 11, 2006 through February 24, 2006 (Troy Dahlberg)

RE Audit Committee Invoice

For Professional Services Rendered

Lynn Turner	8.50 hrs @ $ 750.00 per hour	6,375.00	
Troy Dahlberg	41.00 hrs @ $ 450.00 per hour	18,450.00	
David Cogan	83.25 hrs @ $ 350.00 per hour	29,137.50	
La Tanya Squires	88.00 hrs @ $ 250.00 per hour	22,000.00	
Glenn Lewis	5.00 hrs @ $ 350.00 per hour	1,750.00	
Paul Donato	90.25 hrs @ $ 300.00 per hour	27,075.00	
David Fielder	57.00 hrs @ $ 350.00 per hour	19,950.00	
Pavel Pribylovskiy	88.50 hrs @ $ 300.00 per hour	26,550.00	
Cory Martin	8.00 hrs @ $ 300.00 per hour	2,400.00	
Jennifer Arnini	104.50 hrs @ $ 350.00 per hour	36,575.00	
Jeffrey Klein	106.10 hrs @ $ 350.00 per hour	37,135.00	
Rachel Laybourn	99.30 hrs @ $ 250.00 per hour	24,825.00	
Jenny Dominguez	106.00 hrs @ $ 350.00 per hour	37,100.00	
Lisa Han	75.25 hrs @ $ 300.00 per hour	22,575.00	
Bill Knoedelseder	110.00 hrs @ $ 350.00 per hour	38,500.00	
Harold C. Nuoffer	105.30 hrs @ $ 300.00 per hour	31,590.00	
Jason Thomas Wright	102.00 hrs @ $ 250.00 per hour	25,500.00	
Candice Hirsch	88.35 hrs @ $ 300.00 per hour	26,505.00	
Morgan Brazil	94.50 hrs @ $ 250.00 per hour	23,625.00	
David Callaghan	58.00 hrs @ $ 400.00 per hour	23,200.00	
			$ 480,817.50
Less Fee Adjustment			(3,600.00)
			(See Schedule A)
Out-of-Pocket Disbursements			45,331.68
			(See Schedule B)
Total Due:			$ 522,549.18

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	24,825.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	21,795.00
13)	Perform accounting analysis related to investigative workplan.	13,200.00
14)	Perform electronic forensic procedures and analyses.[1]	42,945.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	374,452.50
	Total Professional Fees	$477,217.50

[1] A credit of $3,600 is included in this invoice and has been applied to Task 14. This credit is a result of applying an incorrect billing rate for David Fielder on Invoice #1311506. The incorrect rate billed was $450.00 per hour. The correct rate, as it appears on this invoice, is $350.00 per hour.

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[2]	$ 14,486.35
T&E - Ground Transportation[3]	3,204.58
T&E - Hotel Charges[4]	21,368.85
T&E – Meals[5]	4,102.37
T&E – Mileage Reimbursement[6]	136.32
Miscellaneous & Telephone	728.03
Electronic Research	583.64
Postage & Courier	304.58
Temporary Personnel[7]	416.96
Office Supplies	-
Total Out-of-Pocket Disbursements	$ 45,331.68

[2] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 5 roundtrip tickets between Los Angeles, CA and New York, NY
- 6 roundtrip tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Chicago, IL and New York, NY
- 1 one-way ticket between Cape Girardeau, MO and Los Angeles, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 roundtrip ticket between Nashville, TN and San Diego, CA
- 2 roundtrip tickets between Denver, CO and Los Angeles, CA

[3] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[4] Hotel Charges include costs for 63 nights of hotel accommodations in San Diego, CA (1 night), New York, NY (52 nights), and Los Angeles, CA (10 nights) for 7 professionals. The rate in San Diego was $187.85 per night, including a 10.5% Occupancy Tax. The rate in New York averaged $376.26 per night, including applicable taxes. Before taxes, the New York rate ranged between $149.00 and $345.00 per night. In Los Angeles, CA, the average rate was $154.42 per night including applicable taxes. Before taxes the rate ranged between $127.00 and $163.00. Hotel Charges also includes San Diego Occupancy Tax not included on the previous invoice of $71.40.

[5] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 69 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.45 ($4,102.37 ÷ 69).

[6] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

[7] Temporary Personnel include costs for a temporary employee engaged through AppleOne Employment Services to assist in the review of City email and electronic documents.

Kroll

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

www.krollworldwide.com

March 16, 2006

Matter No. 0005948-0002
Invoice No. 1311546

Mr. John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

From February 25, 2006 through March 10, 2006 (Troy Dahlberg)

RE Audit Committee Invoice
For Professional Services Rendered

Lynn Turner	2.00 hrs @ $ 750.00 per hour	1,500.00	
Troy Dahlberg	46.00 hrs @ $ 450.00 per hour	20,700.00	
Ivette Morales	13.50 hrs @ $ 300.00 per hour	4,050.00	
David Shapiro	18.00 hrs @ $ 300.00 per hour	5,400.00	
David Cogan	95.00 hrs @ $ 350.00 per hour	33,250.00	
La Tanya Squires	104.75 hrs @ $ 250.00 per hour	26,187.50	
Lorraine Ciechanowicz	8.00 hrs @ $ 300.00 per hour	2,400.00	
Glenn Lewis	2.00 hrs @ $ 350.00 per hour	700.00	
Paul Donato	72.75 hrs @ $ 300.00 per hour	21,825.00	
David Fielder	107.00 hrs @ $ 350.00 per hour	37,450.00	
Pavel Pribylovskiy	92.50 hrs @ $ 300.00 per hour	27,750.00	
Michael Shanahan	18.50 hrs @ $ 300.00 per hour	5,550.00	
Richard Vincent	8.00 hrs @ $ 250.00 per hour	2,000.00	
Jennifer Arnini	109.50 hrs @ $ 350.00 per hour	38,325.00	
Jeffrey Klein	80.10 hrs @ $ 350.00 per hour	28,035.00	
Rachel Laybourn	91.90 hrs @ $ 250.00 per hour	22,975.00	
Jenny Dominguez	83.50 hrs @ $ 350.00 per hour	29,225.00	
Rex Homme	4.00 hrs @ $ 350.00 per hour	1,400.00	
Lisa Han	72.50 hrs @ $ 300.00 per hour	21,750.00	
Bill Knoedelseder	90.95 hrs @ $ 350.00 per hour	31,832.50	
Harold C. Nuoffer	86.30 hrs @ $ 300.00 per hour	25,890.00	
Jason Thomas Wright	89.50 hrs @ $ 250.00 per hour	22,375.00	
Candice Hirsch	10.00 hrs @ $ 300.00 per hour	3,000.00	
Morgan Brazil	96.00 hrs @ $ 250.00 per hour	24,000.00	
David Callaghan	71.00 hrs @ $ 400.00 per hour	28,400.00	
Arthur Levitt	1.00 hrs @ $ 900.00 per hour	900.00	
			$ 466,870.00
			(See Schedule A)
Out-of-Pocket Disbursements			29,635.42
			(See Schedule B)
Total Due:			$ 496,505.42

Please wire funds to the following account:
JP Morgan Chase Bank
1166 Sixth Avenue
New York, NY 10036
In the name of Kroll Associates, Inc.
Account # 006124461
ABA # 021000021

or remit payment to:
Kroll Associates, Inc.
Accounting Department – 9th Floor
660 S. Figueroa Street
Los Angeles, CA 90017

-DUE UPON RECEIPT-

Schedule A

Professional Fees

	Tasks	Current Fees
1)	Obtain an understanding of overall investigative procedures performed prior to the retention of Kroll and the creation of the Audit Committee.	$ -
2)	Review and assess V&E binders containing evidential matter supporting draft analyses and conclusions.	-
3)	Review of the Summary Memoranda and supporting documentation prepared by V&E to identify areas for additional investigation and/or analyses.	-
4)	Prepare investigative workplan covering (1) issues identified in the analyses prepared by V&E and the City Attorney and (2) allegations and records outside those considered by V&E and the City Attorney.	-
5)	Review and analyze Michael Aguirre's Interim Reports to identify allegations to consider and investigate.	-
6)	Identify additional allegations to consider and investigate (e.g., Diann Shipione and KPMG letters).	-
7)	Oversee the ongoing document production to the SEC and U.S. Attorney.	-
8)	Accounting and other research related to investigation.	-
9)	Complete background checks for Pension Board nominees.	-
10)	Prepare communications with City employees, City Council, other elected officials, and SDCERS.	-
11)	Audit Committee oversight and management of investigation	23,100.00
12)	Address investigative workplan procedures related to electronic discovery, outside vendors, City affiliates, and other Audit Committee responsibilities.	23,840.00
13)	Perform accounting analysis related to investigative workplan.	19,350.00
14)	Perform electronic forensic procedures and analyses.	52,745.00
15)	Review selected hardcopy documents turned over by City Employees and Elected Officials in response to the various SEC, USAO, and DAO subpoenas.	-
16)	Review electronic documents.	347,835.00
	Total Professional Fees	$466,870.00

Schedule B

Out-of-Pocket Disbursements

T&E – Air Transportation[1]	$ 6,391.40
T&E - Ground Transportation[2]	1,103.52
T&E - Hotel Charges[3]	17,442.93
T&E – Meals[4]	3,330.00
T&E – Mileage Reimbursement[5]	21.36
Miscellaneous & Telephone	1,221.76
Electronic Research	-
Postage & Courier	-
Temporary Personnel	-
Office Supplies	124.45
Total Out-of-Pocket Disbursements	$ 29,635.42

[1] Air Transportation includes the following economy class tickets (some of which might be full-fare rates):

- 3 roundtrip tickets between Chicago, IL and New York, NY
- 2 one-way tickets between Los Angeles, CA and New York, NY
- 1 roundtrip ticket between Philadelphia, PA and Los Angeles, CA
- 1 one-way ticket between Nashville, TN and Los Angeles, CA
- 1 one-way ticket between San Jose, CA and Los Angeles, CA
- 1 one-way ticket between St. Louis, CA and Los Angeles, CA

[2] Ground Transportation includes, but is not limited to, costs for parking, taxis, sedan car service, train service and toll roads.

[3] Hotel Charges include costs for 51 nights of hotel accommodations in New York, NY (41 nights), and Los Angeles, CA (10 nights) for 7 professionals. The rate in New York averaged $386.45 per night, including applicable taxes. Before taxes, the New York rate ranged between $315.00 and $345.00 per night. In Los Angeles, CA, the average rate was $159.83 per night including applicable taxes. Before taxes the rate ranged between $127.00 and $149.00.

[4] Meal costs include direct out-of-pocket expenses on meals for professionals traveling to New York, NY, Los Angeles, CA and San Diego, CA. Traveling professionals spent approximately 56 days out of town during this billing period. This equates to an average meal cost per day of approximately $59.46 ($3,330.00 ÷ 56).

[5] Mileage Reimbursement costs include a per mile reimbursement for miles driven to a location for a purpose directly related to this project. The current reimbursement rate is $0.445 per mile, which is consistent with IRS tax regulations.

EXHIBIT 64

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20506722
Client/Matter No. 115662.00001
July 15, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2005	$ 329,304.50
Disbursements and Other Charges	18,125.00
Total this Statement	$ 347,429.50

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: [signature]

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Original to Martin
7/26/05

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

JUL 25 2005

July 18, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in June in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2934943.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20506722
Client/Matter No. 115662.00001
July 15, 2005

FOR PROFESSIONAL SERVICES RENDERED through June 30, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: working with Vinson & Elkins as to preparation of summary memoranda and binders on reporting issue areas previously identified and reviewing completed Vinson & Elkins materials; efforts directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and KPMG, including drafting and distributing a memorandum and certification to all City employees concerning document retention and production, establishing procedures for review of completed certifications from employees, working with various City officials to establish an orderly and efficient process to ensure complete compliance with document production obligations, discussing with law enforcement authorities the scope of their document requests, and considering and answering questions and concerns of City employees concerning the scope of and compliance with document production obligations; projects concerning the board of the San Diego City Employees' Retirement System, including efforts directed toward waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities, such as appearing before the board to explain in public testimony the reasons supporting a waiver and the consequences

of failing to waive the privilege, and retention by the board of a new independent actuary; consideration of options in the event of a failure by the SDCERS board to waive the attorney-client privilege, including legal research on receivership and the authority of various City officials to remove members of the board; legal research on California's Brown Act and consideration of the implications of the law on efforts directed toward the SDCERS board; continued research of municipal bankruptcy law and cases related to the rejection under Chapter 9 of employee benefits, and further revision of list of issues that the City should consider in deciding whether to seek Chapter 9 protection; review and consideration of issues raised in fifth and sixth reports of the City Attorney.	$ 329,304.50
Disbursements and Other Charges	18,125.00
Total this Statement	$ 347,429.50

TO: Lisa/Martin
9/7

WILLKIE FARR & GALLAGHER LLP

SEP 7 2005
City Manager

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

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

August 31, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in July in connection with the Audit Committee investigation.

Based on the current status of your discussions with Benito Romano, hotel expenses are reflected at cost but the cost of meals has been reduced to the lower of the actual cost or $60 per person per day. I understand that you are in the process of finalizing an agreement with regard to future hotel expenses.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2968244.2

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20507856
Client/Matter No. 115662.00001
August 18, 2005

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: review of summary memoranda and binders reflecting work of Vinson & Elkins on reporting issue areas identified during its investigation; further efforts at distilling allegations identified in various sources, including the Vinson & Elkins memoranda and City Attorney reports, into issue areas requiring further investigation and substantive conclusions by the Audit Committee; working with Kroll to establish a work plan that outlines the Audit Committee's upcoming investigation and taking steps to present the work plan to the City's outside auditor and investigators; continued efforts directed toward ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and to other investigators, including review of certifications completed by City employees documenting the results of their search for responsive documents, contacting employees who indicated that they possessed responsive documents, and establishing procedures to ensure the orderly and efficient production of those documents; projects concerning the board of the San Diego City Employees' Retirement System, including continued efforts toward waiver of the board's assertion of the attorney-client privilege as to materials sought by

law enforcement authorities and consideration of options in the event that the board fails to waive the privilege; efforts directed at understanding the basis for and consequences of the City Attorney's action to impose a receivership on SDCERS through recently-filed litigation; consideration of issues raised by SEC's "wastewater" investigation and options for Audit Committee to address those issues as part of its existing investigation.	$ 395,113.50
Disbursements and Other Charges	24,961.42
Total this Statement	$ 420,074.92

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20507856
Client/Matter No. 115662.00001
August 18, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2005	$ 395,113.50
Disbursements and Other Charges	24,961.42
Total this Statement	$ 420,074.92

2967230.1

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Pensionable Salaries
Distribution of Expenses

FY2005 AC's	If AC is FY2006, please use "0" for PYCY. Otherwise use the accounting below.								
PY/CY	1	1	1	1	1	1	1	1	1
Fund	81140	41400	41200	41200	41200	41200	41200	41210	41210
Dept	82240	730	750	751	752	753	754	755	757
Org		100	1001	1002	1000	010	020	1002	020
Obj Acct	4151	4151	4151	4151	4151	4151	4151	4151	4151
Job Order	082240	002150	001002	001500	000110	002000	004229	001500	004229
Percentage	71.31%	0.85%	0.19%	0.41%	0.82%	0.26%	0.07%	0.20%	0.96%
Amount	$299,555.43	$3,570.64	$798.14	$1,722.31	$3,444.61	$1,092.19	$294.05	$840.15	$4,032.72

Total 1472/1544 Dollar Amount $420,074.92

Pensionable Salaries
Distribution of Expenses

1	1	1	1	1	0	0	1	1	1
41210	41210	41500	41506	41100	50050	50050	41300	41300	41300
758	759	760	776	720	850	5431	1311	1312	1313
010	010	163	455	2000	2000	100	1100	1250	1310
4151	4151	4151	4151	4151	4151	4151	4151	4151	4151
001001	002010	000163	776260	001101	085010	543100	001111	001000	001310
0.06%	0.17%	8.21%	9.74%	0.17%	1.29%	0.59%	0.05%	0.35%	1.47%
$252.04	$714.13	$34,488.15	$40,915.30	$714.13	$5,418.97	$2,478.44	$210.04	$1,470.26	$6,175.10

Pensionable Salaries
Distribution of Expenses

1	1	1	
41300	41300	41300	
1314	1316	1317	
1410	1610	1720	
4151	4151	4151	
001110	001113	001113	
0.85%	1.24%	0.74%	1
$3,570.64	$5,208.93	$3,108.55	420074.92

Original to Lea Martin 9/27/05

WILLKIE FARR & GALLAGHER LLP

SEP 26 2005

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

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

September 19, 2005

P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in August in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

2994247.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5330844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20508567
Client/Matter No. 115662.00001
September 13, 2005

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: investigation into underlying facts and circumstances as to Manager's Proposal I, Manager's Proposal II, Wastewater, and other matters warranting inquiry, including review of documents produced by City employees in response to the subpoenas issued by various law enforcement authorities and in response to the June 10 Mayor/Manager's Memo; continued efforts directed towards ensuring full compliance by the City with the subpoenas served by various law enforcement authorities and the complete production of documents to those authorities and to other investigators; working with the City Attorney's office to develop a process to ensure the speedy and thorough review of documents by the City Attorney's office for applicable privileges to allow the Audit Committee to have prompt access to produced documents; further projects concerning the board of the San Diego City Employees' Retirement System, including continued efforts toward waiver of the board's assertion of the attorney-client privilege as to materials sought by law enforcement authorities; preparation for and attendance at August 9 City Council meeting and various other related meetings; further discussion and refinement of the Audit Committee's work plan outlining the Audit Committee's upcoming investigatory efforts and steps to update the City's

outside auditor with current information concerning such efforts.	$ 448,001.50
Disbursements and Other Charges	40,038.70
Total this Statement	$ 488,040.20

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20508567
Client/Matter No. 115662.00001
September 13, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2005	$ 448,001.50
Disbursements and Other Charges	40,038.70
Total this Statement	$ 488,040.20

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Lennie Dauer

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20509756-2
Client/Matter No. 115662.00001
October 19, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2005	$ 918,604.00
Disbursements and Other Charges	61,577.57
Total this Statement	$ 980,181.57

CERTIFIED TRUE COPY
STILL OUTSTANDING ON SCREEN C7506 AS not found
SIGNED: Linnie Dance

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

Original to Olga
Martin
10/25/05

WILLKIE FARR & GALLAGHER LLP

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

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

October 19, 2005

RECEIVED
OCT 25 2005
City Manager

Mr. P. Lamont Ewell
City Manager
The City of San Diego
202 C Street
San Diego, CA 92101-3869

Re: *Audit Committee of the City of San Diego*

Dear Lamont:

Here is our bill for services in September in connection with the Audit Committee investigation.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Michael R. Young

Enclosure

cc: Mr. Troy A. Dahlberg

3023351.1

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20509756
Client/Matter No. 115662.00001
October 19, 2005

FOR PROFESSIONAL SERVICES RENDERED through September 30, 2005 in connection with the investigation of the Audit Committee of the City of San Diego, including: investigation into facts of pension and wastewater issues; efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests; matters involving a comprehensive review of City e-mail including efforts to resolve technological deficiencies and problems; continuing discussions with law enforcement authorities as to progress on investigative efforts; review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials; preparation for interviews of witnesses and scheduling of same; preparation for SEC presentation concerning initial views as to wastewater; preparation for wastewater interviews; formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, and identification of areas requiring additional activity; continued projects concerning the board of the San Diego City Employees' Retirement System, including resolution of attorney-client privilege issue concerning board documents and discussions concerning the scope and purpose of the separate investigation of the board and the Audit Committee's access to the information gathered and

conclusions reached in that investigation.	$ 918,604.00
Disbursements and Other Charges	61,577.57
Total this Statement	$ 980,181.57

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20510775
Client/Matter No. 115662.00001
November 16, 2005

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through October 31, 2005	$ 757,820.50
Disbursements and Other Charges	91,336.61
Total this Statement	**$ 849,157.11**
Less Credit for Lodging	$ (1,618.89)
Less Credit for Airfare	$ (1,712.24)
Total Amount Due	**$ 845,825.98**

NEW YORK WASHINGTON, DC PARIS LONDON MILAN ROME FRANKFURT BRUSSELS

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

December 5, 2005

Client/Matter No. 115662-00001
Statement No. 20510775

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through October 31, 2005

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
James Dugan	67.90 hours	$595 per hour	$40,400.50
Martin Klotz	46.90 hours	$685 per hour	$32,126.50
Jack Nusbaum	6.00 hours	$860 per hour	$5,158.00
Benito Romano	138.90 hours	$850 per hour	$118,065.00
Michael Young	17.80 hours	$850 per hour	$15,130.00
Peter Allman	5.20 hours	$590 per hour	$3,068.00
Michael Schachter	101.90 hours	$590 per hour	$60,121.00
Sharon Blaskey	192.10 hours	$505 per hour	$97,010.50
Paul Horan	112.20 hours	$563 per hour	$63,134.50
Heath Rosenthal	21.20 hours	$435 per hour	$9,222.00
Michael Shapiro	173.30 hours	$435 per hour	$75,385.50
Brian Turetsky	160.70 hours	$450 per hour	$72,315.00
Brian Faerstein	97.50 hours	$255 per hour	$24,862.50
Anna Hershenberg	47.10 hours	$255 per hour	$12,010.50
Amina Jafri	106.90 hours	$255 per hour	$27,259.50
Judith Jean	127.60 hours	$325 per hour	$41,470.00
Raymond Sarola	84.90 hours	$255 per hour	$21,649.50
Jennifer Beauharnais	4.50 hours	$190 per hour	$855.00
Ana Calle	102.50 hours	$140 per hour	$14,350.00
Cynthia Chan	13.80 hours	$140 per hour	$1,932.00
Simon Raymundo	40.60 hours	$65 per hour	$2,639.00
Zachary Stendig	140.40 hours	$140 per hour	$19,656.00
Total Billed Time[1]	**1,809.90 hours**		**$757,820.50**
Disbursements/Other			**$91,336.61**
Total this Statement			**$849,157.11**
Credit from Previous Invoice			**$3,331.13**
Total Due			**$845,825.98**

[1] Hourly rates of all professionals at Willkie Farr & Gallagher LLP increased on October 1, 2005.

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$0.00
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$70,914.30
3)	Review of City e-mail and electronic documents.	$158,210.60
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$49,233.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$23,652.50
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$211,859.70
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$123,861.90
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$10,521.90
9)	Activities related to oversight and management of investigative team.	$109,566.60
	Total Professional Fees	$757,820.50

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES

Air Transportation[1]	$9,799.67
Ground Transportation[2]	$1,143.18
Hotel Charges[3]	$12,530.19
Meals[4]	$1,943.46
Postage/Messenger	$62.00
Telephone & Fax	$1800.13
Reproduction[5]	$9,957.68
Air Freight	$1,375.89
Data Acquisition[6]	$4,480.66
Outside Consultants[7]	$48,243.75
Total	**$91,336.61**

---

1 Air Transportation includes the following full-fare economy class tickets:
- 2 roundtrip tickets between New York, NY or Newark, NJ and San Diego, CA
- 12 one-way tickets between New York, NY or Newark, NJ and San Diego, CA
- 1 roundtrip ticket between New York, NY and Los Angeles, CA
- 4 one-way tickets between New York, NY or Newark, NJ and Los Angeles, CA
- 2 one-way tickets between Sacramento, CA and San Diego, CA
- 2 one-way tickets between San Diego and Syracuse, NY
- 1 one-way ticket between Los Angeles, CA and Syracuse, NY
- 5 roundtrip tickets between New York, NY and Washington, DC

2 Ground Transportation consists of taxis and one car rental (San Diego, CA to Los Angeles, CA).

3 Hotel charges include costs for 67 nights of hotel accommodations for 10 professionals at an average rate of $187 per night, including Occupancy Tax.

4 Meal costs include direct out-of-pocket expenses for professionals traveling outside of New York City. Traveling professionals spent a total of approximately 78 days out of town during this billing period. This equates to an average meal cost per day of $24.91 ($1,943.46/78).

5 Reproduction Expense includes costs paid to outside vendors used to provide reproduction services as well as to costs incurred related to in-house reproduction services.

6 Data Acquisition includes costs for electronic legal research services, such as Lexis and Westlaw.

7 Outside Consultants include 12 temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents.

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20600758
Client/Matter No. 115662.00001
January 30, 2006

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through November 30, 2005	$ 146,562.00
Disbursements and Other Charges	16,578.45
Total this Statement	$ 163,140.45

"Treat invoice as original" not paid per C 7506 LA

okay to pay
[illegible]
3/10/06.

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

January 30, 2006

Client/Matter No. 115662-00001
Statement No. 20600758

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through November 30, 2005

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
James Dugan	4.60 hours	$595 per hour	$2,737.00
Jack Nusbaum	2.20 hours	$865 per hour	$1,903.00
Benito Romano	53.60 hours	$850 per hour	$45,560.00
Michael Young	8.00 hours	$850 per hour	$6,800.00
Michael Schachter	11.30 hours	$590 per hour	$6,667.00
Sharon Blaskey	2.60 hours	$505 per hour	$1,313.00
Paul Horan	25.00 hours	$535 per hour	$13,375.00
Michael Shapiro	45.60 hours	$435 per hour	$19,836.00
Brian Turetsky	80.90 hours	$450 per hour	$36,405.00
Brian Faerstein	24.80 hours	$255 per hour	$6,324.00
Ana Calle	9.50 hours	$140 per hour	$1,330.00
Zachary Stendig	30.80 hours	$140 per hour	$4,312.00
Total Billed Time	298.90 hours		$146,562.00
Disbursements/Other			$16,578.45
Total Due			$163,140.45

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$6,236.50
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$3,974.50
3)	Review of City e-mail and electronic documents.	$6,984.00
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$18,877.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$0.00
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$13,385.00
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$9,064.50
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$6,935.00
9)	Activities related to oversight and management of investigative team.	$81,105.50
	Total Professional Fees	$146,562.00

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES

Air Transportation[1]	$1,617.10
Hotel Charges[2]	$374.00
Meals[3]	$120.00
Telephone & Fax	$324.18
Reproduction[4]	$2,257.91
Air Freight	$268.52
Data Acquisition[5]	$463.53
Outside Consultants[6]	$9,300.00
Other Disbursements[7]	$1,853.21
Total	**$16,578.45**

---

1 Air Transportation includes the following full-fare economy class ticket:
- 1 roundtrip ticket between New York, NY and San Francisco, CA

2 Hotel charges include costs for 2 nights of hotel accommodations for one professional at an average rate of $187 per night, including Occupancy Tax.

3 Meal costs include direct out-of-pocket expenses for professionals traveling outside of New York City. Traveling professionals spent a total of approximately two days out of town during this billing period. This equates to an average meal cost per day of $60 ($120/2).

4 Reproduction Expense includes costs paid to outside vendors used to provide reproduction services as well as costs incurred related to in-house reproduction services.

5 Data Acquisition includes costs for electronic legal research services, such as Lexis and Westlaw.

6 Outside Consultants include 12 temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents.

7 Other Disbursements consists of charges related to the rental of laptop computers for use by Willkie Attorneys during document review projects out of the office.

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20600763
Client/Matter No. 115662.00001
January 30, 2006

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through December 31, 2005	$ 101,968.00
Disbursements and Other Charges	3,268.66
Total this Statement	$ 105,236.66

"Treat invoice" as original not paid per 27506 LR

Okay to pay
JRT
3/10/06

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

January 30, 2006

Client/Matter No. 115662-00001
Statement No. 20600763

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through December 31, 2005

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
Jack Nusbaum	2.80 hours	$865 per hour	$2,422.00
Benito Romano	37.7 hours	$850 per hour	$32,045.00
Michael Young	5.00 hours	$850 per hour	$4,250.00
Sharon Blaskey	60.80 hours	$505 per hour	$30,704.00
Paul Horan	14.30 hours	$535 per hour	$7,650.50
Michael Shapiro	6.10 hours	$435 per hour	$2,653.50
Brian Turetsky	44.80 hours	$450 per hour	$20,160.00
Brian Faerstein	1.00 hours	$255 per hour	$255.00
Anna Hershenberg	1.00 hours	$255 per hour	$255.00
Amina Jafri	1.00 hours	$255 per hour	$255.00
Raymond Sarola	1.60 hours	$255 per hour	$408.00
Ana Calle	1.60 hours	$140 per hour	$140.00
Christopher Lisciandro	3.70 hours	$140 per hour	$518.00
Zachary Stendig	1.20 hours	$140 per hour	$168.00
Total Billed Time	182.60 hours		$101,968.00
Disbursements/Other			$3,268.66
Total Due			$105,236.66

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$0.00
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$0.00
3)	Review of City e-mail and electronic documents.	$2,295.50
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$850.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$0.00
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$4,524.00
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$6,592.00
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$2,610.00
9)	Activities related to oversight and management of investigative team.	$85,096.50
	Total Professional Fees	$101,968.00

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES

Air Transportation[1]	$2,847.00
Hotel Charges[2]	$187.85
Telephone & Fax	$113.69
Reproduction[3]	$44.80
Air Freight	$75.32
Total	**$3,268.66**

---

1 Air Transportation includes the following tickets at or below the cost of full-fare economy class tickets:

- 1 one-way ticket between Newark, NJ and San Francisco, CA
- 1 one-way ticket between San Francisco, CA & New York, NY
- 1 roundtrip ticket between Newark, NJ and San Diego, CA

2 Hotel charges includes the cost for one night of hotel accommodation for one professional, including Occupancy Tax.

3 Reproduction Expense includes costs incurred related to in-house reproduction services.

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

FEDERAL ID 13-5536844

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT
NUMBER ON REMITTANCE
Statement No. 20601923
Client/Matter No. 115662.00001
March 7, 2006

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2006	$ 233,473.50
Disbursements and Other Charges	72,280.02
Total this Statement	$ 305,753.52

okay to pay
JK
3/9/06

SCHEDULE A
PROFESSIONAL FEES BY TASK

Tasks		Current Invoice
1)	Efforts directed to seeking compliance by the City with all regulatory and governmental subpoenas and document requests.	$1,214.50
2)	Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	$20,379.00
3)	Review of City e-mail and electronic documents.	$41,988.50
4)	Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	$2,720.00
5)	Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	$1,530.00
6)	Preparation for witness interviews, interviews of key witnesses, and follow-up regarding same.	$1,232.00
7)	Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	$31,281.00
8)	Projects concerning the Board of the San Diego City Employees' Retirement System.	$8,039.00
9)	Activities related to oversight and management of investigative team.	$125,089.50
	Total Professional Fees	$233,473.50

SCHEDULE B
DISBURSEMENTS & OTHER CHARGES[1]

Air Transportation[2]	- $5,639.12
Ground Transportation[3]	$158.00
Hotel Charges[4]	$1,672.62
Meals[5]	$423.85
Telephone & Fax	$507.95
Reproduction[6]	$13,702.10
Air Freight	$3,061.51
Outside Consultants[7]	$54,605.41
Other Disbursements[8]	$3,787.70
Total	**$72,280.02**

---

1 Disbursements from previous billing periods that had not previously been booked to the earlier billing periods by the Willkie Accounting Department appear on this invoice. These disbursements have not previously been billed to the City.

2 Air Transportation includes two roundtrip tickets between Newark, NJ and San Diego, CA at or below the cost of full-fare economy class ticket. It also includes credits for seven flights that were canceled after the cost was booked to a previous invoice.

3 Ground Transportation consists of taxis used during travel in San Diego and Washington, DC.

4 Hotel charges includes the cost for five nights of hotel accommodation for two professionals, including Occupancy Tax, in San Diego, CA, at an average cost of $193 per night. It also includes the cost for two nights of hotel accommodation for two professionals, including Occupancy Tax, in Washington, DC, at an average cost of $353.81 per night.

5 Meal costs include direct out-of-pocket expenses for professionals traveling outside of New York City. Traveling professionals spent a total of approximately nine days out of town during this billing period. This equates to an average meal cost per day of $47.09 ($423.85/9).

6 Reproduction Expense includes costs incurred related to both in-house and outside reproduction services.

7 Outside Consultants includes temporary attorneys engaged through Update Legal to assist in the review of City email and electronic documents ($53,304.50 for two weeks of work by temporary attorneys in October 2005). It also includes reimbursement of copy costs for documents requested from a former consultant to the City.

8 Other Disbursements consists of charges related to the rental of laptop computers in September and October 2005 for use by Willkie Attorneys during projects out of the office.

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

March 7, 2006

Client/Matter No. 115662-00001
Statement No. 20601923

John Torell
San Diego City Auditor and Comptroller
202 "C" Street, MS 6A
San Diego, CA 92101

CONFIDENTIAL

For Professional Services Rendered Through January 31, 2005

RE: Audit Committee Investigation

Professional	Hours Billed	Hourly Rate	Total
Jack Nusbaum	1.80 hours	$865 per hour	$1,557.00
Benito Romano	65.10 hours	$850 per hour	$55,335.00
Michael Young	3.20 hours	$850 per hour	$2,720.00
James Dugan	4.00 hours	$595 per hour	$2,380.00
Sharon Blaskey	91.70 hours	$505 per hour	$46,308.50
Paul Horan	27.00 hours	$535 per hour	$14,445.00
Heath Rosenthal	27.90 hours	$435 per hour	$12,136.50
Michael Shapiro	59.50 hours	$435 per hour	$25,882.50
Brian Turetsky	51.90 hours	$450 per hour	$23,355.00
Anna Hershenberg	1.70 hours	$255 per hour	$433.50
Amina Jafri	5.90 hours	$255 per hour	$1,504.50
Raymond Sarola	12.30 hours	$255 per hour	$3,136.50
Ana Calle	88.30 hours	$140 per hour	$12,362.00
Cynthia Chan	14.10 hours	$140 per hour	$1,974.00
Tamieka Goulbourne	78.50 hours	$170 per hour	$13,345.00
Laura Han	8.00 hours	$140 per hour	$1,120.00
Amanda Niu	20.00 hours	$140 per hour	$2,800.00
Simon Raymundo	8.10 hours	$65 per hour	$526.50
Zachary Stendig	86.8 hours	$140 per hour	$12,152.00
Total Billed Time	**655.80 hours**		**$233,473.50**
Disbursements/Other			**$72,280.02**
Total Due			**$305,753.52**

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099

212 728 8000
Fax: 212 728 8111

Federal ID 13-5536844

REMITTANCE ADVICE

SAN DIEGO AUDIT COMMITTEE

PLEASE INDICATE STATEMENT NUMBER ON REMITTANCE
Statement No. 20601923
Client/Matter No. 115662.00001
March 7, 2006

Remit To:

Willkie Farr & Gallagher LLP
787 Seventh Avenue, 2nd Floor
New York, NY 10019-6099
Attention: Accounts Receivable

FOR PROFESSIONAL SERVICES RENDERED through January 31, 2006	$	233,473.50
Disbursements and Other Charges		72,280.02
Total this Statement	$	305,753.52

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

PAYMENT MAY BE MADE BY WIRE
JPMORGAN CHASE BANK
ABA NUMBER: 021000021
FOR THE ACCOUNT OF WILLKIE FARR & GALLAGHER LLP
ACCOUNT NUMBER: 123-007887

REFERENCE: 115662.00001

WILLKIE FARR & GALLAGHER LLP

BENITO ROMANO
212 728 8258
bromano@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

March 7, 2006

John Torell
San Diego City Auditor and Comptroller
The City of San Diego
202 "C" Street, MS 6A
San Diego, CA 92101

Re: *Audit Committee of the City of San Diego*

Dear Mr. Torell:

Enclosed is our statement for professional services rendered through January 31, 2006 in connection with the City of San Diego Audit Committee investigation. Also enclosed are detailed schedules of time/cost per attorney; detailed professional fees by task (Schedule A), as well as a list of disbursements and other charges (Schedule B). I hope you find it in order and arrange for payment.

Please do not hesitate to call with any thoughts or questions.

Very truly yours,

Benito Romano

Enclosure

3132601.1

EXHIBIT 65

From: "Arnini, Jennifer" <jarnini@KrollWorldwide.com>
To: <myoung@willkie.com>, <bromano@willkie.com>, "Turetsky, Brian" <bturetsky@willkie.com>
Date: 7/15/2005 10:41:55 AM
Subject: V&E Memorandums Update

David Godschalk, V&E, emailed me yesterday with the status of the binders for the Comprehensive Memorandum and the updated memorandums. V&E expects to ship the binders out today for delivery Saturday and the updated memorandums should be emailed sometime today.

Best Regards,
Jennifer

CC: "Dahlberg, Troy" <tdahlberg@KrollWorldwide.com>, <lynneturne@aol.com>

EXHIBIT 66

From: P. Lamont Ewell
To: LynnETurne@aol.com; Tdahlberg@krollzolfocooper.com
Date: 2/2/2005 1:39:32 PM
Subject: appointment of new Auditor

Gentlemen,
I failed to mention, the City is in the process of considering the hiring of a new Auditor and Comptroller. His name is John J. Torell. He is currently employed with the County of Santa Barbara, California. Should he be hired, I will personally share with him, your role with the City. Should you have any knowledge of this person or reason to believe the City should not pursue hiring him, I would personally like to know. I will be negotiating employment terms with him this weekend. Sorry that I failed to mention this during our conversation. Also, at present, the date that we are targeting to have this engagement arrangement placed before Council is February 14th., 2:00 p.m. (west coast time) so Lynn you are the lucky person to join us in sunny San Diego!!! I will be in touch gentlemen.
Thxs
Lamont

CC: Girard, Les

EXHIBIT 67

From: <LynnETurne@aol.com>
To: <LJGirard@sandiego.gov>, <pewell@sandiego.gov>
Date: 2/17/2005 1:35:09 PM
Subject: SEC Call

The SEC staff called this morning and asked if I would talk to them this afternoon. One thing I intend on doing during the telephone call with the SEC staff is to establish a good relationship and protocol with them. I will be telling them we should be viewed very much as an independent audit committee in this situation. Accordingly, we intend to be responsive and cooperative with respect to any request they might have. In doing so:

1. If they seek any documents the City has, the SEC should send the request directly to the City, not us.

2. If the SEC believes we have documents the City does not have, which they would like, we will be responsive to any requests to such documents. We would notify Les at the time we got those requests, but would go ahead and be responsive.

3. We would be happy to be responsive to any questions they might have, and share with them our final findings. If they want any updates as we go along, we would responsive on this as well.

Lynn

CC: <tdahlberg@Krollzolfocooper.com>, <standard31@earthlink.net>

EXHIBIT 69

From: <LynnETurne@aol.com>
To: <pewell@sandiego.gov>, <pmaco@velaw.com>, <tdahlberg@Krollzolfocooper.com>
Date: 2/24/2005 6:08:38 PM
Subject: City Council Members

I did discuss with Karol Pollock at the SEC staff the two city council members I thought would be good representatives to attend. Karol was fine with the two I mentioned and we had discussed.

Lynn

EXHIBIT 70

From: P. Lamont Ewell
To: LynnETurne@aol.com
Date: 2/24/2005 6:11:37 PM
Subject: Re: City Council Members

Great! Both Council members have consented to be present. The pre-meet will be in the Mayor's office at 10:00 AM. as oppose to 10:30. Would you like to invite Mr. Aguirre or shall I do the honors?

>>> <LynnETurne@aol.com> 02/24/05 06:07PM >>>
I did discuss with Karol Pollock at the SEC staff the two city council members I thought would be good representatives to attend. Karol was fine with the two I mentioned and we had discussed.

Lynn

EXHIBIT 71

From: <LynnETurne@aol.com>
To: <PEwell@sandiego.gov>
Date: 4/23/2005 11:20:45 AM
Subject: Re: Horribly Misquoted

I know some of the people at Moody's in the corporate governance area very well including a Ken Bertsch and Greg Jonas. I would be happy to take a call from Moody's.

Question - I heard our "talking points" may have been sent out to a reporter. I would like to confirm whether or not that occurred as they were to be talking points as opposed to a press release. At this time, given the time I have spent with the press, I continue to be disinclined to do a press release. Since we have already discussed where we are with them, I dont know what sending them a piece a paper saying the same thing would do. But I am always open to discussing it and hearing any new additional reasoning.

In addition to talking to the press, I have also alerted the Chamber as to current events as well as the two council members who are our contacts (as you saw in the email).

Lynn

CC: <tdahlberg@Krollzolfocooper.com>

EXHIBIT 72

SignOnSanDiego.com
THE SAN DIEGO UNION-TRIBUNE

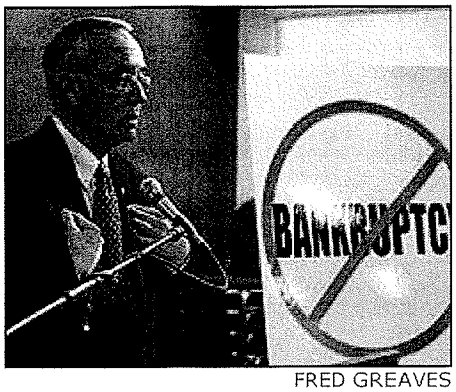
PRINT THIS

Another credit rate downgrade announced

By Matthew T. Hall
STAFF WRITER

September 25, 2004

Mayor Dick Murphy called reporters to his office yesterday to "clarify fact from fiction" on San Diego's fiscal strength, but by the time he reached the microphone he had to announce another credit rating downgrade.



FRED GREAVES
Mayor Dick Murphy emphasized at a news conference yesterday that he does not believe the city is headed toward bankruptcy, a point backed by Moody's Investors Service.

Moody's Investors Service lowered the rating for the city's general obligation bonds one notch, cut ratings for other city bonds and placed San Diego on negative credit watch, signaling possible additional downgrades.

Murphy was handed the report moments before facing the media, causing him to veer from a script his press secretary had outlined for him in a morning news advisory.

Despite its timing, the downgrade did not surprise followers of the city's financial woes. Standard & Poor's Ratings Services suspended its ratings for San Diego on Monday, and Fitch Ratings put the city on its watch list Thursday.

Yesterday's downgrade, from Aa3 to A1, dropped city general obligation bonds from high grade to an upper medium grade with a future "susceptibility to impairment," Moody's said. The bonds are still investment grade.

The action came six weeks after Moody's dropped the city's bonds two notches from the second-highest investment grade. The new downgrade will add to the city's borrowing costs by increasing interest rates, but how much won't be known until the city's fiscal crisis is over, allowing it to issue bonds.

Miles Benickes, senior vice president and director of fixed-income trading at M.L. Stern in Beverly Hills, said this week's bad financial news for San Diego won't have an immediate effect on the trading of the city's bonds.

"I don't think there's a real investor concern out there – yet," he said.

Moody's said San Diego's ratings remain strong because of a healthy local economy, a moderate amount of debt and narrow but adequate reserves.

Yet Moody's latest report said the city's finances "were far less conservatively and carefully managed than we had previously believed."

Alluding to a national spotlight on the city's massive pension underfunding and financial disclosure irregularities, the report said, "Heightened public scrutiny and an uncertain political environment are continuing to narrow the city's options for responding to a difficult long-term problem."

Moody's said the city's long-delayed fiscal 2003 audit adds to the uncertainty. "We now believe (it) may also contain recommendations with financial implications," the agency said.

The report, however, notes that Moody's "does not believe that the city is in danger of declaring bankruptcy."

At his news conference, Murphy reiterated that point. He also said he does not know when the fiscal 2003 audit will be released.

Until that audit is completed, the city is unable to issue any bonds, including $200 million in pension obligation bonds that Murphy has proposed to reduce a $1.17 pension deficit in the system.

Murphy outlined ways he and the City Council are trying to get the city on more stable financial footing. He said the council is considering fixes proposed by the city Pension Reform Committee, and two measures on the November ballot would help. One would pay off the unfunded pension liability in 15 years and another would change the pension retirement board.

A recent report by attorneys from Vinson & Elkins LLP, which the council commissioned, detailed a pattern of boosting benefits while underfunding the pension system and omitting information in financial disclosures to Wall Street. The council is expected to consider improving the city's disclosure rules at a meeting Tuesday.

City officials also are awaiting the completion of federal investigations by the Securities and Exchange Commission and the U.S. Attorney's Office into the city's finances.

Murphy said yesterday that the SEC has not told him of significant violations of securities laws by city officials. Asked if anyone else at the city had been informed, he replied, "To my knowledge, no, but you got to be careful here. I can't talk about things that happened in closed session."

The council consulted with attorneys from Vinson & Elkins in closed session Monday and discussed possible litigation as a result of the SEC investigation, City Manager Lamont Ewell said.Murphy, who is running for re-election Nov. 2 against county Supervisor Ron Roberts, said the timing of the city's deteriorating fiscal condition "has been harmful to me politically."

"But I really think that it was necessary to get all the dirty laundry out, say exactly how we're going to fix it and then let the public decide who's the best person to fix it," he said.

Roberts said the latest ratings action underscores the severity of the problem.

"This is going to cost taxpayers more money each time this happens," he said.

▪Staff writer Philip J. LaVelle contributed to this report.

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Find this article at:
http://www.signonsandiego.com/uniontrib/20040925/news_1m25pension.html

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 73

From: P. Lamont Ewell
To: LynnETurne@aol.com,PEwell@sandiego.gov
Date: 4/23/2005 3:12:32 PM
Subject: Re: Horribly Misquoted

I will refer Moodies to you and will suggest that they call you as part of my presentation. Regarding releasing the talking points, I have not. They are sitting here on my desk. I did use to in speaking with the media and remain disappointed that they were not included. I see that must sharpen my compelling arguement skills with regard to having you gentlemen see the value of a written public statement that can't be misintrepeted or slanted. I will keep trying nonetheless.
Regards

>>> <LynnETurne@aol.com> 04/23/05 11:20 AM >>>
I know some of the people at Moody's in the corporate governance area very well including a Ken Bertsch and Greg Jonas. I would be happy to take a call from Moody's.

Question - I heard our "talking points" may have been sent out to a reporter. I would like to confirm whether or not that occurred as they were to be talking points as opposed to a press release. At this time, given the time I have spent with the press, I continue to be disinclined to do a press release. Since we have already discussed where we are with them, I dont know what sending them a piece a paper saying the same thing would do. But I am always open to discussing it and hearing any new additional reasoning.

In addition to talking to the press, I have also alerted the Chamber as to current events as well as the two council members who are our contacts (as you saw in the email).

Lynn

CC: tdahlberg@Krollzolfocooper.com

EXHIBIT 74

From: "Scott Peters" <speters3@san.rr.com>
To: "'P. Lamont Ewell'" <PEwell@sandiego.gov>, <tdahlberg@KrollWorldwide.com>
Date: 4/25/2005 11:36:01 AM
Subject: Audit Committee Issues

Lamont, Lynn and Troy,

I appreciated the call from Lynn recently explaining the next steps, and understand and support the retention of counsel. I do feel a little out of the loop myself, however, especially on the schedule. I'd really appreciate a sense of where that is and what factors would affect it.

Also, I am willing to do whatever I can to encourage the retirement board to release as many of the desired documents as possible. Any of you can contact me with ideas if I can help.

Finally, if the audit really is to be delayed as long as I see in the papers, I wonder if part of the issue is the personality of KPMG. I am not married to any particular firm, especially if another firm that's more interested in developing municipal business could turn this around faster. I have heard that KPMG is not so interested in cities and counties and I sometimes have the feeling that they are moving the goal lines.

I agree that we need some help explaining our strategy to the public. The idea is not to have a battle, but to fill an information void that others (who don't care for the cause) fill with misinformation.

Feel free to contact me at the office, this (home) email, or on my cell phone 858.354.7005.

SHP

From: P. Lamont Ewell [mailto:PEwell@sandiego.gov]
Sent: Saturday, April 23, 2005 11:13 AM
To: tdahlberg@KrollWorldwide.com
Cc: LynnETurne@aol.com
Subject: Re: Horribly Misquoted

Lynn, Troy,

After yesterdays and today's articles, I would like to re-state my concern...Without your putting forth a clear, concise statement of your current efforts, the role of each person, especially with respect to your seeking outside counsel we will be allowing the public to be completely misled and/or confused. Please remember, the public does not understand the Sarbanes Oxley Act. We are not a Public trading company. As a municipality, we have a broader duty to keep our citizens, Banking partners, Rating Agencies, and Bondholders informed of activity and progress. Otherwise, they are left to only rely on the misrepresentations appearing in the media. I am in no way asking that you go toe to toe with our City Attorney. I am only

asking that you put clear proactive, regular statements out that clarify your efforts. On May 10, 2005 I am expected to go before Council with a proposed budget to support the activities of Audit committee. I will be in need of justification for this expenditure. That can only come from you. Please reconsider my request to put a statement out that clarifies the above. I am traveling to San Francisco on Monday to update Moody's on our efforts. I can assure you that they will be interested in knowing particulars about today's articles. I will also be discussing Banc of America our need to secure Tax Anticipation Notes by July 1, 2005. I can assure you that they too will be concerned by what is being reported. Please give consideration to these matters because our audience is broader than most would appreciate. Lynn can I also ask Moody's to call you should they desire to do so?

Lamont

>>> "Dahlberg, Troy" <tdahlberg@KrollWorldwide.com> 04/22/05 04:02PM >>>

Gentlemen,

Believe it or not, this reporter has horribly misstated comments I made to him. Although, technically this is not even a quote (see blue section below). I made no statement that, in any way, shape, or form resembled what is printed here. I bring this up simply as a matter of clarification in case either of you see this quote or are asked about it.

Further Questions of City's Law Firm Could Continue Delay of Audits, Investigations

By ANDREW DONOHUE
Voice Political Writer
Published April 22, 2005

The city of San Diego's long struggle to finish a self-investigation and release its fiscal year 2003 and 2004 audits appears headed toward a new phase -- one with more outside legal counsel.

The consultants brought in to usher the city out of its financial and political storm have alerted city officials they will likely ask to bring in their own legal counsel because of concerns over the independence of the city's chosen law firm, said Troy Dahlberg. He is one of three accountants -- the other two are former high-ranking officials at the Securities and Exchange Commission -- tasked with untangling the city's cluster of investigations, accusations and audits.

The switch could mean further delays in the attempt to close the investigations and return the city to the financial markets.

Officials from auditor KPMG and the investigators from the SEC have voiced concerns over the independence of the firm currently conducting the city's investigation into possible criminal acts in connection with the city's $1.37 billion pension deficit. Critics and experts have questioned whether the firm, Vinson & Elkins, which is also representing the city before the SEC, can be independent enough to conduct a sufficient investigation.

"Normally your attorney is your advocate for the city. It's hard to say

you're an advocate and be independent at the same time," Dahlberg said.

The firm released a self-investigation in September that city officials hoped would reconcile the SEC's concerns over errors and omissions found in financial statements given to potential investors. The errors failed to fully account for the city's pension debt, among other things.

While that investigation was being conducted for the SEC, auditor KPMG became involved and warned city officials in a series of letters in the summer and fall that the investigation by the law firm likely wouldn't be sufficient to satisfy their worries that wrongdoing had been committed by city officials. Already on the hook for the V&E report, officials pushed ahead with the hope it would suffice for KPMG as well.

It turns out the report didn't satisfy anyone.

Neither Mayor Dick Murphy nor City Manager Lamont Ewell returned calls for comment. In a previous interview, Ewell said the city was aware of concerns from the start about the firm's independence, but stuck with them because of their experience.

The firm has been paid more than $4 million since being hired in early 2004. It is one of a slew of outside consultants and firms brought in to assist the city. Dahlberg and his colleagues are paid between $750 and $900 per hour.

Dahlberg said his audit committee, which consists of former SEC chairman Arthur Levitt, will likely need independent counsel that has no connection to the city in order to analyze laws governing political wrongdoing and financial disclosures. The only connection they will have to the city, he said, is through billing.

"I think there's enough attorneys," Councilwoman Donna Frye said.

The municipal world has been watching and waiting for the completion of V&E's investigation since October as a sign of the city's recuperation.

Lynn Turner, former chief accountant at the SEC and Dahlberg's colleague, said V&E will turn over its work to his committee. The committee will then combine it with work done by City Attorney Mike Aguirre in his three investigations. All the data and documents will be combined and turned in to KPMG and the SEC. It is unclear what V&E's role will be after turning over the work.

Turner and Dahlberg said the auditor and investigators will be comfortable with their level of independence. They are in the process of scheduling meetings with new pension board members to convince them of the importance of turning over documents sought by investigators.

"Once federal officials come in and look at questionable conduct, you are more than willing to do anything to cooperate with them, and I don't think anybody has explained that to them," Dahlberg said.

The board voted last week to maintain its attorney-client privilege in communications between former board members and attorneys. Federal investigators at the SEC and the U.S. Attorney's Office -- which is

investigating criminal wrongdoing -- are seeking documents related to a controversial deal made between the city and pension board in 2002. The deal allowed the city to continue its historic underfunding of the pension system in exchange for increased benefits for employee unions.

The refusal to turn over the documents is another factor in the delays.

Please contact Andrew Donohue directly at <mailto:andrew.donohue@voiceofsandiego.org> andrew.donohue@voiceofsandiego.org with your thoughts, ideas, personal stories or tips.

CC: <LynnETurne@aol.com>

EXHIBIT 75

From: <LynnETurne@aol.com>
To: <sscottpeters@sandiego.gov>, <TONI@sandiego.gov>, <jimmadaffer@sandiego.gov>
Date: 7/30/2005 11:40:24 AM
Subject: Governmental Auditing Standards

Toni, Jim and Scott - This is for your information but can certainly be shared with whomever you want to including the rest of the members of the council.

One of the issues I have heard raised on more than one occassion is why couldn't someone just get another auditor to replace KPMG? Does an auditor really have to do what they are requiring the city to do?

I have included below for your reading, the auditing standards an independent auditor must follow when performing an audit of a state or local entity such as the City of San Diego. These standards are issued by the General Accountability Office (GAO) which is the organization Congress established as their investigative and auditing arm.

As you will note in the excerpts from the standards I have included below (the entire document is attached), auditors are unquestionably required to investigate matters involving allegations of illegal acts, fraud or abuse. In carrying out their work, the auditor is required to obtain sufficient evidence to permit them to make appropriate determinations regarding the allegations, as well as disclosures. Then the auditor is required to report on their findings as noted below. We believe KPMG has been doing just exactly what they should be doing to fulfill these statutory requirements.

Also as noted below, the auditor is required to make certain reports, even if fired. Usually when an auditor is terminated in the middle of these investigations, it raises a serious red flag and concerns with the governmental agencies as to exactly what is going on.

That is why we on the audit committee have been saying, and continue to say, that in order to get an audit report from an auditor complying with the governmental auditing standards (often referred to as GAGAS), the steps highlighted below MUST be performed, regardless of the auditor. This is not just a KPMG issue, but should be an issue for any auditor who is going to comply with the standards set forth by the GAO. Accordingly, a change in auditor does not resolve the issue and may well contribute to further red flags and concerns being raised with the government.

I would be pleased to discuss this further with any of you and answer any questions. I realize you may have questions as it gets into the technical jargon and auditing requirements of the auditing and accounting profession. This is difficult enough for trained experienced auditors.

Lynn

GAGAS standards from GAO Yellow Book:

Detecting Material Misstatements Resulting from Violations of Contract Provisions or Grant Agreements, or from Abuse
(http://www.gao.gov/govaud/yb/2003/html/chap47.html#BOTTOM)

(http://www.gao.gov/govaud/yb/2003/html/TOC.html)
(http://www.gao.gov/govaud/yb/2003/html/chap46.html)
(http://www.gao.gov/govaud/yb/2003/html/chap48.html)

GAO-03-673G Government Auditing Standards > _Chapter 4 Field Work Standards for Financial Audits_
(http://www.gao.gov/govaud/yb/2003/html/chap4.html#1034518) > Detecting Material Misstatements Resulting from Violations of Contract
Provisions or Grant Agreements, or from Abuse

GAO-03-673G Government Auditing Standards > _Chapter 5 Reporting Standards for Financial Audits_
(http://www.gao.gov/govaud/yb/2003/html/chap5.html#1034535) > Reporting on Internal Control and on Compliance with Laws,
Regulations, and Provisions of Contracts or Grant Agreements

GAO-03-673G Government Auditing Standards > _Chapter 5 Reporting Standards for Financial Audits_
(http://www.gao.gov/govaud/yb/2003/html/chap5.html#1034535) > _Reporting Deficiencies in Internal Control, Fraud, Illegal Acts,
Violations of Provisions of Contracts or Grant Agreements, and Abuse_
(http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034603)

Direct Reporting of Fraud, Illegal Acts, Violations of Provisions of Contracts or Grant Agreements, and Abuse
5.21 GAGAS require auditors to report fraud, illegal acts, violations of provisions of contracts or grant agreements, and abuse directly to parties outside the audited entity in two circumstances, as discussed below. _8_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034696) These requirements are in addition to any legal requirements for direct reporting of fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse. Auditors should meet these requirements even if they have resigned or been dismissed from the audit prior to its completion.
5.22 The audited entity may be required by law or regulation to report certain fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse to specified external parties, such as a federal inspector general or a state attorney general. If auditors have communicated such fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse to the audited entity and the audited entity fails to report them, then the auditors should communicate such an awareness to the governing body of the audited entity. If the audited entity does not make the required report as soon as possible after the auditors' communication with the entity's governing body, then the auditors should report such fraud, illegal acts, violations

of provisions of contracts or grant agreements, or abuse directly to the external party specified in the law or regulation.

5.23 Management of the audited entity is responsible for taking timely and appropriate steps to remedy fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that auditors report to it. When fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse involve awards received directly or indirectly from a government agency, auditors may have a duty to report directly if management fails to take remedial steps. If auditors conclude that such failure is likely to cause them to depart from the standard report on the financial statements or resign from the audit, they should communicate that conclusion to the governing body of the audited entity. Then, if the audited entity does not report the fraud, illegal act, violation of provisions of contracts or grant agreements, or abuse as soon as possible to the entity that provided the government assistance, the auditors should report the fraud, illegal act, violation of provisions of contracts or grant agreements, or abuse directly to that entity.

5.24 In these situations, auditors should obtain sufficient, competent, and relevant evidence, such as confirmation from outside parties, to corroborate assertions by management that it has reported fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse. If they are unable to do so, then the auditors should report such fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse directly as discussed above.

5.25 Laws, regulations, or policies may require auditors to report promptly indications of certain types of fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse to law enforcement or investigatory authorities. In such circumstances, when auditors conclude that these types of fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse either have occurred or are likely to have occurred, they should ask those authorities and/or legal counsel if publicly reporting certain information about the potential fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse would compromise investigative or legal proceedings. Auditors should limit their public reporting to matters that would not compromise those proceedings, such as information that is already a part of the public record.

_1_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034610) If the auditor is performing an audit in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, the thresholds for reporting are defined in the circular. These reporting thresholds are sufficient to meet the requirements of GAGAS.

_2_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034617) AICPA standards define reportable conditions as significant deficiencies in the design or operation of internal control that could adversely affect the entity's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

_3_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034643) The AICPA standards define a material weakness as a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

_4_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034652) Common sources for criteria include laws, regulations, policies, procedures, and best or standard practices. The Standards for Internal Control in the Federal Government, _GAO/AIMD-00-21_ (http://www.gao.gov/cgi-bin/getrpt?GAO/AIMD-00-21) .3.1

(Washington, D.C.: Nov. 1999) and Internal Control--Integrated Framework, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) are two sources of established criteria auditors can use to support their judgments and conclusions about internal control. The related Internal Control Management and Evaluation Tool (_GAO-01-1008G_ (http://www.gao.gov/cgi-bin/getrpt?GAO-01-1008G) , Aug. 2001), based on the federal internal control standards, provides a systematic, organized, and structured approach to assessing internal control.
_5_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034670) See paragraph 4.19 for a discussion of abuse.
_6_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1036377) Whether a particular act is, in fact, illegal may have to await final determination by a court of law or other adjudicative body. Thus, when auditors disclose matters that have led them to conclude that an illegal act is likely to have occurred, they should not unintentionally imply that a final determination of illegality has been made.
_7_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1036377) Auditors should include information about fraud or abuse in the audit reports required by paragraph 5.08 as applicable to internal control and compliance with laws, regulations, and provisions of contracts and grant agreements.
_8_ (http://www.gao.gov/govaud/yb/2003/html/chap57.html#1034693) Internal audit organizations do not have a duty to report outside that entity unless required by law, rule, regulation, or policy. See paragraph 3.28 for reporting requirements for internal audit organizations when reporting externally.

5.26 The standard related to reporting the views of responsible officials for financial audits performed in accordance with GAGAS is:
If the auditors' report discloses deficiencies in internal control, fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse, auditors should obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as planned corrective actions.
5.27 One of the most effective ways to ensure that a report is fair, complete, and objective is to obtain advance review and comments by responsible officials of the audited entity and others, as may be appropriate. Including the views of responsible officials results in a report that presents not only the deficiencies in internal control, fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse the auditors identified but also what the responsible officials of the audited entity think about the deficiencies in internal control, fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse and what corrective actions officials of the audited entity plan to take. Auditors should include in their report a copy of the officials' written comments or a summary of the comments received.
5.28 Auditors should normally request that the responsible officials submit in writing their views on the auditors' reported findings, conclusions, and recommendations, as well as management's planned corrective actions. Oral comments are acceptable as well, and, in some cases, may be the only or most expeditious way to obtain comments. Cases in which obtaining oral comments can be effective include when there is a time-critical requirement to meet a user's needs; auditors have worked closely with the responsible officials throughout the conduct of the work and the parties are very familiar with the findings and issues addressed in the draft report; or the auditors do not expect major disagreements with the draft report's findings, conclusions, and recommendations, or perceive any major controversies with regard to the issues discussed in the draft report. Auditors should prepare a summary of the officials'

oral comments and provide a copy of the summary to officials of the audited entity to verify that the comments are accurately stated prior to finalizing the report.

5.29 Comments should be fairly and objectively evaluated and recognized, as appropriate, in the final report. Comments, such as a promise or plan for corrective action, should be noted but should not be accepted as justification for deleting a significant finding or a related recommendation.

5.30 When the audited entity's comments oppose the report's findings, conclusions, or recommendations, and are not, in the auditors' opinion, valid, or when planned corrective actions do not adequately address the auditors' recommendations, the auditors should state their reasons for disagreeing with the comments or planned corrective actions. The auditors' disagreement should be stated in a fair and objective manner. Conversely, the auditors should modify their report as necessary if they find the comments valid.

CC: <pewell@sandiego.gov>

EXHIBIT 76

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 77

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 78

From: "Maco, Paul S." <pmaco@velaw.com>
To: "Lamont Ewell (E-mail)" <PEwell@sandiego.gov>
Date: 6/27/2005 12:58:43 PM
Subject: FW: San Diego Letter.pdf

Attached
In Lynn's hands,waiting for his ok.
-----Original Message-----
From: Brown, Andrea
Sent: Monday, June 27, 2005 3:43 PM
To: Maco, Paul S.
Subject: San Diego Letter.pdf

San Diego Letter.pdf
<<San Diego Letter.pdf>>

.....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.

Vinson&Elkins

Paul S. Maco pmaco@velaw.com
Tel 202.639.6705 Fax 202.879.8905

June 27, 2005

P. Lamont Ewell
City Manager
City of San Diego California

Re: Report

Dear Mr. Ewell:

Pursuant to our conversation of this past Saturday, June 25, 2005, I have prepared this Report providing an overview of the work we have performed for you under our contract of October 15, 2004.

> As you may recall, under our contract, we "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 contract also provides:
>
> "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."

The "program for inquiry addressing certain matters of interest to the Independent Auditor" took the form of Work Plans I and II. Work Plan I identified ten issues of interest to the Independent Auditors, while Work Plan II identified over 40 allegations of fraud made by a third party whistleblower also of interest to the Independent Auditors. In addition, we were to address additional issues identified in the course of the investigation.

The City, working with its outside consultant Chicago Partners, developed Work Plans I and II to address concerns of the City's independent auditor, KPMG. At meetings with the Mayor and City Manager, senior representatives of KPMG indicated they viewed the Plans favorably.

The agreed to plans involved:

- the "pull" and forensic analysis of **28** City hard drives;
- recovery and analysis of electronic documents from **35** city group-wise e-mail accounts and **31** network drives.
- yielding, together with electronic documents from SDCERS and the newly discovered back-up tapes approximately **350,000** electronic documents. Many of these documents are of multiple pages in length.
- These electronic documents were reviewed, sorted, and examined by our attorneys.
- Reviewed approximately **100** boxes of newly produced documents, in addition to the documents reviewed in connection with our September Report.
- Using these materials, conducted **59** additional interviews of City officials, employees, and outside professionals, and prepared memoranda memorializing the interviews. Many of these interviews were joined by representatives from KPMG, as authorized by City Council in December of 2004.
- The combined evidence gathered and reviewed to date includes:
    - **124** interview memoranda;
    - **79** individuals interviewed;
    - @ **350,000** electronic documents;
    - **260** boxes of paper documents;
    - **8 years** of paper City and SDCERS disclosure documents.
    - **8(+) years** of public records

forming the fact-based evidence for our investigation.

Working with and at the direction of the Audit Committee, we have reviewed, analyzed and organized the investigation into approximately 20 subject binders of materials containing important documents. interview statements, and other materials, as well as related draft memoranda for each. We are continuing a detailed review of these materials with the Audit Committee.

In addition to the work described above, we have:

- conducted interviews of numerous individuals upon the discovery of "file-cleaning" day in which the City Attorney's Office participated;
- conducted "quality control" interviews with approximately 40 document custodians in which the City Attorney's Office also participated.
- assisted in extensive document review and production following the quality control interviews;
- organized and produced full sets of interview memoranda and supporting documents to the SEC and U.S. Attorney;
- worked with the SEC to refine the scope of document production; and
- continue to be responsive to SEC requests.

The above is an overview of the work we have performed under our contract with you since October 15, 2004. This effort has required the assistance of over 35 attorneys and paralegals. The review and analysis of electronic documents is particularly time consuming. All together we have expended over **9400** hours of time on this contract. As agreed to in our contract, we are billing our services at a substantial discount to our normal rates. Excluding charges for this current month of June, our fees total **$2,223,725.00.**

Very truly yours,

Paul S. Maco

From: P. Lamont Ewell
To: LynnETurne@aol.com,JStone@sandiego.gov,Pmaco@velaw.com,Lirvine@sandiego.gov
Date: 6/29/2005 9:34:43 AM
Subject: Re: PDF Letter

Lynn,
By now you may have heard about the Council meeting last night and their request to have the Audit Committee, V&E, and KPMG appear before them in July. This was in response to Mr. Aguirre suggesting that you are each taking advantage of the City. Council provided limited funding for July so that they could better access where we are with the investigations. Aguirre alleged that their was no plan of action and that this was going to go on with no end insight...just high expense! The meetings for next month are the 17th and 18th, and the 25 and 26th. I am out the office until the 5th. Please provide me with a preferred date so that I may coordinate with the others. Better yet, if possible, could you coordinate the date with the others? I will call upon my return to the office so that we may firm up dates. Thanks for the letter. It helped a great deal. P.S. Aguirre also said he had provided necessary information to you.
Lamont

>>> <LynnETurne@aol.com> 06/27/05 2:58 PM >>>

CC: dcallaghan@KrollWorldwide.com,myoung@willkie.com,arthur.levitt@carlyle.com,tdahlberg@Krollzolfocooper.com

EXHIBIT 79

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 80

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

> Part of the settlement was a creative contingent liability to retirees, part was a non-contingent liability option to present employees. You may or may not have heard the plan to pay that liability is to mortgage the future by agreeing to pay more later. This was done in the last retirement deal when the City was in a difficult recession. I have serious doubts as to the wisdom of this method of finance 4 to 5 years into the recovery from that recession. The City is already paying approximately $8.0 million annually less than it should be to the retirement system. For every 1% of payroll these new benefits cost, this shortfall will increase by $4-4.5 million annually.[215]

Pre-settlement: In light of the Available Evidence, the failure of the City to fully disclose the *Corbett* litigation, particularly in the case of the September 1998 Convention Center financing and 1999 CAFR, could be viewed as a material omission. A potential loss contingency estimated by the City at as much as $743 million, even though it would not directly impact the City's balance sheet, could be held material to the City's overall fiscal health, alone or in conjunction with other factors discussed in this memorandum.[216]

Post-settlement: There is sufficient Available Evidence to conclude that the omission from the UAAL of the "contingent" component of the *Corbett* settlement resulted in a material distortion of the City's public disclosure.

Factors do exist that may lead the ultimate trier of fact to different conclusions. With respect to pre-settlement omission, the terms of the settlement were well publicized and therefore available to any interested investors or other parties, although of arguable access to investors outside California. With respect to the post-settlement omissions, before the cost of the *Corbett* settlement (excluding the contingent aspect) was included into the System's funded ratio in FY 2002, that ratio was approximately 104%. The conclusion that might have been drawn from that fact is that the System could absorb the cost of the settlement without seriously undermining its fiscal strength. That the rating agencies expressed no concern over pension matters so long as plans' funded ratios reflected the gains of the 1990s bull market offers some support to that conclusion.

C. The Blue Ribbon Finance Committee Report

1. Warnings contained in the Report

The first significant warning as to the possible long-term consequences of the City's attempts to minimize its contributions and reported liabilities to SDCERS came from a

---

215 Draft memorandum from Edward Ryan to Mayor and City Council, re: Relationship of On-Going Revenues In the Proposed Budget for '01 And Beyond and Bonding Priorities (Apr. 11, 2000) (emphasis in original).

216 Dan Kelley notes of meeting with Ed Ryan, Terri Webster, Lawrence Grissom and Bruce Herring (Feb. 8, 2000).

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

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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]

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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.*

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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.

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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."

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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

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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]

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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 81

BLUE RIBBON COMMITTEE REPORT
ON
CITY OF SAN DIEGO FINANCES

FEBRUARY 2002

BLUE RIBBON COMMITTEE REPORT
ON
CITY OF SAN DIEGO FINANCES
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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 82

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 9:42 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

EXHIBIT 83

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

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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

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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).

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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.

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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

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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 84

From: P. Lamont Ewell
To: LynnETurne@aol.com
Date: 3/3/2005 8:01:29 AM
Subject: Re: Resolution/Letter for Council

Lynn,
How do you feel about my arranging a meeting with you and the Editor of the Tribune for Monday since you are here? It may help with the next days editorial, which will surely follow given the request of Council to sign the agreement.
Your thoughts please.
Lamont

>>> <LynnETurne@aol.com> 03/03/05 07:43AM >>>

Attached is a draft of a letter to council for your comments. I think this letter encompasses all perspectives I heard from everyone at the meeting and will achieve all our goals and objectives, including sending the appropriate message to the SEC.

I want to thank everyone for all your help the last couple of days.

Lynn

EXHIBIT 85

From: P. Lamont Ewell
To: LynnETurne@aol.com; tdahlberg@Krollzolfocooper.com
Date: 4/12/2005 8:01:55 AM
Subject: Re: Update

Thanks Lynne. Do you have a problem with me discusses the importance of taking each concern of KPMG and working through the issues in a comprehensive fashion before finalizing a report?

>>> <LynnETurne@aol.com> 04/11/05 05:15PM >>>
I did have a call today with Bill Osborn updating him on our progress - I did tell him this was not going to be done quickly as he was asking for timing. I said we were committed to the thorough and comprehensive investigation that KPMG would require prior to signing off. Bill Kettle was on the other line and Bill was going to have him call me when I return from DC>

Lynn

EXHIBIT 86

From: <LynnETurne@aol.com>
To: <PEwell@sandiego.gov>
Date: 4/22/2005 4:10:55 PM
Subject: Re: Just got off the line with Kittle

he seemed to understand what was going

EXHIBIT 87

From: <LynnETurne@aol.com>
To: <PEwell@sandiego.gov>
Date: 4/23/2005 11:20:45 AM
Subject: Re: Horribly Misquoted

I know some of the people at Moody's in the corporate governance area very well including a Ken Bertsch and Greg Jonas. I would be happy to take a call from Moody's.

Question - I heard our "talking points" may have been sent out to a reporter. I would like to confirm whether or not that occurred as they were to be talking points as opposed to a press release. At this time, given the time I have spent with the press, I continue to be disinclined to do a press release. Since we have already discussed where we are with them, I dont know what sending them a piece a paper saying the same thing would do. But I am always open to discussing it and hearing any new additional reasoning.

In addition to talking to the press, I have also alerted the Chamber as to current events as well as the two council members who are our contacts (as you saw in the email).

Lynn

CC: <tdahlberg@Krollzolfocooper.com>

EXHIBIT 88

Q&A: Lynn Turner, Arthur Levitt, Benito Romano

May 15, 2005

Three members of an audit team the city of San Diego hired in February met with the Union-Tribune's editorial board May 12. The on-the-record session was requested by the audit team to provide an update on its work. While the team hopes to finish its work before year-end, it says it is hampered by the city pension board's refusal to turn over key documents.

Levitt: I'm feeling new to the San Diego scene and I've spent the better part of the past few weeks on reading everything that's been written about a city that I thought was, you know, one of the most beautiful and prosperous, culturally accomplished and wonderful cities that I'd ever spent time in. So, I got to know the city, I thought, and then I read this incredible series of stories about what was going on here. I am concerned at the early stages of our activity of gaining great public exposure to a process that, by its very nature, has to have a certain measure of security because it is an investigation. I was attracted to this project because I have seen other cities that go through financial tribulation and I think if we can help bring about a resolution of these problems and create an environment where there is a greater measure of disclosure, we can help restore confidence and the financial integrity of the city. I think that confidence would appear to be sorely missing at this point in time. Lynn (Turner) and I have known one another and worked together at the SEC. The two of us battled the accounting profession for nearly five years with a fair measure of success. The goal here very simply is to, as quickly as possible, get KPMG to sign off on the audit and as quickly as possible means right away because the consequences to the city of not having that audit become increasingly grave as every week goes by. We have brought in Benito Romano, a former U.S. attorney in the City of New York, because we are an audit committee in effect and our independence is critical to KPMG's acceptance of what we represent. As good as many of the people in city government may be, they lack the aura of independence that KPMG must demand at this point in time. So, that's our mission. To the extent to which it is possible, we will try very hard not to engage in findings through the press. At the same time, we want to be open and available about everything that we do and our present plan is to convene on a regular basis and answer questions of any kind in terms of our progress.

Question: Where does the audit committee stand? When might the investigation be completed? When might you be able to satisfy KPMG?

Levitt: We're early in the process obviously.

Turner: With the sum of the federal funding issues and all, it (completion of the investigation) can't get beyond the end of this year. We've already started reviewing the documentation evidence. V&E (Vinson & Elkins) has started to pull together

(what was) underlying their report. We've had a number of meetings with KPMG trying to narrow down as much as we can what's key and critical to them. Of course, (current City Attorney Michael) Aguirre has done his reports. We've asked him to provide us a list of all of his concerns and the documentation behind that, which we can then compare and reconcile to what (V&E) has when we get all their stuff pulled together. Then we can figure out if there are any areas of investigation that fulfill what KPMG is looking for that still needs to turn around and be addressed and looked at. What the auditor is going to be looking at, especially in this day and age, is has someone come in independent of the city ... gathered all the evidence or documentation where there's been allegations made, looked through it, and reached their own conclusions and opinions. What are those and are there any that can have an impact on the financial statements or need to be disclosed in the financial statements? As an auditor, you need to make sure you get your hands around ... what the SEC's asking for, look at what the U.S. attorney is asking for and see if all those documents have been turned over. And then either that the investigators or the auditors have had a chance to look through all those to see that the issue has been driven to the ground.

Have those documents been turned over? Have the subpoenas – some of them are a year old now – been complied with fully?

Levitt: I don't think we know yet.

Turner: You see documents keep coming in and additional document requests keep coming in from the law enforcement agencies. (Reading one document may produce a request for another.)

Did your associate not tell the City Council on Monday that the SEC and the U.S. Attorney's Office are not satisfied with the document production thus far? Do people need to be held accountable for the lack of compliance with the subpoenas?

Turner: Well, we know that the U.S. Attorney's Office is in a dispute with the Pension Board over the assertion of privilege. One of the things we have to do is to meet with them, now that we're organized, and to make sure that we understand that they are dissatisfied and with what respects they're dissatisfied. The failure to produce documents in response to a subpoena can be explainable because of the protocol or arrangements that were made with sequential rolling production, but they could also suggest something worse. We have to be mindful of the possibility that there's a gap in the production of those because there are facts that someone doesn't want to have to disclose. We are certain that that's going to be a concern of KPMG.

Have you had time to analyze the issues of the things that have occurred such as the so-called shredding day and the boxes of documents that were turned in late? Can you evaluate for us?

Turner: Not now. We have started to look at it in terms of what V&E has put

together and in talking to people, but in terms of evaluating it ... no. It's still too early on for that.

Would you elaborate on your remark that the consequences are increasingly grave as each week goes by?

Levitt: I'm thinking most pointedly about federal funding. At the end of this year it may become a real issue. Certainly, the city attorney recognizes the gravity of the situation.

Turner: When you take federal funds, in return for that Congress passes an act that said you've got to file certain financial reports with us and you've got to have all that subject to what's known as the Single Audit Act and what is now known as the General Accountability Office oversees that. And as you go out and pull funds down from whatever program it might be, then you have an obligation to have your audited financial statements done in accordance with auditing standards. So, if you start getting out beyond a time period where you're no longer filing, you're no longer current and there are deadlines on these programs and they are different deadlines for different programs for being able to have completed the Single Audit and have the financial statements filed with the federal government, then you run the risk of that they may all of a sudden start to cut off your federal funding.

We are about to enter fiscal '06, and we don't have an audit for fiscal '03, '04 or '05. How much time does the federal government allow before it says, 'OK, no audit, no money?

Turner: You would have to go through each of the specific OMB circulars.

Levitt: One of the worrisome things about San Diego situations when cities go into extremis – interestingly enough very often various opposing bodies band together in the community interest. When New York City came close to bankruptcy the unions and the business community worked together. The Financial Oversight Board was set up and they worked out a solution. Right now ... I see so many factions in this community at war with one another and it just doesn't seem to be the kind of united will to bring about a solution. I think it's essential that these oppositional factions understand that their salvation is only in working together on this rather than continuing the kind of strife that has characterized the community.

An additional appropriation of $2 million for the investigation implies that this could drag on forever or that this is about to enter a much more labor-intensive phase. Can you give us any guidance?

Levitt: I think this project calls for resolution by the end of the year. I don't know very much about whether it's a million or two million or exactly what the number is. I can tell you my motivation in requesting certain talent to be brought into this picture. It's very simply, KPMG appropriately called for independent study. And I was not about to be part of this unless I was satisfied that I had counsel of my own choosing.

Anyone on the committee must choose their own counsel and that's why I chose the individuals that I asked to be part of this team.

Turner: The answer is we are about to enter, and probably have actually gotten into, a more labor intensive phase. People are going to be spending more time, because we are getting right into the meat of everything. And we are starting to pursue things like the (issue of) privilege. It is very difficult for not only the public but just about everyone, including financially astute people to understand what all you go through on one of these investigations. You're going through e-mails and reading e-mails and you're interviewing people. And then when someone gives us documents, then you've got to go back and re-interview. The one thing you don't want to miss is the one e-mail that turns around and says, 'Here's who did what when' that blows it up. Typically, the SEC or the law enforcement agency starts interviewing the people at the bottom. And you get all the documents out of that. And they usually ... start to tell you everything. And then you can start working up the ladder to the three or four people at the top. But that process ... may very well take three to four years. We've got to be there by the end of the year. People have to cooperate with us to get there. We've got to have the pension board turn around and waive that privilege so we can make sure we get what we need there.

What are the chances of you actually convincing the pension board to waive attorney/client privilege?

Turner: First, the U.S. attorney has requested that. Seven of the members (of the pension board) are relatively new here. Hopefully, her staff can persuade them of why they need that information, so they change it. And of course, the SEC will probably follow on that as well. If they don't get that, then there is no question in my mind the U.S. attorney will take steps.

Are there ways around the privilege issue?

Romano: Without speaking for the U.S. attorney, yes, there are exceptions to the privilege and the judge can find that exceptions apply.

If the pension board ultimately does not waive the attorney-client privilege, can you complete your work? Can KPMG ever be satisfied? Will it certify the financial records?

Turner: It's hard to know because we don't know what's in the privileged communications or what impact it would have and what answers we might obtain by looking at the material. It is conceivable that as we get closer to circumscribing that information we may be left with a black hole, from which we can only infer one thing. If they were to refuse to waive privilege it makes it a much more difficult job to get done. But on the other hand, I also think that there's hope out there that through discussions and meetings we might have with the people at the pension board, as well as administrative staff, that we'll be able to lay out facts that would convince them that it would be in their best interests, as well as the best interests of the city, to turn

around and change that vote.

Has any of that happened yet?

Romano: Well, I would think the resolutions by the Chamber of Commerce and the City Council were both viewed by us as very positive. Keep in mind we don't have subpoena power. All of a sudden now people can start refusing to talk. I am hopeful that at the end of the day the pension board will comply with the request of the U.S. attorney.

What might the second report produce that the first one did not?

Turner: I encourage you to go look at the engagement letter, the contract that they have with the city. The second contract doesn't actually call for a report. The contract actually specifically states that there's only supposed to be a summary memorandum, not a report. In these investigations, some end up with reports and some don't. And it depends upon at the end of the day, quite frankly, what the people are going to use them need. And auditors very well might turn around and say just give us the work papers. And when you got into the second engagement letter, keeping in mind that it was driven by the fact that the city was trying to get to KPMG what they wanted. What KPMG is most interested in, from my perspective, is have all the issues been investigated, all the evidence brought to light? And then whatever remediation taken that is necessary including dealing with controls and processes and quite frankly people. So if they can get all that in that binder with the summary memo on top of it ... I suspect that's why that second engagement letter very well might have been written that way.

Are you starting from scratch in your investigation?

Turner: No. That's why we've gone back to D.C. once, why we're going to be going back to D.C. again in a couple weeks, to the extent that these people have already gone through and got documentation. And we can get all that and get it organized in succinct binders by topics and whatever. We don't want to have to go back and re-pull everyone's hard drives.

So you're actually going for source documents? You're not going for what V&E finally concluded about the content of those documents?

Turner: Correct.

Was the V&E report worth the taxpayers' investment? It was not viewed by KPMG as credible.

Turner: I would encourage you again though, and I found Councilwoman (Donna) Frye on Tuesday night asking a couple of what I consider to be good questions. And that is what was that original arrangement? And when you go back and look at the actual letter, where the original arrangement was made with the city and actually

signed by one of the representatives of the city attorney, the first letter is signed by the representative of the City Attorney's Office. The second letter is signed by the city manager. But in the first letter, OK, when you go back and look at it, the scope of the engagement is to, the first sentence I think says represent the city before, in the investigations by the SEC and the U.S. attorney. They principally had done the SEC and not really the U.S. attorney.

Levitt: Let me ask you a question. Who do you think calls the shots in the city?

Well, you put your finger on the problem.

What might we anticipate from the SEC as this process winds down?

Turner: I think it depends a lot on the willingness in the city to cooperate. I think if the city cooperatives, the SEC has a public responsibility as a government agency, it certainly doesn't want to add to the city's problems. But the caveat is cooperation.

There has been a suggestion that the second summary report will be delivered orally but not in writing. As taxpayers, should we place less credibility in something that costs millions and yet has not been produced in writing?

Turner: I think we have to look at the totality of the expenditure and the product. I think if I were you I'd look at it in terms of did this exercise move the process along and if so, how much did it move it along? I don't think that I would be as concerned about whether it was in writing or not. Had the city gone down the road of an independent audit committee initially, probably we would've saved some time in the process. Was the process a total waste? No, I think absolutely not. It sounds like maybe the signals changed a number of times during the process. The mandate was different. And I asked that question at V&E. To me it sounded like it was some fuzziness in terms of the mandate, some change in the mandate.

During the process?

Turner: During the process. Let me come back to a previous question. If I were a citizen here and going through this, my, whether or not I got my money's worth would depend upon whether or not what was created, what allowed this to happen got fixed. If at the end of the day you get the right controls and processes in, if people need to be dealt with, people need to be dealt with, and competent people brought in to make sure it doesn't occur again. Because this is always done by people. So my focus would be on, at the end of the day as a citizen, did I get the controls and processes fixed that were all broken? Was the investigation done so that all the things got fixed? You've got conflicts here. You've got competency issues here. You've got probably some lack of some independence type issues here. Did they get rectified and the whole system fixed in a way so that it's fixed going forward and isn't allowed to repeat? That tells me whether or not I as a citizen got a return on my dollars. You're underfunded by what – $1.2, $1.5 billion depending on which number. So that's

costing the city a phenomenal amount and at the end of the day, whatever money you end up spending, if you can prevent that from happening again, then you probably got good return on your money.

Isn't it clear that SEC regulations were violated on the face by the failure to report the status of the pension fund?

Romano: I grant you that there's evidence of error. And the question is whether the error was done negligently or intentionally. And there's different degrees of severity then in terms of the action the SEC might take. But also once you start getting up into this intentional fraud area, that is a very high hurdle for the SEC to prove in court. When you're talking about intentional misconduct, you're talking about removing individuals and how far is the integrity of the process compromised because of the presence of individuals and certain key decision points. So it's very important if you can to come to some conclusions about those, if you're going to be of any help.

Whether negligence or intentional, can these acts constitute a firing offense?

Romano: Oh, from the standpoint of disciplining employees, you don't use the same standard in making any decisions as you would use in a court of law.

Turner: From an employer perspective, there's all sorts of reasons you might relieve an employee.

What would you like to see in a new mayor?

Levitt: I'd like to see the new mayor have an incredible laser like focus on the importance of doing those things that will most expeditiously get a clean audit report, and that takes in a lot of things. It's got to be a person of great self-confidence, a kind of integrity that will enable the public to accept touch decisions and the communication skills to be able to persuade oppositional parties to make the kind of community sacrifice that inevitably resolves these municipal problems.

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EXHIBIT 89

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UNION-TRIBUNE EDITORIAL

Aguirre's gambit

City attorney tries to scuttle audit panel

August 11, 2005

"No man goes so high as he who knows not where he is going."

–Oliver Cromwell

By trying to scuttle the essential work of the city's independent investigative panel, City Attorney Mike Aguirre has undermined San Diego's vital interests. Had he succeeded in persuading even two members of the City Council to go along with his reckless gambit, the damage would have been incalculable.

During his early months in office, Aguirre played an invaluable role in uncovering wrongdoing at City Hall. Today, however, his obstructionist stance threatens to wreck San Diego's hopeful progress toward financial recovery.

The city attorney ought to be joining constructively with council members and the city's highly respected consultants to craft solutions. Instead, he engaged this week in an appallingly petty assault on the very experts who are trying to guide San Diego out of the swamp.

The indispensable key to getting the city back on its feet financially is the three-member audit committee chaired by former Securities and Exchange Commission chairman Arthur Levitt. Operating with total independence, the panel is assisting KPMG, the city's outside auditor, in completing the stalled financial statements that have locked San Diego out of the capital markets for over a year. Equally important, the Levitt committee is conducting an investigation that is almost certain to assign culpability to city officials who have engaged in misconduct. This probe is instrumental to both the SEC's anticipated enforcement action against the city and U.S. Attorney Carol Lam's criminal investigation.

Without the independent oversight provided by the audit committee, all of San Diego's efforts to regain its financial strength would collapse in one catastrophic stroke. Yet Aguirre, betraying resentment over what he saw as his exclusive turf, belittled Levitt and his colleagues during Tuesday's City Council meeting, urging that their contract be canceled. His sneering references to "East Coast" lawyers bristled with disturbing overtones. His prosecutorial bullying was an ugly echo of McCarthyism.

Aguirre would serve his own interests – and, more important, those of San Diego – by reflecting on Cromwell's famous utterance about the perils of blind ambition. This is not the moment for a power-hungry politician to exploit the instability at City Hall for his own self-aggrandizement. If Aguirre is incapable of becoming part of the solution, he at least must stop obstructing those who are committed to moving San Diego forward responsibly.

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EXHIBIT 90

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REVIVING SAN DIEGO

Looking at the numbers at City Hall

By Arthur Levitt
August 11, 2005

From the recent downgrading of the rating of the city of San Diego's bonds to the ongoing investigations of various officials, the fiscal and political crisis facing San Diego has only deepened. "America's finest city" has been tarnished almost beyond recognition.

Realizing the extent of the problems facing San Diego and the necessity for an independent assessment of its finances, the city's outside auditors – KPMG – suggested to the council that it establish an independent audit committee in the model of those required by pubic companies under the Sarbanes-Oxley Act.

In establishing this audit committee, the City Council wisely recognized the important role that qualified, committed, independent and tough-minded audit committees play as guardians of the public interest.

Our mission is clear: to act as a freestanding committee, separate and apart from the body politic, to review the investigative activity under way; to take the steps necessary to correct the city's financial disclosures and provide a remediation plan to prevent the deficiencies from recurring; and to otherwise satisfy the city's auditors – so San Diego may issue credible, transparent financial statements. This past week, the Securities and Exchange Commission confirmed the wisdom of this approach in regaining access to the sources of public funding needed to begin to restore the city's financial viability – and the viability, in particular, of its pension system.

Yet, in the months since these developments, we are at a logjam. Battles over political turf overwhelm the public interest. Openness in the pursuit of a credible, effective investigation is being frustrated and deliberately undermined by legal maneuverings and political showmanship.

Some may say that the issues facing San Diego are too complex simply to be painted as a choice between right and wrong. My colleagues and I on the audit committee disagree: the choice couldn't be clearer. Either you reject the politics, personal avarice and misguided policies that have put San Diego in the position it finds itself in – or you excuse them and grant them a pass to cause further disarray, division and distrust. It's a choice between personal grudges and the community's well-being – between arguing about the past and finding solutions for the future – between cynicism and hope.

Over the past five months since the City Council established an independent audit committee, we have made some significant progress.

Part of the audit committee's investigation is the remediation of the causes of the deficiencies that are found to exist. In doing so, the audit committee has met with city officials and leaders in the business community and labor whose support, commitment, and cooperation are essential to resolving the pension and other long-term issues that threaten this community.

Indeed, from the outset of this project, we have been clear that we cannot complete the task at hand without the active support and cooperation of key members of the San Diego community.

We approached our mission knowing we could only succeed if the leaders of this community wanted us to

succeed. Unfortunately, time and again, key figures in the leadership of San Diego have frustrated, impeded, and even thwarted our efforts.

We have encountered a refusal by the pension board to make available to the U.S. attorney, the SEC,or the audit committee documents critical to ascertainment of the truth and critical to the completion of an investigation satisfactory to us and to the auditor.

We have encountered an unrelenting drumbeat of almost nonstop public accusations by the City Attorney's Office, which have only served to cause division, uncertainty and obstacles to necessary progress.

The Audit Committee is grappling with an extraordinarily complex situation – combing through hundreds of thousands of records and scores of allegations of possible violations of criminal and civil law. We have a team of 15 lawyers and accountants, working long days and longer weeks trying – quickly and efficiently – to uncover the facts and prepare a report.

The hostile environment we are operating in only adds to the time and, in turn, cost of our review. But more than that, this contentiousness also flies in the face of two calls by the SEC for the leadership of this city to cooperate.

Ignoring these calls will only add to the costs incurred by the people of San Diego – not just in reputation lost, but also – potentially – in the size of the sanctions handed out by various law enforcement agencies.

Let me be crystal clear: There is no way San Diego can get the funds it needs from the public capital markets without an audit report; and there is no way to get such a report without a thorough investigation by a body unencumbered, untainted, and unabashedly independent from those involved in this situation.

Of course, some have suggested disbanding the audit committee, firing KPMG and seeking an auditor who would be less rigorous in its requirements. Without getting into the wrath that may be expected from regulatory officials in response to such an irresponsible approach, it is inconceivable to me that any reputable auditor would simply turn a blind eye to the legal and factual issues that must be investigated and resolved before an audit report may be issued.

Others have argued – somewhat naively – that bankruptcy is a viable option. Yet, it is far from clear that the city would even qualify for a bankruptcy filing to begin with.

A bankruptcy filing would do nothing to resolve the city's present difficulties and would only add new layers of cost and delay as all meaningful activity would have to be argued about by lawyers, subject to the scrutiny of various committees (all convened at city expense) and then separately approved by the bankruptcy court.

That responsible officials would even raise the possibility of bankruptcy speaks to the tragic circumstances of the current situation. San Diego's problems are – at their root – political problems, not economic ones. This is a city with remarkable assets – magnificent natural beauty and resources, a committed public citizenry, a hardworking populous and an extremely robust economic base. How tragic it is that infighting, intemperate political diatribe and premature public charges have so driven asunder the members of this magnificent community.

■ Levitt, who served chairman of the U.S. Securities and Exchange Commission from 1993 to 2001, supervises a team of attorneys, accountants and other professionals acting as the city of San Diego's audit committee. This article was adapted from Levitt's presentation this week to the San Diego City Council.

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EXHIBIT 91

COMMENT ON IT AND SO AT LEAST YOU WILL HAVE A RECORD AND SOME THOUGHT HAS GONE INTO LAYING OUT THE RELEVANT CONSIDERATIONS.

AGUIRRE:
THIS HAS GONE ON WAY TOO MANY MONTHS. EVERY OTHER CONTRACTOR WITH THE CITY, EVEN THE DEFENSE ATTORNEYS-

ROMANO:
HOW MANY AUDIT COMMITTEES DO YOU HAVE?

AGUIRRE:
EXCUSE ME. THERE IS NOTHING THAT IS UNIQUE ABOUT AN AUDIT COMMITTEE WITH REGARD TO BILLINGS. IT HAS NOTHING TO DO WITH YOUR INDEPENDENCE. EVERY CPA FIRM, EVERY LAW FIRM HAS TO MAINTAIN ITS INDEPENDENCE IN A THOUSAND DIFFERENT WAYS, BUT HERE IS THE KEY POINT. RIGHT NOW WE HAVE NO IDEA WHAT YOU ARE DOING AND YOU ARE SPENDING MILLIONS OF DOLLARS. THESE ARE NOT OUR MONIES.

ROMANO:
YOU DO HAVE AN IDEA WHAT WE ARE DOING.

AGUIRRE:
NO. NO, WE DO NOT. I DO NOT KNOW. ARE YOU CHARGING FOR YOUR MEETINGS WITH THE EDITORIAL BOARD?

ROMANO:
YOU DO NOT KNOW?

ATKINS:
MRS. FRYE, I AM SORRY.

AGUIRRE:
ARE YOU CHARGING FOR YOUR MEETINGS WITH THE EDITORIAL BOARD WITH THE UNION TRIBUNE? ARE YOU CHARGING THE CITY FOR THAT?

DAHLBERG:
YES.

AGUIRRE:
SO YOU ARE CHARGING THE CITY. SO MEET. LEVITT IS CHARGING US NINE HUNDRED DOLLARS AN HOUR TO GO AND MEET AND THAT IS SOMEHOW GOING TO COMPROMISE YOUR EFFORTS FOR US TO KNOW THAT?

DAHLBERG:
NO.

AGUIRRE:
WE WOULD LIKE TO KNOW THAT. THIS IS WHAT I AM SAYING, I THINK-

DAHLBERG:
BUT WHY?

AGUIRRE:
BECAUSE WE WANT TO MANAGE-

DAHLBERG:
YOU WANT TO MANAGE OUR-

ROMANO:
I DON'T THINK THAT IS GOING TO WORK.

AGUIRRE:
WE WANT TO MANAGE- I THINK THAT-

ATKINS:
MRS. FRYE, I AM SORRY I TOOK OVER FROM YOU. I WAS TRYING TO OFFER SOMETHING THAT COULD HELP.

AGUIRRE:
I THINK WHAT YOU ARE OFFERING COULD HELP.

ROMANO:
MR. AGUIRRE, ALL I AM SUGGESTING IS THAT WE SUBMIT SOMETHING TO THE COUNCIL SO YOU CAN READ IT.

[MULTIPLE VOICES]

ATKINS:
I AM GOING TO GO BACK TO MRS. FRYE. MRS. FRYE, I APOLOGIZE FOR INTERRUPTING YOU.

FRYE:
THANK YOU. THAT IS ALRIGHT. SO ANYWAYS, I STILL THINK IT IS A REASONABLE ASSUMPTION THAT WE HAVE SOME BETTER DETAIL THAN WHAT WE HAVE. IT IS DIFFICULT BECAUSE I AM PLACED AND WE (COUNCIL) ARE ALL PLACED IN A DIFFICULT SITUATION BECAUSE WE HAVE TO TAKE VOTES ON WHETHER OR NOT TO PAY YOUR BILLS AND BUT YET WE ARE TOLD THAT IF WE REVIEW THEN WE ARE TRYING TO MANAGE OUR INVESTIGATION AND SO IT IS VERY DIFFICULT. THAT IS WHY WE HAVE A CITY ATTORNEY. THAT IS WHY WE HAVE A CITY AUDITOR. THERE IS NO REASON WHY THE CITY AUDITOR AND THE CITY ATTORNEY COULD NOT LOOK AT THOSE BILLS. THAT IS WHAT LEGAL BILLS- THAT IS WHAT- THEY ARE SUPPOSE TO GO THROUGH A PROCESS. THAT WAY I CAN STILL HAVE SOME ASSURANCE THAT THE WORK THAT IS BEING BILLED IS BEING ACCOUNTED FOR AND THAT I WASN'T AT THE SAME TIME MANAGING YOU. I DON'T WANT TO MANAGE YOU, PERSONALLY, BUT WHAT I DO WANT TO MANAGE IS THE LENGTH OF TIME THIS INVESTIGATION IS TAKING AND I DO NEED TO KNOW CERTAIN FACTS, FOR EXAMPLE, THE FACT THAT MY UNDERSTANDING OF WHEN WE HIRED YOU WAS TO HAVE YOU DO AN ANALYSIS BETWEEN THE CITY ATTORNEY'S REPORT AND THE VINSON AND ELKIN REPORT. IT IS SOMEWHAT BLOSSOM TO THAT. I DO NOT RECALL, AND IT MIGHT BE ON YOUR CONTRACT, ASKING ANYONE FROM YOUR FIRM TO GO TO THE UNION TRIBUNE EDITORIAL BOARD AND HAVE MEETINGS. I DON'T RECALL THAT DIRECTION. I DON'T EVEN RECALL THAT COMING UP AS PART OF A REVIEW PROCESS. I GUESS I MISUNDERSTOOD THE ROLE WAS AND FOR ME FAIRLY NARROWLY DEFINED THAT YOU WOULD TAKE THIS REPORT AND THESE REPORTS AND YOU WOULD LOOK AT

THEM ALL AND COME OUT WITH A REPORT TELLING US WHICH ONE WAS CLOSER TO THE TRUTH THAN THE OTHER AND MAKING YOUR OWN FINDINGS. THAT WAS PRETTY MUCH WHAT I ENVISIONED THIS TO BE. AND IT SEEMS TO HAVE GOTTEN LARGER THAN THAT. THAT'S ALL. IT IS HARD FOR ME TO MANAGE YOU, BECAUSE IF I TRY TO MANAGE YOU, YOU SAY I'M TRYING TO MANAGE YOU. AND, YEAH, I KIND OF AM. THAT IS MY JOB.

DAHLBERG:
BUT YOU HAVE TO UNDERSTAND THAT MANAGING-

FRYE:
I DO UNDERSTAND THAT. IT IS DIFFICULT TO FIND THAT EXACT MANAGING LEVEL THAT DOES NOT IMPEDE IN YOUR INVESTIGATION AND IN ANY WAY, SHAPE, OR FORM TRYING TO CONTROL IT, BUT AT THE SAME POINT OR TIME IT ALLOWS ME TO HAVE SOME MANAGEMENT OF THE TAXPAYER'S DOLLARS THAT I AM SUPPOSE TO BE LOOKING OUT FOR.

DAHLBERG:
I WOULD JUST SAY TO THAT EXTENT, WE HAVE ALWAYS BEEN WORKING WITH THE CITY MANAGER AND MAINLY WITH LISA IRVINE IN GOING OVER A LOT OF DETAILED EXPENSES, DOWN TO RECEIPT THAT WE GET FOR THINGS AND GOING THROUGH AND ANSWERING QUESTIONS ABOUT ALL OF OUR BILLS TO THE EXTENT THEY HAVE ANY. IT IS NOT LIKE WE HAVEN'T SAT DOWN AND WE DON'T- EVERY BILL WE SIT DOWN AND DID OVER WITH CITY MANAGER AS FAR AS ANY QUESTIONS THEY HAVE AND ANY AUDIT PROCEDURES THEY WANT TO DO ON IT.

FRYE:
SO IT IS CERTAIN PEOPLE THAT CAN'T MANAGE YOU?

DAHLBERG:
NO. THEY ARE NOT MANAGING IT. WHAT THEY ARE DOING IS BASICALLY SAYING THAT THIS IS THE LEVEL- WELL THEY HAVE QUESTIONS ABOUT, OK AND THIS INVOICE IS HERE, AND WHATNOT. WE NEVER EXPLAIN MORE THAN THE LEVEL OF JUST GENERALLY OF WHAT WE ARE DOING.

FRYE:
OK, AND I UNDERSTAND THAT. SO I GUESS THAT YOU ARE SAYING IS THAT IT IS OK FOR SOME PEOPLE TO HAVE THAT INFORMATION BUT NOT ALL PEOPLE.

ROMANO:
NO. IF I COULD SUGGEST, IT MAY MAKE SOME SENSE TO TAKE THE PROCESS AND TRY AND GET SOMEONE INVOLVED IN IT, THAT ISN'T NECESSARILY INVOLVED IN THE INVESTIGATION. MR. AGUIRRE'S OFFICE, NOT MR. AGUIRRE PERSONALLY BUT THERE ARE ELEMENTS OF OUR WORK THAT AFFECT HIS OFFICE.

FRYE:
THERE ARE ELEMENTS OF YOUR WORK THAT AFFECT THE CITY MANAGER'S OFFICE, AS WELL.

ROMANO:
WE ARE TRYING TO FIND, AND I THINK WHAT WE HAVE BEEN DOING IS WORKING WITH SOMEONE AT THE CITY MANAGER'S OFFICE WHO IS NOT-WASN'T HERE AT THE TIME, IT IS NOT INVOLVED, IS AN OUTSIDE PROFESSIONAL.

FRYE:
EXCUSE ME BUT MR. EWELL AND MRS. IRVINE WERE HERE AND SO IF THAT IS WHO YOU ARE WORKING WITH.

[MULTIPLE VOICES]

ATKINS:
NO- MRS. FRYE IS ON THE MIC.

FRYE:
TO ME THIS IS NOT THAT DIFFICULT. I AM JUST TRYING TO MAKE SURE THAT YOUR BILLING RECORDS ARE COMPLETED AND ACCURATE. PERIOD AND END OF DISCUSSION. I UNDERSTAND THE ISSUE AS FAR AS YOU WANTING TO MAINTAIN CONFIDENTIALITY AND NOT DO ANYTHING TO SLOW DOWN AND IMPEDE YOUR INVESTIGATION, BUT YOU ALSO MUST UNDERSTAND THAT I HAVE

A DUTY AND RESPONSIBILITY AS WELL TO THE PEOPLE OF SAN DIEGO. I HAVE TO LOOK OUT FOR THAT. I THINK WE BEAT THE HORSE TO DEATH.

ATKINS:
MR. TORELL, THE QUIET ONE OVER HERE WANTED TO RESPOND TO, IF YOU WILL ALLOW HIM TO.

FRYE:
YES, REALLY BRIEFLY BECAUSE WE HAVE PEOPLE WAITING HERE AND I AM TRYING TO BE KIND AND POLITE.

TORELL:
I'LL MAKE THIS REAL QUICK. I AM THE ONE WHO SIGNS THE CHECKS THAT PAYS THEIR BILLS. I WOULD APPRECIATE BILLS BEING IN MORE DETAIL THAN THEY ARE. I THINK I HAVE A SPECIAL RESPONSIBILITY BECAUSE WE ARE TALKING PUBLIC FUNDS HERE. I DON'T THINK OUR INTERESTS ARE MUTUALLY EXCLUSIVE WITH KROLL. I THINK WE CAN RESPECT THEIR INDEPENDENCE, WE NEED TO RESPECT THEIR INDEPENDENCE BUT AT THE SAME TIME JUST FEEL A LITTLE MORE COMFORTABLE THAT THE MONEY IS GOING FOR SOMETHING- THAT WE CAN SUBSTANTIATE WHAT THE MONEY IS BEING SPENT FOR.

FRYE:
THAT IS CORRECT.

TORELL:
I DON'T THINK THAT IS MUTUALLY EXCLUSIVE. I THINK WE CAN GET THERE AND I THINK THESE GUYS AGREE WITH THAT.

FRYE:
AND I THINK WE CAN TOO. THAT IS THE POINT I WAS TRYING TO MAKE AND I BELIEVE MR. TORELL WAS NOT HERE AT THE TIME OF ANY OF THIS. THERE IS A PERSON YOU CAN CERTAINLY PROVIDE INFORMATION TO; I'M SURE HE WOULD LOOK OVER THAT. I AM JUST SAYING THAT THERE IS A WAY TO DO THIS THAT WOULD SATISFY THE NEED OF EVERYBODY CONCERNED.

DAHLBERG:
AND WE ARE NOT REALLY TRYING TO FIGHT WITH YOU. WE ARE WALKING A FINE LINE HERE AND WE DON'T WANT TO WASTE ALL OF OUR EFFORTS.

FRYE:
AND I UNDERSTAND THAT. I WANT TO GET BACK TO THOSE DOCUMENTS. I DON'T REMEMBER WHAT YOU SAID, ABOUT SEC ASKED KROLL TO INVESTIGATE THE WASTEWATER?

ROMANO:
THAT WAS ACTUALLY SAID BY COUNCILMAN MADAFFER AND I DIDN'T WANT TO INTERRUPT HIM. IT IS A SLIGHT, I THINK THAT THEY ARE RELYING ON US TO REVIEW THE MATTER AND PROVIDE THEM WITH INTERIM REPORTS ON OUR PROGRESS. I THINK THEY ARE ALLOWING US TO TAKE THE LEAD, I DON'T THINK THEY ARE DELEGATING TO US TO INVESTIGATE FOR THEM.

FRYE:
BECAUSE I WAS GOING TO SAY THAT IF THEY WERE, THAT I WOULD PREFER THAT THEY PAY YOUR BILLS.

[LAUGHTER]

ROMANO:
I AM SURE THAT WOULD BE APPROPRIATE UNDER THE CIRCUMSTANCES.

ATKINS:
JUST MAKING SURE SO THAT I KNOW EXACTLY WHO TO SEND THE BILLS TO.

DAHLBERG:
PART OF THE REASON THEY DID THAT WAS BECAUSE THE INITIALLY PART OF THE SUBPOENA THEY SENT ON WASTEWATER WAS VERY BROAD. THE CITY THEN CAME BACK PROPERLY AND SAID, LOOK THIS IS GOING TO VERY EXPENSIVE AND TIME CONSUMING, SO THEY SAID; ONE WAY TO NARROW IT IS DO A

LITTLE INVESTIGATION AND GIVE US A SENSE OF WHERE THIS IS GOING AND MAYBE WE WILL BE WILLING TO NARROW THE SUBPOENA SO YOU DON'T HAVE TO SPEND THE TIME AND EFFORTS FILLING THIS OUT.

FRYE:
THAT'S TOO BAD. I WAS HOPING THE ANSWER HAD BEEN YES. THE OTHER QUESTIONS RELATING TO THE EMAILS THAT WE WERE TALKING ABOUT CAUSING PROBLEMS TO YOUR INVESTIGATION. THE EMAILS YOU ARE TALKING ABOUT ARE RELATED TO ATTACHMENTS TO EMAILS. IS THAT WHAT WE ARE TALKING ABOUT?

DAHLBERG:
ACTUALLY IT IS A LITTLE MORE COMPLICATED THAN THAT. WE CAN PROBABLY SPEND THE MOST OF THE NIGHT, BUT GENERALLY SPEAKING, THERE IS A WHOLE SERIES OF ISSUES THAT HAVE OCCURRED HERE BETWEEN THINGS THAT HAVE HAPPENED WHEN APPLIED DISCOVER LOADED SOME THINGS UP AND THEN WHAT THE NEXIT TOOL CAUSED. GENERALLY SPEAKING, THERE IS A SPLITTING SOMETIMES OF ATTACHMENTS OR WHAT THE NEXIT TOOL WAS DOING WAS NOT PROCESSING THEM AND YOU GET SORT OF A GHOST IMAGE, AND THIS HAPPENS ON THE PRIVILEGE DOCUMENTS THAT WERE PRODUCED BY CERS; WHERE IT LOOKS LIKE YOU GOT AN ATTACHMENTS ON AN EMAIL AND THEN YOU CLICK ON IT AND YOU GET A BLANK SCREEN. SO WHEN THE NEXIT TOOL EXTRACTED THE EMAIL AND THE ATTACHMENT IT DIDN'T GET THE SUBSTANCE OF THE EMAIL.

FRYE:
IT DIDN'T GET ATTACHMENTS.

DAHLBERG:
THE ATTACHMENTS, RIGHT. IT LOOKS LIKE A GHOST OF AN ATTACHMENT BUT BASICALLY IT DOESN'T-

FRYE:
SO THESE ARE JUST ATTACHMENTS FROM EMAILS?

DAHLBERG:
MAINLY, BUT SOME EMAILS ACTUALLY GOT DROPPED OUT TO. IT IS NOT QUITE AS SIMPLE. PART OF THE PROBLEM IS, THE NEXIT TOOL DOESN'T CREATE; A LOT OF TOOLS CREATE SORT OF AN AUDITABLE BOX WHERE CORRUPTED FILES GET PUT INTO, SO YOU CAN GET INTO IT AND SEE WHAT THE PROBLEM IS. THE NEXIT TOOL DOESN'T DO THAT. YOU CAN'T REALLY SEE WHAT HAS GOTTEN DROPPED OUT. MANUALLY YOU CAN TRY AND GO BACK AND DO SOME KIND OF PHYSICAL MATCHING, BUT THAT IS VERY, VERY TIME CONSUMING. ONE OF THE THINGS WITH THE NOVELL TOLL, WHICH IS KIND OF COMMON FOR A LOT OF THESE TOOLS IS THAT WHEN IT RUNS, ITS PROCEDURE IS, IF FILES GET DROPPED OUT, THEY GET PUT IN THIS SORT OF CORRUPTED FILE THING AND YOU ACTUALLY GO THROUGH IT AND SEE WHAT THE UNTO THE UNDERLINED DATA, IF POSSIBLE.

FRYE:
WHEN DID THE WORK STOP?

DAHLBERG:
WHEN WE SAY WE STOPPED WE TRY TO WIND DOWN EVERYTHING, OTHER THAN GETTING THIS NOVELL SITUATION TAKEN CARE OF. WE ARE WORKING WITH THAT AND WE ARE WORKING WITH GETTING THIS DATA LOADED UP. WE GOT A WHOLE BUNCH OF FOLKS THAT WERE READY TO START GOING THROUGH THE EMAILS ABOUT TWO WEEKS AGO AND RIGHT BEFORE WE STARTED DOING THAT WE DISCOVERED THIS GLITCH AND POTENTIALLY THE EMAIL COULD NOT BE COMPLETE SO WE DON'T WANT YOU GUYS SITTING AROUND SPENDING TIME ON DATA THAT IS POTENTIALLY NO GOOD, SO WE BASICALLY PUT EVERYBODY ELSE ON HOLD, EXCEPT FOR THE FEW FOLKS WE HAVE THAT ARE TRYING TO WORK WITH THE CITY MANAGER'S OFFICE AND SAN DIEGO DATA PROCESSING TO GET NOVELL TO GET UP TO SPEED.

FRYE:
SO ALL THE OTHER DOCUMENTS THEN, YOU HAVE GONE THROUGH?

DAHLBERG:
A LOT OF THEM, THERE MAYBE A COUPLE AREAS WERE WE HAVEN'T COMPLETELY FINISHED OUR REVIEW. MOST OF WHAT WE HAVE, YES WE HAVE GONE THROUGH.

FRYE:
I GUESS THERE WAS THE LAST UNANSWERED QUESTION. I'M ALMOST AFRAID TO ASK IT. HOW LONG, AND AGAIN NOT TRYING TO MANAGE YOU BUT TRYING TO MANAGE THE MONEY THAT WE GIVE YOU, HOW LONG APPROXIMATELY, BECAUSE WE HAVE THIS DISCUSSION ALMOST EVERY TIME YOU COME HERE, AND I ASK YOU HOW LONG THIS WILL TAKE AND THEN YOU GIVE ME AN ANSWER.

ROMANO:
THERE IS A FORMULA.

FRYE:
I HAVEN'T FIGURED OUT THE FORMULA.

ROMANO:
IT'S AN X. WE DON'T KNOW THE VOLUME OF EMAILS THAT WE HAVE TO REVIEW. WE KNOW THE VOLUME WE ARE CAPABLE OF REVIEWING BY THE WEEK. RAMPING UP THE MAXIMUM LEVEL OF STAFFING WE THINK WERE COMPETENT TO MANAGE OURSELVES PROFESSIONALLY. ONCE WE KNOW THE VOLUME OF EMAILS THAT NEED TO BE REVIEWED, THE SAMPLING OF EMAILS, NOT EVERY EMAIL, BUT THE SAMPLE THAT WOULD BE SELECTED USING SEARCH TERMS THAT HAVE BEEN APPROVED AND AGREED UPON BY EVERYONE. WE WILL KNOW WHAT THE VOLUME OF EMAILS WILL NEED REVIEW. WE WILL KNOW MORE OR LESS HOW MANY EMAILS A HUMAN BEING CAN REVIEW IN A DAY AND WE KNOW HOW MANY PEOPLE WE CAN MANAGE WITH THE STAFFING THAT WE HAVE, VARIOUS LEVELS OF SENIORITY. ONCE WE KNOW THAT VOLUME, WE CAN CALCULATE FOR YOU-

FRYE:
OK, SO X IS THE EMAILS. I UNDERSTAND THAT FORMULA BUT THEN, WHICH EMAILS ARE YOU TALKING ABOUT? ARE YOU TALKING ABOUT THE EMAILS IN YOUR REPORT IN REVIEWING THE WORK OF VINSON AND ELKIN? ARE YOU TALKING ABOUT OTHERS?

ROMANO:
WE ARE TALKING ABOUT THE EMAILS WE ARE TRYING TO EXTRACT FROM THE GROUPWISE SYSTEM, WHICH IS THE SIXTY OR SEVENTY EMAIL BOXES, NINETY EMAIL BOXES.

FRYE:
WHICH ONE OF THESE ITEMS? YOU HAVE A REPORT THAT YOU WROTE FOR US DATED OCTOBER, 25TH OF 2005. WHICH ONE OF THESE BULLET POINTS WOULD THESE DOCUMENTS-

DAHLBERG:
OK, THE FIRST BULLET POINT IS APPROXIMATELY THE THIRTY-FIVE EMAIL BOXES THAT WERE INITIALLY LOOKED AT AND REVIEWED BY VINSON AND ELKINS AND WERE APPLIED DISCOVERY. WE TALKED ABOUT THOSE AND THE NEXT GROUP IS ELECTED OFFICIALS THAT WERE SOMEWHERE IN THE MIX IN 2002-2201.

FRYE:
NO, I'M JUST WONDERING LIKE YOU DESCRIBE YOUR WORK. YOU ARE DESCRIBING YOUR WORK. I'M JUST TRYING TO UNDERSTAND THE ISSUE THAT WE ARE TALKING ABOUT NOW ON THIS DOCUMENT I AM LOOKING AT, WHERE ARE YOU DESCRIBING THAT? IS IT THE PART OF, "WE ARE REVIEWING THE WORK OF VINSON AND ELKINS AND APPLIED DISCOVERY –"

DAHLBERG:
GO TO PAGE 5 OF 9.

FRYE:
IT WOULD BE ON PAGE 2 OF 9 AND IT WOULD BE THE THIRD BULLET. IS THAT WHAT WE ARE TALKING ABOUT? IS THAT THE

EMAILS YOU ARE TALKING ABOUT OR ARE THERE OTHER? THAT IS ALL I AM TRYING TO UNDERSTAND. WHICH EMAILS WE ARE TALKING ABOUT. IT WOULD MAKE IT A LOT SIMPLER TO TALK ABOUT.

DAHLBERG:
RIGHT. I THINK IF YOU TURN TO PAGE 5 OF 9.

FRYE:
OH, 5 OF 9!

DAHLBERG:
YES, WHERE IT SAYS ON THE HEADING UP THERE, ELECTRONIC MAIL. ON TOP OF THE PAGE AND YOU GO TO THE SECOND PARAGRAPH. I'M JUST GOING TO WALK YOU THROUGH.

FRYE:
LET ME JUST BACK YOU UP BEFORE YOU TAKE ME FORWARD. WHAT DO YOU MEAN ON THE THIRD BULLET OF PAGE 2 OF 9? JUST WHERE YOU ARE SAYING, "WE ARE REVIEWING THE WORK OF VINSON AND ELKINS AND APPLIED DISCOVERY, WE DISCOVERED THAT ABOUT ONE THIRD OF THE DATA NEEDED FOR V&E'S REVIEW IS NOT UPLOADED IN THE APPLIED DISCOVERY DATABASE." IS THAT A DIFFERENT SET OF EMAILS OR DOCUMENTS THAT YOU NEEDED, OVER AND ABOUT WHAT WE ARE TALKING ABOUT NOW? ARE THOSE THE SAME EMAILS?

DAHLBERG:
IT IS THE SAME BECAUSE WHAT WE ARE DOING IS, THE WAY THE LETTERS ARE LAID OUT. PAGE 1 OF 9 GOING ONTO PAGE 2 OF 9; BASICALLY STATES THE WORK WE HAVE DONE AND CONCLUSIONS WE HAVE COME TO ON THE WORK. SO, PART OF THE WORK WE DID WAS DOING AN ANALYSIS ON WHAT V&E HAD DONE. TO SEE WHETHER OR NOT WE CAN RELY ON THE WORK THEY DID ON THE EMAILS. THAT IS WHERE WE RAN INTO THE APPLIED DISCOVERY ISSUE.

FRYE:
WASN'T THAT UNTIL SEPTEMBER?

DAHLBERG:
RIGHT. WE DIDN'T START TO DEVELOP A WORK PLAN, WHICH I THINK WE TALKED TO THE COUNCIL ABOUT SOMETIME IN THE BEGINNING TO THE MIDDLE OF AUGUST, BECAUSE WE HAD STARTED TO DO OUR OWN WORK. WE WERE JUST TRYING TO GET V&E FINISHED AND GET THEIR STUFF WRAPPED UP AND GET IT DOCUMENTED IN THE HOPES THAT WE CAN RELYING IN A LOT OF THAT TO LIMIT THE AMOUNT OF WORK WE WERE GOING TO DO.

FRYE:
DIDN'T WE KIND OF WRAPPED THAT UP A WHILE BACK WITH THEIR DRAFT REPORT?

DAHLBERG:
I THINK IT WAS THE FIRST PART OF JULY PROBABLY. THE MIDDLE OF JULY WHERE THEY DID THAT AND THEN WE WENT THROUGH A PROCESS WHERE WE SAID, OK WE'VE GOTTEN YOU NOW TO DOCUMENT EVERYTHING YOU DID, WE GOT YOUR REPORT, WE GOT THE CITY ATTORNEY REPORT, WE GOT WHATEVER DOCUMENTATION HE DID. THEN WE WERE GOING TO SIT THERE AND SAY, WHAT ADDITIONAL WORK NEEDS TO BE DONE TO ACTUALLY MAKE SURE WE HAVE ENOUGH DOCUMENTATION TO DO A COMPLETE AND THOROUGH INVESTIGATION? AND SO PART OF THE PROCEDURE WAS TO AUDIT SOME OF VINSON AND ELKIN'S WORK, WHICH IS WHERE WE HIT THESE THIRTY-FIVE EMAILS FILE SITUATION. THEN WE SAID, WHAT OTHER AREAS NEED TO BE LOOKED AT THAT WEREN'T LOOKED AT BY EITHER PARTY? THIS IS HOW THE GROUP OF EMAIL BOXES WAS DETERMINED.

FRYE:
OK. MR. CITY ATTORNEY AND THEN I AM WRAPPING UP.

AGUIRRE:
THE ONLY POINT I WOULD MAKE IN RESPONSE TO YOUR QUESTION. THE PERSON THAT HAS ACTUAL KNOWLEDGE, SINCE MR. DAHLBERG NOR MR. ROMANO WAS ACTUALLY INVOLVED IN THIS IS MRS. ARNINI WHO IS NOT HERE TODAY. BUT, WE HAVE IN OUR POSSESSION, WHICH I RECEIVED FROM OUR FRIENDS THAT WERE INVOLVED IN PROVIDING CONSULTING WORK; THAT ON

JANUARY THE 10TH OF 2005 AN EMAIL WAS SENT TO MR. MACO THAT SAID IN BRIEF, "JUST PRIOR OF YOU CONTACTING ME ABOUT THIS ISSUE I HAD OUR PRODUCTION TEAM LOOK INTO DOCUMENT NUMBER AT KPMG'S REQUEST WHEN OUR TEAM LOOKED AT THE PRE-CONVERTED DOCUMENTS, THE LINKS TO THE ATTACHMENT WERE DEAD. HENCE, THE ATTACHMENTS ARE NOT EXTRACTED AND LINKED TO THE EMAIL ON THE ORA. ADDITIONALLY, WHEN WE LOOK AT THE DOCUMENT, AGAIN THE NUMBER, THERE IS NO EVIDENCE THAT THIS DOCUMENT IS AN ATTACHMENT TO ANY OTHER DOCUMENT IN THE SYSTEM. IT APPEARS AS A LOOSE FILE THAT DID NOT COME OUT OF ANY EMAIL 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, IN THEIR NATIVE FORMAT." THEN IT GOES ON FROM THERE. THE POINT BEING THAT THIS WAS A PROBLEM THAT WAS UNDERSTOOD IN JANUARY BY MR. MACO. THAT IS WHO THIS WAS SENT TO. OUR CITY MANAGER DETERMINED IN MARCH NOT TO USE NEXIT, SO HE KNEW ABOUT IT IN MARCH AND FOR THESE PEOPLE TO COME IN AS THE TOP PEOPLE IN THE COUNTRY AND SAY THEY DIDN'T DISCOVER THE PROBLEM UNTIL SEPTEMBER IS ABSOLUTELY UNACCEPTABLE. THAT IS WHY YOU NEED TO MANAGE THEM WITHOUT THEM LOOSING THEIR INDEPENDENCE AND IT IS NOT CORRECT FOR THEM TO SAY NOW THAT THIS IS SOMEHOW BRAND NEW INFORMATION AND THAT IS WHAT WE HAVE TO GET TO THE BOTTOM OF IT. WHAT HAPPENED WITH THE COMMUNICATION BETWEEN THE CITY MANAGER AND THE KROLL PEOPLE AND MR. MACO WHO HAS A VERY CLOSE RELATIONSHIP WITH MR. TURNER AND MR. LEVITT SO THAT MR. MACO KNEW ABOUT THE PROBLEM IN JANUARY OF THIS YEAR. MR. CITY MANAGER KNEW ABOUT IT IN MARCH OF THIS YEAR AND KROLL IS TELLING US THEY DIDN'T DISCOVER IT UNTIL SEPTEMBER. THERE IS SOMETHING WRONG HERE AND MAYBE IT IS BECAUSE NO ONE IS TALKING TO EACH OTHER OR MAYBE THERE IS SOME OTHER REASON.

FRYE:
THANK YOU. I KNOW WE ARE NOT GOING TO GET AN ANSWER TONIGHT BECAUSE THE PEOPLE THAT WE NEED TO TALK TO ARE NOT HERE TONIGHT SO IT IS A LITTLE DIFFICULT. I WOULD LIKE TO SAY THAT THERE IS TO DEAL WITH THE BILLING RECORDS TO MAKE SURE THAT, THAT IS ADDRESSED. AND I DON'T THINK THAT IS UNREASONABLE. I THINK EVERYONE SEEMS TO UNDERSTAND WHAT IT IS WE NEED TO MAKE SURE THAT THE CITY AUDITOR AND COMPTROLLER AS WELL AS THE CITY ATTORNEY, BUT AGAIN THESE GENTLEMEN WERE NOT HERE AND I DON'T SEE THERE BEING ANY SORT OF CONFLICT OR PROBLEM WITH THEM LOOKING AT THAT. WOULD YOU AGREE WITH THAT?

DAHLBERG:
I THINK THAT MAKES A LOT OF SENSE. YES.

FRYE:
IT WOULD BE HELPFUL FOR YOU TO PUT TOGETHER SOMETHING IN WRITING OR WHATEVER THAT MAY BE. I THINK IN THE INTERIM THAT WE REALLY NEED TO MAKE SURE THAT THERE ARE FULL AND COMPLETE BILLING RECORDS AND AGAIN I DON'T THINK THAT IS UNREASONABLE, IN FACT IT HAS BEEN PROVEN TO BE NECESSARY GIVEN THE FACT THAT THE AMOUNT OF MONEY THAT THE CITY OF SAN DIEGO IS SPENDING, AGAIN WITH THE CITY AUDITOR AND COMPTROLLER AS WELL AS THE CITY ATTORNEY TO WORK ON THAT WITH YOU.

ROMANO:
IT IS PERFECTLY REASONABLE. JUST SO THERE IS NO MISUNDERSTANDING, THERE ARE COMPLETE AND ACCURATE BILLING RECORDS. THE ONLY ISSUE WE ARE RAISING IS HOW THAT INFORMATION IS HANDLED. THAT'S ALL.

FRYE:
THERE ARE FULL AND COMPLETE BILLING RECORDS THAT NO ONE HAS SEEN?

DAHLBERG:
THAT IS NOT TRUE.

FRYE:
OH! SOMEONE HAS SEEN THEM?

DAHLBERG:
THE CITY MANAGER:

FRYE:
THE CITY MANAGER HAS SEEN THEM. OK.

EWELL:
THE CITY MANAGER'S OFFICE THRU FINANCIAL MANAGEMENT GO THRU EVERY BILLING. ONCE THEY RECEIVE THE BILL, THE STAFF SITS DOWN WITH REPRESENTATIVES FROM THE AUDIT COMMITTEE AND GO OVER EACH OF THE ITEMS TO ENSURE THAT THEY ARE NOT CHARGING INCONSISTENT WITH THE CONTRACT. THAT HAS BEEN IN PLACE SINCE THE BEGINNING OF THIS ENGAGEMENT AND IT HAS NOT CHANGED. BUT, WHAT TENDS TO HAPPEN IS THAT THE WORD "CITY MANAGER" IS TOSSED AROUND HERE LIKE I PERSONALLY AM INVOLVED IN ALL OF THESE ACTIVITIES. THE REALITY IS WE HAVE STAFF DOING THIS WORK IN ENSURING THAT THE BILLINGS ARE CORRECT. I'D BE MORE THAN HAPPY TO GIVE IT TO THE AUDITOR AND COMPTROLLER JUST TO RESOLVE THIS ISSUE. I'M JUST AMAZED THAT WE TEND TO BE MORE ENGAGED IN SUBTERFUGE BY OUR CITY ATTORNEY AS OPPOSED TO DEALING WITH THE FACTS OF THIS MATTER. AND HI IS VERY ADEPT AT MISREPRESENTING THINGS. I WANTED TO GO BACK TO ONE OTHER ISSUE. AS I STATED BEFORE, MY OFFICE WAS MADE AWARE OF THE MATTER IN MARCH. AS MR. AGUIRRE LIKES TO KEEP TOUTING THAT I DID NOT SHARE THIS INFORMATION. I FOUND OUT AB OUT THIS INFORMATION AT THE SAME TIME THAT KROLL FOUND OUT ABOUT IT BECAUSE THEY NOTIFIED ME OF THE DISCREPANCY. WHEN I ASKED OUR IT&C STAFF THEY EXPLAINED TO ME IN GOING THRU THE PROCESS, BECAUSE WE NOW TOOK OVER THE ROLE OF RESPONDING TO SUBPOENAS BECAUSE WE WERE NOT GETTING THE SUPPORT FROM THE CITY ATTORNEY'S OFFICE. THEY THEN BUILT IN A QUALITY CONTROL FEATURE TO MAKE SURE THAT ANY INFORMATION THE HAD BEEN EXTRACTED OFF OF GROUPWISE OR ANY OTHER SYSTEM WAS IDENTICAL TO WHAT WAS NOT BEEN CAPTURED ON A CD-ROM AND THAT IS HOW

THEY FOUND OUT ABOUT IT. WHO WERE THEY TO REPORT IT TO? THIS HAD BEEN MANAGED BY THE CITY ATTORNEY'S OFFICE THEN HE HAS THE AUDACITY TO SAY, WHY DIDN'T WE NOTIFY HIM? WELL, WHY DIDN'T THE CITY ATTORNEY'S OFFICE KNOW ABOUT THIS IN JANUARY WHEN THEY WERE DEALING WITH THIS ISSUE? HE IS CONSTANTLY MISREPRESENTING THE FACTS.

[MULTIPLE VOICES]

ATKINS:
NOW I AM GOING TO STOP YOU. I AM NOT GOING TO LET THIS KEEP HAPPENING. I AM JUST NOT. MRS. FRYE PLEASE FINISH.

FRYE:
MRS. DEPUTY MAYOR ATKINS, AGAIN I GUESS WHAT I JUST LEARNED IS HAT THE CITY MANAGER KNEW ABOUT THIS ISSUE OR THE DOCUMENTS IN MARCH. IS THAT RIGHT?

EWELL:
I KNEW ABOUT THIS ISSUE OFFICIALLY ABOUT TWO WEEKS AGO.

DAHLBERG:
RIGHT.

EWELL:
WHEN IT WAS DETERMINED BY THE AUDIT COMMITTEE. MY STAFF WHO HAD TAKEN OVER THE RESPONSIBILITIES FOUND OUT ABOUT IT AS THEY WERE GOING THRU A QUALITY CONTROL CHECK AND, YES THAT IS HOW THEY WERE MADE AWARE OF IT.

FRYE:
SO, YOUR STAFF KNEW IN MARCH BUT THEY DID NOT TELL YOU?

EWELL:
YES.

FRYE:
OK AND THESE ARE THE PEOPLE WHO ARE GOING THRU THE BILLING DOCUMENTS?

EWELL:
NO.

FRYE:
NO? THESE ARE DIFFERENT PEOPLE?

EWELL:
THEY ARE DIFFERENT PEOPLE.

FRYE:
OK, I WOULD FEEL MORE COMFORTABLE TO HAVE SOMEONE GO THRU THE BILLING RECORDS SUCH AS OUR CITY AUDITOR COMPTROLLER. I AM GOING TO PUT THAT MOTION ON THE FLOOR RIGHT NOW AND HOPE THAT WE CAN GET A SECOND FOR THAT. I THINK THAT IT IS IMPORTANT THAT THEY LOOK AT THAT. I THINK THAT EVERYBODY WOULD FEEL COMFORTABLE. SO, THE CITY MANAGER'S OFFICE LEARNED ABOUT THE GLITCH. THE PROBLEM AND THEN YOU FOUND OUT ABOUT IT IN SEPTEMBER BECAUSE NOBODY FROM THE CITY MANAGER'S OFFICE TOLD YOU?

DAHLBERG:
THERE REALLY WAS NO REASON FOR-

FRYE:
AND V&E DIDN'T TELL YOU.

DAHLBERG:
THEY HAD WORKED ON A WORK AROUND WHEN THEY HAD IT IN MARCH. THEY FIGURED OUT A WAY TO –

[MULTIPLE VOICES]

FRYE:
SO YOU DIDN'T FIND OUT UNTIL SEPTEMBER?

DAHLBERG:
RIGHT.

FRYE:
THE CITY MANAGER DID NOT FIND OUT UNTIL SEPTEMBER?

DAHLBERG:
WHO?

FRYE:
THE CITY MANAGER, MR. LAMONT EWELL DID NOT FIND OUT UNTIL SEPTEMBER.

DAHLBERG:
YEAH.

FRYE:
BUT THE CITY MANAGER'S OFFICE, WHOEVER WAS WORKING WITH SOMEBODY KNEW ABOUT IT?

ROMANO:
THAT IS WHAT WE GATHER BY IT.

FRYE:
OK AND THAT WAS ALL WE REALLY NEEDED TO KNOW AND THEN WE CAN MOVE ONE. IT IS 5 O'CLOCK AND I WOULD REALLY LIKE TO GET TO THESE FOLKS. I BELIEVE THIS IS IMPORTANT INFORMATION AND I DO BELIEVE THAT WE NEED TO SPEND A LITTLE MORE TIME WORKING ON THIS BECAUSE THERE SEEMS TO BE A LOT OF DISAGREEMENT ABOUT HOW THIS HAPPENED AND WHO AND WHAT INFORMATION WENT.. WELL, THANK YOU.

ATKINS:
MR. PETERS.

PETERS:
THANK YOU. FIRST I WOULD LIKE TO CONGRATULATE THE COMMUNITY OF EL CERRO FOR THEIR INTEREST IN OUR AUDITS.

[LAUGHTER AND APPLAUSE]

PETERS:
YOU KNOW IT IS REALLY IMPRESSIVE, YOU KNOW, NOT A LOT OF PEOPLE PAY ATTENTION AND HERE YOU ARE THRU THIS MEETING. I AM ONLY GOING TO BE ABOUT FORTY MINUTES. FIRST OF ALL I THINK IT IS GOOD TO HAVE A HEALTHY DISCUSSION AND I WOULD THINK THAT IT IS IMPORTANT TO POINT OUT IN THE BEGINNING THAT ALL OF US AR, FIRST AND FOREMOST CONCERNED ABOUT PROTECTING THE TAXPAYERS HERE. THERE ARE A NUMBER OF COMPETING THINGS AT WORK, PEOPLE I TALK TO ARE CONCERNED ABOUT THEIR PARKS AND GETTING THEIR ROADS PAVED, GETTING THEIR SEWER SYSTEM DONE. A LOT OF THINGS THAT DEPEND ON OUR FINANCES; REALLY WHAT WE ARE TRYING TO DO THRU THIS WHOLE EFFORT WITH KROLL IS TO GET OURSELVES BACK ON OUR FINANCIAL FEET. LET'S REMEMBER THAT, THAT IS THE BIG PICTURE. MR. CITY MANAGER, I WOULD APPRECIATE IF YOU COULD JUST WRITE YOUR RESPONSE TO THIS WHOLE ISSUE OF WHO KNEW WHAT AND WHEN. I THINK IT IS REALLY A PERIPHERAL ISSUE AND IT HAS BEEN RAISED. IF YOU COULD POINT THAT OUT. I HEAR THE CITY ATTORNEY SAYING THAT YOU KNEW, I HEAR THAT YOU ARE SAYING THAT THE CITY ATTORNEY KNEW, IT IS ALL VERY INTERESTING BUT IN MY VIEW IT IS NOT FUNDAMENTAL AS TO WHERE WE ARE TODAY. I THINK MAYBE THE CITY ATTORNEY COULD HAVE RAISED SOME OF THESE ISSUES IN WRITING BEFOREHAND AND WE COULD HAVE DONE THIS MUCH MORE QUICKLY AND COULD HAVE LESSENED THE INQUISITION STYLE. BE IT AS IT MAY, WE HAVE SOME IMPORTANT DECISIONS TO MAKE GOING FORWARD ABOUT WHAT WE DO TO GET THESE AUDITS RELEASED AND THAT IS REALLY WHAT IT'S ALL ABOUT. WHEN WE TALK ABOUT A SEWER PROGRAM AND OUR WATER PROGRAM, AND POTENTIALLY PENSION OBLIGATION BONDS THAT ARE GOING TO HELP US CLOSE THE GAP. THAT IS THE MOST IMPORTANT THING WE HAVE TO DEAL WITH TODAY. ON THE COMMENT ABOUT THE MEDIA I JUST WANT TO SAY THAT YOUR CONTACTS WITH THE PRESS, I HAVE ENCOURAGED YOU TO SPEAK DIRECTLY WITH ANY REPORTERS WHO WANT TO SPEAK WITH YOU AND THE REASON FOR THAT IS, THE TAXPAYERS DESERVE TO KNOW WHAT YOU ARE DOING. THE TAXPAYERS WILL GET THEIR INFORMATION FROM THE MEDIA AND THEY WILL GET A MUCH BETTER READ OF WHAT YOU ARE

DOING IF YOU ARE DESCRIBING DIRECTLY TO THE MEDIA AND NOT THRU SOME INTERMEDIARY. YOU CAN CALL ME, I COULD ASK YOU AND RELAY IT TO THE NEWSPAPER ASSUMING YOU ARE NOT SPENDING GREAT AMOUNT OF TIME ON THAT EFFORT. I THINK IT IS USEFUL TO THE PUBLIC AND TO THE TAXPAYERS TO KNOW WHAT YOU ARE DOING. I THINK IT IS PROBABLY VERY EFFICIENT. I WOULD BE CURIOUS TO FIND OUT HOW MUCH TIME WE SPEND WITH THE UNION TRIBUNE BUT I AM ASSUMING THAT IT IS NOT THAT MUCH. I REALLY HAVE NO OBJECTION TO IT. I DO WANT TO ASK, JUST TO MAKE CLEAR AND I NOT TO BE PROVOCATIVE OR NOTHING BUT MR. TORELL WAS DESCRIBING THE POSITION OF THE CITY ATTORNEY WITH RESPECT TO KROLL AND IT WAS NOT WHAT I WAS HEARING. I JUST WANT TO BE CLEAR. MR. TORELL WAS SAYING THAT MR. CITY ATTORNEY, YOU AGREE THAT WE SHOULD BE KEEPING KROLL ON AND FINISH THIS INVESTIGATION. MY IMPRESSION HAS BEEN THAT YOU ARE RECOMMENDING THAT WE FIRE KROLL AND LET THE SEC DO THE INVESTIGATION.

AGUIRRE:
IF IT WERE UP TO ME I WOULD HAVE FIRED KROLL MANY MONTHS AGO BECAUSE OF THE VERY SITUATION WE HAVE SEEN HERE TODAY. HOWEVER, IN RECOGNITION OF THE FEELINGS OF THE COUNCIL I HAVE PROPOSED A COMPROMISE. THAT COMPROMISE IS THAT KROLL PROVIDE US WITH AT THE EARLIEST OPPORTUNITY, THREE THINGS. ONE IS, DETAILED BILLS OF ALL THEIR BILLINGS.

PETERS:
A BUDGET AND A TIMELINE?

AGUIRRE:
YES.

PETERS:
UNDERSTANDABLE.

PETERS:
SO I TAKE YOUR TIMELINE ANSWER IS, WE TAKE A FORMULA AND AS SOON AS YOU KNOW, WITHOUT HAVING TO COME BACK HERE, TELL US WHAT THE EMAIL UNIVERSE IS, CALCULATE THAT OUT IN A FORMULA AND LET US KNOW. I THINK EVERYONE WANTS TO KNOW THAT INFORMATION AS SOON AS POSSIBLE. WITH RESPECT TO THE REVIEW OF BILLS, I REALLY THINK MR. TORELL IS THE RIGHT GUY. PARTLY BECAUSE IT IS HIS JOB TO DO THIS KIND OF THING AND ALSO BECAUSE HE CAME IN AFTER ALL OF THIS HAPPENED. HE'S RELATIVELY UNINVOLVED, LET ME SAY MY OBSERVATION IN REVIEWING YOUR BILLS REALLY DOES GO TO THE INTEGRITY OF THE INVESTIGATION. THE REASON WE CARE ABOUT THE INTEGRITY OF THE INVESTIGATION IS, WOULDN'T IT BE A TRAGEDY THAT AFTER WE SPENT ALL THIS MONEY, IT LOOKED LIKE WE WERE MANAGING YOU IN A WAY THE SEC WOULD SAY THE CITY ATTORNEY WAS TELLING YOU WHAT TO DO, OR THE CITY COUNCIL WAS TELLING YOU WHAT TO DO, OR THE CITY MANAGER WAS TELLING YOU WHAT TO DO. I DON'T THINK THAT IS A GOOD PLACE FOR US TO PUT YOU. WE HIRED YOU TO BE INDEPENDENT AUDITORS AND WE WERE REALLY IN A BIND BECAUSE WE WANT TO KNOW HOW WE ARE SPENDING THE MONEY AND WE WANT TO BE ACCOUNTABLE FOR THAT AND WE WANT YOU TO BE ACCOUNTABLE FOR THAT. AT THE SAME TIME I UNDERSTAND THAT IF THE CITY COUNCIL WERE REVIEWING YOUR BILLS YOU'D BE OPEN TO CHARGES THAT WE WERE TRYING TO DIRECT YOUR WORK AWAY FROM US. MAYBE SO YOU WON'T HAVE TO PAY SO MUCH ATTENTION TO US OR THE CITY ATTORNEY, HE MAYBE DIRECTING YOUR WORK AWAY FROM UNDERCUTTING HIS REPORTS, OR THE CITY MANAGER MAYBE TRYING TO PROTECT HIS PEOPLE SO I THINK ONE ADVANTAGE OF MR. TORELL IS THAT HE DOESN'T HAVE ANY HISTORY TO PROTECT HIMSELF WITH. HE WASN'T HERE, HE'S NEW, HE BRINGS IN SOME GOOD INNOVATION. WHETHER IT REQUIRES A MOTION; WITHIN THE ORGANIZATION MAYBE MR. TORELL GOING FORWARD IS THE RIGHT PERSON TO LOOK AT THIS AND I ALSO SUGGEST THAT SINCE WE ARE MOVING TO A NEW FORM OF GOVERNMENT AND MR. EWELL WILL BE GONE, THAT IT WOULD MAKE SENSE FROM THAT TRANSITION POINT TOO.

AGUIRRE:
CAN I JUST MAKE ONE POINT OF INQUIRY?

PETERS:
ALL RIGHT GO AHEAD.

AGUIRRE:
THANK YOU.

PETERS:
YOU ARE ASKING ME A QUESTION?

AGUIRRE:
YES, DON'T YOU THINK THOUGH SINCE THE CITY AUDITOR IS HIRED BY THE COUNCIL WHEREAS THE CITY ATTORNEY IS ELECTED BY THE PEOPLE THAT IT WOULD MAKE BETTER SENSE TO HAVE SOMEONE WHO IS INDEPENDENTLY ELECTED BY THE PEOPLE RATHER THAN SOMEONE WHO WORKS UNDER THE PLEASURE OF THE COUNCIL; NO OFFENSE TO MR. TORELL. IN TERMS OF REALLY HAVING AN INDEPENDENT REVIEW?

TORELL:
COULD I JUST RESPOND TO THAT? ONE OF THE THINGS MIKE, AS A CERTIFIED PUBLIC ACCOUNTANT I HAVE TO SUBSCRIBE TO A CODE OF ETHICS THAT ELEVATES INDEPENDENCE TO THE PRIMARY ELEMENT OF THAT CODE AND I VALUE THE INDEPENDENCE THAT I HAVE AND NO ONE IS GOING TO INTIMIDATE ME AND YOU KNOW THAT, THAT NO ONE IS GOING TO INTIMIDATE ME. I HAVE A GREAT SEVERANCE PACKET IF SOMEONE WANTS TO FIRE ME HERE AND THAT IS FINE WITH ME SO NO ONE IS GOING TO TELL ME WHAT TO SAY.

AGUIRRE:
I HAVE YOUR ASSURANCE THAT YOU WOULD BE INDEPENDENT?

TORELL:
ABSOLUTELY, MIKE.

PETERS:
I APPRECIATE THAT AND I WOULD JUST SAY ALSO, THAT WE'VE LEARNED FROM THE SEC THAT THEY DON'T RECOGNIZE- YOU KNOW VINSON AND ELKIN'S REPORT HAD BEEN AN INDEPENDENT REPORT THAT THE SEC WOULD RELY ON THEN WE WOULD BE DONE. SIMILARLY THEY SAID THE SAME THING ABOUT THE CITY ATTORNEY'S REPORTS AND MEMBERS OF THE CITY ATTORNEY'S OFFICE WERE AROUND DURING ALL OF THESE THINGS AND ADVISED THE COUNCIL. I THINK IT IS SORT OF THE SAME SITUATION. I LIKE THE IDEA AND I LIKE THE ASSURANCE THAT MR. TORELL GAVE AND I THINK THAT MAKES SENSE TO ME. THAT IS SOMETHING FOR US TO DEAL WITH INTERNALLY. MR. DAHLBERG?

DAHLBERG:
JUST SO YOU UNDERSTAND, WE ARE PERFECTLY FINE WITH THAT. WE DO HAVE A SENSITIVITY TO THE PUBLICITY ASPECT. IN OTHER WORDS, JUST BECAUSE WE DON'T WANT THE INVESTIGATION DONE, WE WOULD LOVE TO TURN OVER OUR DETAILED RECORDS TO HIM FOR A PRESS CONFERENCE.

PETERS:
WITHOUT GETTING INTO MORE COLLOQUY, I THINK THESE POOR PEOPLE HAVE GONE THROUGH A LOT. I AM INTERESTED IN YOUR SUBMISSION. I THINK WE NEED TO KNOW, REALLY, WHY IT IS YOU CAN'T PROVIDE DETAILED BILLS. I AM NOT SAYING THAT THERE IS NOT A GOOD REASON FOR IT. I REALLY THINK WE OUGHT TO GET SOMETHING THAT IS IN WRITING TO EXPLAIN IT TO US. I DON'T UNDERSTAND, FOR INSTANCE, A BILL COULDN'T SAY INTERVIEWED THREE CITY EMPLOYEES TODAY, WITHOUT SAYING THEIR NAMES. THAT WOULD PROTECT THIS INTEREST AND CANDOR YOU HAVE OF HAVING TO PUT PEOPLE'S NAMES IN THE PRESS AND AT THE SAME TIME WE WILL KNOW YOU INTERVIEWED THREE CITY EMPLOYEES. MAYBE IN YOUR SUBMISSION YOU CAN CONSIDER THAT KIND OF THING. YOU COULD COME WITH A RECOMMENDATION AS TO WHAT NEEDS TO REMAIN PRIVATE, IN ORDER TO PROTECT YOUR INVESTIGATION, NOT IN ORDER TO PROTECT THE PUBLIC FROM KNOWING ABOUT THIS OR THE COUNCIL. WHAT WE WANT TO DO IS TO MAKE SURE

YOUR INVESTIGATION IS INDEPENDENT AND IT IS RELIABLE AND TO THE MAXIMUM EXTENT WE CAN, WE WANT TO KEEP AN EYE ON THE MONEY. I AM INTERESTED IN YOUR SUBMISSION. I AM NOT ASKING YOU TO DO THAT TODAY AT 5:10. I WOULD BE INTERESTED IN THAT BEFORE MAKING ANY DECISIONS ABOUT THAT HERE. AT THIS POINT I AM INCLINED TO HAVE MR. TORELL TAKE ON, INTERNALLY, THE REVIEW OF WHATEVER BILLS THOSE ARE WITH SOME UNDERSTANDING OF CONFIDENTIALITY. DOES THAT SEEM FAIR?

DAHLBERG:
THAT IS GREAT. WE WOULD DO IT.

ROMANO:
WE JUST WANT TO GIVE SOME THOUGHT TO THE KIND EDITING THAT WE THINK WE WOULD NEED AND WE WOULD HAVE SOMEONE, IF THEY DISAGREE WITH US, REACT.

PETERS:
I JUST THOUGHT THE BEST DISCUSSION OF THIS, MR. TORELL DID GIVE US ABOUT WHY WE ARE PROBABLY IN THE POSITION WERE WE HAVE TO STAY THIS COURSE. I THINK WE ALL OF US ARE FRUSTRATED BY THIS. NO ONE LIKES TO SPEND MONEY ON CONSULTANTS INSTEAD OF YOUR DISTRICTS. MAKING NEIGHBORHOODS BETTER AND PAVING STREETS, AND IMPROVING PARKS. I THINK THAT IS THE TENSION WE ARE FEELING NOW BECAUSE WE DO WANT TO GET THROUGH THIS SO WE CAN GET BACK TO THE BUSINESS OF SERVING THE TAXPAYERS. I DO WANT TO RECOGNIZE, HOWEVER, IF WE FIRE KROLL AND WE DIDN'T GET OUR AUDIT, THE DELAY THAT, THAT WOULD CAUSE IS IN ITSELF A HUGE COST TO THE CITY. WE CAN'T JUST ASSUME THAT, THAT GOES AWAY. WE ARE GOING TO START OVER AGAIN. KPMG IS WAITING FOR WHAT YOU SAY, I THINK WE UNDERSTAND FOR THE BENEFIT OF THE TAXPAYERS, WE ARE PROBABLY GOING TO HAVE TO FINISH THIS PROCESS OUT. I WOULD ASK YOU TO UNDERSTAND THAT THERE IS GREAT CONCERN AMONG THE COUNCIL AND THE TAXPAYERS ON WHETHER THIS MONEY IS WELL SPENT AND MAKING SURE THAT WITHIN THE RESTRICTION THAT WE HAVE, WE HAVE TO GET THROUGH THE SEC, WE HAVE TO GET THROUGH

THE AUDIT, THAT WE REALLY ARE USING THE MONEY WISELY. WE ARE ASKING YOU TO HELP US MAKE THAT CASE. THANK YOU ALL FOR YOUR REPORT.

DAHLBERG:
NO PROBLEM.

ATKINS:
THANK YOU. MR. YOUNG.

YOUNG:
THANK YOU. MOST OF THE THINGS I HAD WRITTEN DOWN, A LOT OF STUFF HAS BEEN SAID. I WILL JUST KIND OF SUMMARIES THAT WE WANT THIS INVESTIGATION TO END. WE ARE AS COUNCIL MEMBERS, AS REPRESENTATIVES TO THE CITY OF SAN DIEGO AND ITS RESIDENTS, WE HEAR A LOT OF INPUT FROM OUR RESIDENTS WHO ASK QUESTIONS IN REGARDS TO HOW MUCH MONEY WE ARE SPENDING AND THEN LOOK AT THE CUTS WE ARE MAKING IN REGARDS TO SERVICES TO OUR RESIDENTS. THERE IS A LOT OF QUESTIONS ABOUT THAT. I UNDERSTAND WERE YOU POINTED OUT THAT THESE TYPES OF INVESTIGATIONS REQUIRE THAT YOU NOT SAY OR EXPLAIN EVERYTHING THAT YOU DO BECAUSE IT MIGHT DAMAGE OR THE QUALITY OF THAT. BUT THIS IS A LITTLE DIFFERENT BECAUSE YOU HAVE OVER A MILLION PEOPLE, TAXPAYERS WHO ARE PAYING FOR THIS AND THAT IS A VERY IMPORTANT POINT. WE HAVE TO SPEAK FOR THEM. AS I HEARD THE COUNCIL TODAY, ARE THEIR (CITIZENS) SENTIMENTS AND THAT IS WHAT OUR JOB IS TO DO. IN REGARD TO YOUR SCOPE OF WORK I JUST WANT TO MAKE SURE I AM CLEAR, WHEN YOU WENT TO THE EDITORIAL BOARD FRO THE UNION TRIBUNE, WAS THAT IN YOUR SCOPE OF WORK? I DON'T THINK IT WAS. THE SCOPE OF WORK THAT WE AGREED UPON FOR YOU TO DO WHEN YOU WENT TO THE EDITORIAL BOARD, WAS THAT IN YOUR SCOPE OF WORK? HOW DID THAT FIT INTO YOUR SCOPE OF WORK?

DAHLBERG:
BASICALLY, WE FELT THAT IF THE PRESS HAS QUESTIONS FOR US WE NEED TO BE AVAILABLE TO ANSWER THEM TO SOME DEGREE BECAUSE THIS IS A UNIQUE SITUATION, AS YOU SAID, YOU HAVE

CONSTITUENTS AND PEOPLE READ THE NEWSPAPER. THEY NEEDED SOME FORM OF BEING ABLE TO UNDERSTAND THE FACTS, SO WE GOT INVITED BY THE EDITORIAL BOARD TO BASICALLY COME IN AND BE ABLE TO ANSWER QUESTIONS THAT THEY HAD. THE QUESTIONS THAT WE ANSWERED HAD NOTHING TO DO WITH OUR ULTIMATE OPINIONS OR ULTIMATE THOUGHTS BUT THEY DO HAVE TO DO WITH PROCEDURAL THINGS. MUCH OF IT IS THE SAME WAY THAT YOU ARE ASKING QUESTIONS RIGHT NOW FOR YOUR CONSTITUENTS. A UNIQUE ASPECT OF THIS PROJECT IS THAT WE CAN'T JUST TELL THE PRESS TO TAKE A HIKE BECAUSE A LOT OF PEOPLE ARE TALKING TO THEM ALL THE TIME. SOME PEOPLE ARE TALKING TO THEM ALL THE TIME AND SOME PEOPLE SOMETIMES WHAT THEY ARE TELLING THEM IS NOT RIGHT. WE ARE IN A SITUATION WERE WE HAVE TO PERIODICALLY MAKE OURSELVES AVAILABLE AND WHAT HAS HAPPENED WITH THE UNION TRIBUNE IS THAT A NUMBER OF TIMES WHEN MR. LEVITT IS GOING TO COME IN, THEY ISSUE AN INVITATION FOR US TO COME AND HAVE US ANSWER QUESTIONS TO THE BOARD.

YOUNG:
THAT PART MAKES SENSE BUT THAT IS NOT THE QUESTION. THE QUESTION IS, HOW MUCH IS THAT WORTH?

DAHLBERG:
IT IS A SMALL AMOUNT.

YOUNG:
BUT SEE, I DON'T KNOW HOW MUCH YOU CHARGED AND THERE HAS TO BE SOME VALUE PUT TO THAT FOR ME TO ASSES THAT VALUE AND HOW MUCH WE SHOULD PAY FOR THAT. THOSE ARE THE TYPES OF THINGS WE ARE TALKING ABOUT HERE. IF YOU WENT TO THE EDITORIAL BOARD THERE ARE SOME OTHER GROUPS YOU WENT TO TALK TO ALSO. AS I UNDERSTAND YOU WENT TO THE WALL STREET JOURNAL AND THE SAN DIEGO CHAMBER OF COMMERCE, IS THAT CORRECT?

DAHLBERG:
WE GOT INVITATIONS IN THOSE SITUATIONS. WE HAVE PEOPLE THAT COME IN AND-

YOUNG:
DID YOU CHARGE US FOR IT?

DAHLBERG:
YES.

YOUNG:
THOSE ARE THE TYPES OF THINGS WE HAVE A PROBLEM WITH. THOSE ARE THE THINGS THE WE HAVE TO EXPLAIN TO OUR CONSTITUENTS ON WHY WOULD WE BE SPENDING MONEY FOR YOU TO SPEAK AT THE CHAMBER OF COMMERCE?

ROMANO:
IF I COULD JUST ADD AND WE CAN DISAGREE ABOUT THIS, BUT-

YOUNG:
SIR, I'M SORRY, BEFORE YOU EXPLAIN. YOU ARE RIGHT WE CAN DISAGREE ABOUT IT BUT WE ARE THE ONES WHO ARE ACTUALLY PAYING FOR YOUR SERVICES.

ROMANO:
I WAS JUST GOING TO EXPLAIN WHY I THINK IT IS RELEVANT TO THE SCOPE OF SERVICES.

YOUNG:
OK

ROMANO:
IT IS VERY CONFIDENT AND DIFFICULT TO UNDERSTAND FOR NORMAL MEMBERS OF THE PUBLIC HOW AN AUDIT COMMITTEE WORKS. WHAT ITS FUNCTION IS AND WHY IT IS NECESSARY IN A CIRCUMSTANCE LIKE THIS. THERE HAS BEEN A LOT OF MISINFORMATION OUT THERE AND I THINK ARTHUR LEVITT IN PRIOR APPEARANCES BEFORE THE COUNCIL HAS SAID THAT HE HAS MET WITH COMMUNITY GROUPS AND HE HAS MADE HIMSELF AVAILABLE TO THOSE GROUPS ON A VERY LIMITED BASIS BUT TO EXPLAIN WHY THE AUDIT COMMITTEE WAS FORMED AND HOW IT CONDUCTS ITS WORK AND WHAT THE PURPOSE OF IT IS, IS

REALLY PUBLIC INFORMATION. AS I SAID WE COULD DISAGREE AS TO WHETHER THAT IS A VALUE TO THE CITY. WE THINK IT IS IMPORTANT BECAUSE, AS I SAID EARLIER, WE THINK IT HELPS TO CONTRIBUTE TO AN ATMOSPHERE IN WHICH PEOPLE UNDERSTAND OUR WORK AND HOPEFULLY SUPPORT IT BECAUSE WE NEED THE SUPPORT OF THE COMMUNITY AND THE CITY IN ORDER TO ACCOMPLISH WHAT WE NEED TO ACCOMPLISH.

YOUNG:
I UNDERSTAND THAT AND IN A PERFECT WORLD THAT IS TRUE, BUT UNFORTUNATELY SAN DIEGO, RIGHT NOW, IS NOT PERFECT IN REGARDS TO OUR FISCAL SITUATION. WHEN I HAVE TO GO TO MY CONSTITUENTS AND SAY THAT WE HAVE TO RAISE OUR FEES TO BURY OUR MOST POOR CITIZENS IN THE MOUNT HOPE CEMETERY THAT CAN'T AFFORD IT. WHEN WE HAVE TO SAY THAT WE HAVE TO CUT BACK ON OUR 6 TO 6 PROGRAM AND CLOSE OUR POOLS. THAT IS THE CONTEXT THAT I AM WORKING IN. EVERY LITTLE DOLLAR COUNTS FOR US. WHAT YOU HAVE DONE AND ACCOUNTING WHAT YOU HAVE DONE AND BEING ABLE TO WEIGH THAT OUT WITH THE OTHER DECISIONS I HAVE TO MAKE WHEN IT COMES TO OUR BUDGET, THAT IS WHERE WE ARE. I WILL TELL YOU THAT, THAT IS SOMETHING YOU ARE GOING TO CONTINUE TO HEAR EVERY TIME YOU COME AND SPEAK TO US.

DAHLBERG:
I THINK THAT IN SOME OF THESE THINGS, IF YOU WERE TO GIVE US THE DIRECTION AS COUNCIL TO SAY, DO NOT SPEAK TO THE PRESS, DO NOT SPEAK TO THE PUBLIC.

YOUNG:
NO-

DAHLBERG:
I AM JUST SAYING IF YOU WANTED TO GIVE US THAT DIRECTION, BECAUSE WE DON'T DO IT BECAUSE IN OUR FREE TIME WE LIKE DOING IT.

YOUNG:
I UNDERSTAND THAT BUT MAYBE THAT SHOULD BE A DISCUSSION TO CLEARLY DEFINE WHAT WE WANT YOU TO DO. IT IS NOT THAT I DON'T THINK YOU ARE DOING A GOOD JOB, IT IS THAT I CAN'T SAY FOR SURE THAT YOU ARE BECAUSE I DON'T KNOW WHAT YOU ARE DOING. MY CONSTITUENTS CERTAINLY WANT TO ASK THOSE QUESTIONS, TRUST ME, WHEN I GET TO WORK TOMORROW THERE ARE GOING TO BE A LOT OF PHONE CALLS FOR ME TO ANSWER. I'LL DO IT BUT I NEED TO BE ABLE AND HAVE ALL THE INFORMATION AT HAND SO THAT IS WHAT THIS IS ABOUT. I SECONDED MRS. FRYE'S MOTION TO ASK THE AUDITOR TO SEE, HOPEFULLY, A NEW REVISED LIST OF INFORMATION OF YOUR BILLING. I AM LOOKING FORWARD TO SEEING THAT AND JUST SO YOU KNOW, THE FIFTEEN MILLION DOLLARS THAT WE HAVE HAD TO SPEND SO FAR IN OUR INVESTIGATION HERE; WE HAVE ALREADY CUT COMMUNITY OFFICERS, STREET SWEEPING, POT HOLES. I DON'T KNOW HOW MANY THOUSANDS OF POT HOLES WE COULD HAVE FIXED HERE. TIME IS OF THE ESSENCE. I BELIEVE THAT WE NEED TO CONTINUE OUR INVESTIGATIONS HERE. I DON'T THINK WE HAVE MANY OTHER OPTIONS. WE DON'T HAVE MUCH MORE MONEY, I MEAN THERE IS GOING TO BE A POINT WHERE WE DON'T HAVE ANY MONEY TO PAY YOU AND THAT IS THE BOTTOM LINE. WE MIGHT HAVE TO PUT OURSELVES AT THE MERCY OF THE SEC AND SAY; YOU KNOW WHAT TAKE THREE YEARS TO MAKE YOUR INVESTIGATION BECAUSE WE DON'T HAVE ANY MORE MONEY. THAT IS ONE OF THE DECISIONS THAT WE MIGHT HAVE TO MAKE. I APPRECIATE YOU COMING AND I GUESS YOU ARE COMING AGAIN. WHEN ARE YOU COMING BACK? NEXT MONTH?

DAHLBERG:
PROBABLY ONCE WE GAT A BETTER PICTURE ON THE NOVELL THING. IT COULD BE IN A COUPLE OF WEEKS. TWO TO THREE WEEKS PROBABLY.

ATKINS:
IT IS SCHEDULED TOWARDS THE END OF NOVEMBER, BECAUSE NEXT WEEK WE ARE OFF AND THEN THE FOURTEENTH AND THE TWENTY-FIRST, I THINK.

EXHIBIT 92

SANDIEGOSOURCE The Daily Transcript

Tuesday, November 01, 2005 editor@sddt.com http://www.sddt.com Source Code: 20051101tba

City's audit mired in billing controversy

By KEVIN CHRISTENSEN, The Daily Transcript
Tuesday, November 1, 2005

The city of San Diego likely will be unable to access money on Wall Street for far longer than expected, according to a report from the audit committee at a Tuesday City Council meeting.
The committee could not provide any solid indication of when the city will be able to access those markets.

In one of the most argumentative and contentious meetings in recent memory, City Council members also failed to make any headway on receiving a more accurate billing system to track the work of the outside investigators who have thus far charged the city more than $6 million in less than one year.

Lynne Turner, a **Kroll Inc**. senior adviser leading the audit committee, told the council that its investigation into possible illegal acts by city officials on financial disclosures would not be completed by the former-December deadline.

The problem, Turner said, is the turnover of e-mails from the city has been incomplete as a result of problems with computer programs and the transfer of electronic documents.

City Council members then asked how much longer the investigation will take after the electronic difficulties are addressed.

Benito Romano, an attorney representing Kroll, said the timing is uncertain until the audit committee knows exactly how many e-mails will turn up.

In February, the City Council hired Kroll Inc. to complete an investigation into possible violations of federal disclosure practices on financial statements.

The city, which is unable to borrow funds in the capital markets, has not issued a financial audit since 2002, forcing cuts in some department budgets.

The city's outside auditor **KPMG**, which is working to complete the 2003 audit, has said it will not issue the audit until Kroll has completed its investigation.

Another key issue in the discussion included City Attorney Michael Aguirre and some City Council members' request for a more accurate, line item breakdown of the billings of Kroll and its law firm **Willkie Farr & Gallagher**.

Currently, the billings that most city officials have access to include only the name of the audit committee employee, number of hours worked and the total dollar amount due. No information is provided about what the employee has actually worked on, Aguirre said.

City Manager Lamont Ewell said at the meeting that the firm has submitted bills to his office that include some in-depth descriptions of the company's work.

Neither Aguirre nor the City Council members have had access to the bills.

Ewell also said he had not seen the detailed bills, but members of his staff have approved payment.

To date, Kroll has received $3.25 million from the city and Willkie Farr has collected $2.65 million without providing any substantial work product.

Prior to the meeting, Deputy Mayor Toni Atkins said she would propose establishing a committee to review the billing of the audit committee. The committee would include representatives of the mayor's office, the city attorney's office, two council members and the city auditor.

The discussion at this point unraveled into sometimes-uncontrollable quarreling, and Atkins turned off Aguirre's microphone three times.

Romano said that submitting a line item accounting of their billing could compromise the integrity of the investigation because if city employee's names began to appear, it might scare them away from openly discussing what occurred.

"That sense of fairness is a way to encourage people to come forward and share information with us," Romano said. "A number of people have said to us that they don't want to come forward because they don't want to see their name trashed."

Aguirre said that without some a more accurate billing, there is no way for the city to discern what the audit committee was doing.

Councilwoman Donna Frye agreed and said, "I don't think it's unreasonable. I think it's a matter of good business practices for billings to be complete."

For months, Aguirre has charged that the audit committee is engaging in lobbying efforts that have nothing to do with the investigation; however, he did not have the line item billing to prove it.

When asked by Aguirre if members of the audit committee are charging the city for his meetings with *The San Diego Union-Tribune* editorial board for editorial opinion articles, Dahlberg replied, "Yes, we are."

Arthur Levitt, a consultant for Kroll and former chair of the U.S. Securities and Exchange Commission, has met on different occasions with the editorial board and bills the city $950 hour, Aguirre said.

Frye said, "I don't recall directing employees of Kroll to have meetings with the newspaper."

The audit committee also met with *The Wall Street Journal* and the San Diego Regional Chamber of Commerce, said Councilman Tony Young.

"We have to explain to our constituents why we are paying money for you to talk to the Regional Chamber of Commerce," Young said.

A council motion that would allow City Auditor John Torrell to review a more in-depth breakdown of the billing failed on a 4-to-2 vote, with Councilmen Scott Peters and Jim Madaffer opposing.

Send your thoughts, comments or suggestions to kevin.christensen@sddt.com

EXHIBIT 93

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Sanders' first test

Audit committee's probe must continue

UNION-TRIBUNE

December 13, 2005

The keystone of San Diego's financial recovery is its independent audit committee. The city's ability to borrow money, issue certified financial statements and conduct a range of other essential business – not to mention get out from under the cloud of multiple federal probes – all hinges on completion of the audit committee's investigation.

Yet, astonishingly, the panel is on the brink of shutting down because of an interruption in its funding from the city. Mayor Jerry Sanders and the City Council must move quickly to avert this looming calamity.

As a political matter, the work of the audit committee is controversial because it is enormously costly. To carry out its probe, the panel is examining hundreds of thousands of internal e-mails generated by mid-and upper-level city officials and members of the City Council. This entails forensic computer experts and a large staff to pore over individual documents.

To date, the city has paid the audit committee and its outside law firm $7.8 million. In the time since those funds were exhausted, however, the panel has run up an additional $3 million in billable hours while awaiting approval by the City Council to continue its work. Completing the investigation, the audit committee estimates, will require another staggering payment from the city of $9 million to $11 million.

Sanders had planned to take the issue to the council for approval today. He backed off, though, when the audit committee, chaired by former Securities and Exchange Commission chairman Arthur Levitt, would not guarantee that the $11 million figure would be enough to finish the investigation. As a result, the panel is preparing to cease operations until some time in January, when the council will return from its Christmas break.

This would mean, at the very least, a month-long postponement in completing the probe, now set to be wrapped up in mid-spring of next year. Yet far worse than the delay is the disastrous message it sends about San Diego's commitment to resolving its financial crisis under its newly elected mayor.

For starters, putting the audit committee's operations on hold would signal to KPMG, the city's outside auditor, that the mayor and council are not fully committed to an independent investigation of San Diego's financial affairs. KPMG has made it unmistakably plain it will not issue the long-delayed audit for 2003 until an independent probe is conducted. And without that audit, the city cannot return to the regular municipal bond market.

What is more, a disruption in the audit committee's work would telegraph to the SEC and the U.S. Attorney's Office that San Diego cannot be relied upon to investigate the potential wrongdoing that has occurred at City Hall in the last three years. And it would be a glaring indication to Wall Street investors that San Diego still is not prepared to tackle its financial woes.

The urgent solution here is for Mayor Sanders to reach an ironclad funding agreement with the audit committee that is satisfactory to KPMG in terms of the scope and duration of the investigation. Then Sanders

must present the matter to the City Council as soon as possible. This will require the mayor to call a special council meeting, because today's is the last regularly scheduled session of the year.

San Diego's fiscal upheaval demands strong, determined direction from the top. This all-important issue poses the first critical test of Jerry Sanders' leadership.

Find this article at:
http://www.signonsandiego.com/news/op-ed/editorial1/20051213-9999-lz1ed13top.html

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 94

AGUIRRE:
DO YOU REPORT TO ANYONE WHO IS ON THE BOARD OR IN THE NATIONAL MANAGEMENT COMMITTEE WITH REGARD TO THIS AUDIT?

MORRIS:
TO REGARD OF THIS AUDIT. I HAVE RESPONSIBILITIES FROM AN OPERATIONAL POINT OF VIEW TO THE SENIOR PARTNER RESPONSIBLE OF THE AUDIT PROCESS.

AGUIRRE:
AND WHO IS THAT?

MORRIS:
AN INDIVIDUAL BY THE NAME OF JACK TAYLOR.

AGUIRRE:
HAVE YOU SPOKEN TO HIM ABOUT HIS AUDIT?

MORRIS:
I'VE SPOKEN TO HIS PREDECESSOR WHO IS NOW OUR CHAIRMAN.

AGUIRRE:
WHO IS HIS PREDECESSOR?

MORRIS:
TIM FLYNN.

AGUIRRE:
TIM FLYNN? HAVE YOU EVER MADE A REPORT ABOUT THIS AUDIT TO THE MANAGEMENT COMMITTEE?

MORRIS:
HE HAS BEEN INTERESTED AS HE WOULD BE IN ANY OF OUR AUDITS PARTICULARLY ON ANY ONE THAT HAS OR IS KIND OF IN A NATIONAL STAGE AS THIS DOES.

AGUIRRE:
NOW YOU HAVE TOLD US THAT THE INVESTIGATION THAT HAS YOUR INTEREST IS THE ONE THAT IS BEING CONDUCTED BY KROLL. DO YOU REMEMBER SAYING THAT A LITTLE WHILE AGO?

MORRIS:
YES.

AGUIRRE:
THAT HAS YOUR INTEREST BECAUSE WHY?

MORRIS:
BECAUSE IT'S INDEPENDENT IN PARTICULAR.

AGUIRRE:
IT'S INDEPENDENT FROM WHOM?

MORRIS:
IT'S INDEPENDENT BODY UNDER TAKING IT ON BEHALF OF THE CITIZENS OF SAN DIEGO TO LOOK AT WHETHER OR NOT THERE HAS BEEN ANY IRREGULARITIES AND IF SO IF THOSE IRREGULARITIES AND WHAT THEIR CONSEQUENCES ARE AND WHETHER OR NOT THEY HAVE BEEN REMEDIATE.

AGUIRRE:
WHAT I'M TALKING ABOUT NOW IS NOT WHETHER IT'S AN INDEPENDENT BODY. WHAT I'M TALKING ABOUT IS, I DON'T BELIEVE WHAT WE ARE TALKING ABOUT IS SEPARATE NESS AS A CORPORATION. WHAT I'M TALKING ABOUT IS WHO IS IT INDEPENDENT FROM?

MORRIS:
IT IS INDEPENDENT FROM THE MANAGEMENT AND FROM THOSE RESPONSIBLE WITHIN THE CITY OF THE DAY TO DAY OPERATIONS OF THE CITY INCLUDING THE COUNTY.

AGUIRRE:
SO IT'S INDEPENDENT FROM THE CITY THAT IS WHAT YOU ARE SAYING?

MORRIS:
YES.

AGUIRRE:
IT'S INDEPENDENT FROM THE CITY OFFICIALS?

MORRIS:
YES.

AGUIRRE:
AND BECAUSE IT'S INDEPENDENT FROM THE CITY OFFICIALS THEN YOU BELIEVE THAT, THAT MAKES IT THE INVESTIGATION OF INTEREST TO YOU. IS THAT CORRECT?

MORRIS:
YES.

AGUIRRE:
SO IF YOU FOUND OUT THAT IT WASN'T INDEPENDENT FROM THE CITY OFFICIALS WILL THAT BE IMPORTANT TO YOU?

MORRIS:
I SUPPOSE.

AGUIRRE:
WHY WOULD THAT BE?

MORRIS:
I'M NOT QUITE SURE WHERE WE ARE GOING WITH THIS LINE OF QUESTIONING. I MEAN, I THINK IT'S INDEPENDENT TO ME IS A PRETTY STRAIGHT FORWARD. IT'S INDEPENDENT. IT'S COMPREHENSIVE. LOOKING AT ALL ASPECTS OF THE INVESTIGATION.

AGUIRRE:
THERE ARE TWO COMPONENTS OF INDEPENDENCE. ACTUAL AND APPEARANCE. CORRECT?

MORRIS:
SURE.

AGUIRRE:
IF YOU FOUND OUT THAT THE KROLL COMPANY WAS NOT INDEPENDENT FROM THE CITY OFFICIALS THAT WOULD HAVE AN IMPACT ON THE RELIABILITY OF THEIR WORK PRODUCT, WOULD YOU AGREE WITH THAT?

MORRIS:
I'M LOOKING TO THE THREE MEMBERS OF THE AUDIT COMMITTEE AS APPOINTED BY THE CITY COUNCIL TO SERVE AS THEIR AUDIT COMMITTEE AND LOOKING AT THAT CONSTITUENCY WE WERE PRETTY COMFORTABLE THAT THESE WERE THE RIGHT INDIVIDUALS TAKING THIS RESPONSIBILITY.

AGUIRRE:
RIGHT BUT THE QUESTION BEFORE YOU IS IF THEY WERE NOT INDEPENDENT FROM THE CITY OFFICIALS THAT WOULD BE OF SOME CONCERN TO YOU, CORRECT?

MORRIS:
WE'D HAVE TO CONSIDER THAT AS WE CONSIDER EVERYTHING ELSE.

AGUIRRE:
IT WOULD BE IMPORTANT TO THE USERS OF OUR FINANCIAL STATEMENTS THAT YOU BE INDEPENDENT FROM THE KROLL COMPANY. IS THAT CORRECT? DO YOU THINK? IN TERM OF BEING ABLE TO FULLY ASSES THE WORTH OF YOUR OPINION ON OUR FINANCIAL STATEMENTS FOR 2003?

MORRIS:
SURE.

AGUIRRE:
ARE YOU INDEPENDENT FROM KROLL?

MORRIS:
ABSOLUTELY.

AGUIRRE:
DOES KPMG HAVE ANY FINANCIAL RELATIONSHIP WITH KROLL?

MORRIS:
NOT THAT I'M AWARE OF.

AGUIRRE:
DOES KPMG HAVE ANY FINANCIAL RELATIONSHIP WITH MR. LEVITT?

MORRIS:
THIS WOULD ALL BE ON A NATIONAL BASIS BUT TO THE BEST OF MY KNOWLEDGE WE DO NOT HAVE AN ONGOING FINANCIAL RELATIONSHIP WITH HIM. MR. LEVITT WAS A YEAR AGO PERHAPS NO LONGER WAS TEAMING UP WITH US IN A COUPLE OF CITIES HELPING US DO SOME OF OUR SEMINARS TO AWAKEN- TO HELP AUDIT COMMITTEE MEMBERS BECOME BETTER AUDIT COMMITTEE MEMBERS AND UNDERSTAND THE ISSUES OF THE DAY. IT'S UNDERTAKING WE HAVE AN AUDIT COMMITTEE INSTITUTE. WE MAY HAVE HAD A RELATIONSHIP I'M NOT AWARE OF, WITHIN SERVING THE JOINT INTEREST OF EDUCATION.

AGUIRRE:
ANYTHING OTHER WITH HIM HELPING YOU IN REGARD TO THOSE SEMINARS THAT HE SPOKE AT?
MORRIS:
I'M NOT AWARE OF ANYTHING ELSE.

AGUIRRE:
NOW WITH REGARD TO KPMG, YOU RECENTLY WENT THROUGH A SETTLEMENT AGREEMENT REGARDING A RESOLUTION OF ALLEGATIONS THAT THERE WAS APPROXIMATELY 1.2 BILLION DOLLARS IN TAX FUNDS DEFRAUDED BY KPMG PARTNERS IS THAT CORRECT?

MORRIS:
WE REACHED AN AGREEMENT WITH THE DEPARTMENT OF JUSTICE REGARDING THAT MATTER .

AGUIRRE:
IN THAT AGREEMENT YOU ACKNOWLEDGED THAT YOUR PARTNER, FORMER PARTNERS HAD ENGAGED IN ILLEGAL BEHAVIOR, IS THAT CORRECT?

MORRIS:
YES.

AGUIRRE:
AND THAT INVOLVED THE DEFRAUDING OF THE AMERICAN TAXPAYERS OF APPROXIMATELY 1.2 BILLION DOLLARS, IS THAT TRUE?

MORRIS:
I HAVE NO IDEA IF THAT'S THE RIGHT NUMBER OR NOT, THAT'S THE NUMBER I'VE READ IN THE PRESS. THAT'S ALL I KNOW.

AGUIRRE:
NOW MY QUESTION TO YOU IS THAT IN THAT CONTEXT YOU HAD A CONCERN ON WHETHER YOU MIGHT LOOSE YOUR AUDIT CLIENTS WITH REGARD TO THE ANNOUNCEMENT OF THE SETTLEMENT THAT KPMG REACHED WITH THE U.S. ATTORNEY'S OFFICE REGARDING THE ALLEGATIONS THAT KPMG DEFRAUDED THE UNITED STATES GOVERNMENT OF 1.2 BILLION DOLLARS IN TAXES, IS THAT CORRECT? THERE WAS A CONCERN WITHIN THE COMPANY

THAT YOU MIGHT LOOSE YOUR AUDIT PARTNERS (OR) AUDIT CUSTOMERS?

MORRIS:
WE TOOK THE MATTER EXTREMELY SERIOUS. WE RECOGNIZE THAT IT HAD RAMIFICATIONS TO OUR FIRM, BOTH OUR PEOPLE, AND OUR CLIENTS, AND IT WAS A SERIOUS MATTER, AND THAT WE WANTED IT TO BE RESOLVED, AND WE ARE VERY PLEASE THAT IT HAS BEEN RESOLVED.

AGUIRRE:
WELL WHAT I'M SAYING THOUGH IS WHERE YOU AWARE THAT MR. TURNER AND MR. LEVITT VOUCHED FOR KPMG AFTER KPMG ISSUED OR ENTERED INTO THAT SETTLEMENT AGREEMENT WITH THE U.S. GOVERNMENT. IS THAT CORRECT? IN THE WALL STREET JOURNAL.

MORRIS:
I'VE READ COMMENTS, I'VE READ THE SAME ARTICLES IN THE WALL STREET JOURNAL AND OTHER PAPERS THAT YOU HAVE REGARDING PEOPLE WHO'VE MADE COMMENTS ONE WAY OR THE OTHER WITH RESPECT TO OUR PRACTICE.

AGUIRRE:
VOUCHING AND SAYING THAT THEY WILL CONTINUE ON WITH KPMG WITH REGARD TO AUDIT SERVICES. CORRECT?

MORRIS:
RIGHT:

AGUIRRE:
THAT IS SOMETHING THAT YOU APPRECIATED THAT MR. LEVITT DID FOR YOU. THAT HE DID YOU THE FAVOR OF SAYING THAT IN HIS OPINION IT WOULD BE A WISE DECISION TO CONTINUE ON WITH KPMG AS AN AUDITOR, IS THAT CORRECT? DID YOU APPRECIATE THE FACT THAT HE DID THAT?

MORRIS:
WE APPRECIATE, NOT ONLY THAT HE WOULD MAKE A COMMENT GIVEN HIS PAST RESPONSIBILITIES WITH THE SEC, WE APPRECIATE THE SIMILAR COMMENTS GIVEN TO US BY THE PUBLIC COMPANY OVERSIGHT BOARD AND OTHERS. THERE WAS A LOT OF COMMENTS THAT WHERE POSITIVE WITH RESPECT TO OUR PROFESSIONALISM OF OUR AUDIT PRACTICE.

AGUIRRE:
NOW, YOU UNDERSTAND THAT MR. LEVITT IS CHARGING THE CITY OF SAN DIEGO APPROXIMATELY A MILLION DOLLARS A MONTH FOR HIS INVESTIGATION, IS THAT CORRECT?

MORRIS:
I'M AWARE OF THE REPORTS.

MADAFFER:
MR. AGUIRRE CAN I JUST ASK YOU A QUESTION. THIS IS GOING ON NOW FOR ALMOST TEN MINUTES. I THINK THE THINGS WE REALLY WANT TO GET TO THE BOTTOM OF TODAY IS BEING ABLE TO MAKE AN INFORM DECISION AND YOUR INQUIRY OF MR. MORRIS, WHILE ENTERTAINING IS REALLY AN ISSUE THAT I SUSPECT THAT YOU COULD HAVE IN A DISCUSSION WITH HIM IN A MEETING.

AGUIRRE:
NO. THE PEOPLE OF SAN DIEGO HAVE THE RIGHT TO KNOW THIS. IF YOU WANT TO STOP ME FROM ASKING THE QUESTIONS THAT I WAS ELECTED TO ASK, YOU CAN DO THAT OTHERWISE I WOULD LIKE YOU TO ALLOW ME TO CONTINUE ON WITH MY QUESTION. IF YOU WANT TO STOP THE QUESTIONING THAT'S FINE BUT THESE ARE APPROPRIATE QUESTIONS. THESE ARE WHAT ANY PROFESSIONAL ORGANIZATION WOULD ASK. THESE ARE SERIOUS MATTERS WE ARE SPENDING A MILLION DOLLARS A MONTH ON MR. LEVITT. I BELIEVE IN MANY, IN LARGE PART NOT WISELY THAT KPMG IS ENDORSING MR. LEVITT'S WORK SAYING THAT IT'S ESSENTIAL TO GET THE AUDIT DONE. THERE IS A CERTAIN AMOUNT OF LEVERAGE THAT KPMG HAS, I THINK THAT THEY SHOULD BE

THOROUGHLY AND COMPLETELY EXPLORED SO THAT WE CAN GET TO THE BOTTOM OF IT. WE ARE SPENDING MILLIONS AND MILLIONS OF DOLLARS, ESPECIALLY IN THE FACE OF NOT EVER EVEN KNOWING IF WE ARE GOING TO GET AN AUDIT REPORT AND WE ALSO HAVE TO EXPLORE THIS QUESTION, AND I'LL JUST LAY THIS OUT. RIGHT NOW IF YOU WHERE TO ISSUE AND AUDIT OPINION AND THE CITY OF SAN DIEGO WHERE TO GO INTO BANKRUPTCY, YOU MIGHT FACE POSSIBLE LIABILITY. IS THAT CORRECT?

MORRIS:
WE ARE SUBJECT TO THAT SORT OF RISK I SUPPOSE THAT'S THE CASE.

AGUIRRE:
NOW, DO YOU THINK...

MORRIS:
WE ARE SUBJECT TO THAT RISK ON MANY, MANY CLIENTS.

AGUIRRE:
DO YOU THINK THE FACT THAT YOU JUST SETTLED- WHAT WAS THE PENALTY THAT YOU HAD TO PAY?

MADAFFER:
MR. AGUIRRE, I UNDERSTAND WHERE YOU ARE GOING WITH THIS AND I THINK THE PEOPLE OF SAN DIEGO DESERVE TO HEAR ANY AND ALL DETAILS ABOUT ANY AND ALL CONSPIRACY THEORIES THAT ARE OUT THERE BUT I THINK WHAT ...

AGUIRRE:
THIS ISN'T A CONSPIRACY THEORY AND THAT'S NOT APPROPRIATE FOR YOU TO SAY. IF YOU WANT TO RULE ME OUT OF ORDER OR STOP MY QUESTIONING THAT'S FINE BUT DON'T DO IT IN A FORM OF AN ARGUMENT. I HAVE A RIGHT TO ASK THESE QUESTIONS, IF YOU DON'T WANT THEM ASKED THAT'S YOUR CHOICE. I WILL POINT OUT THAT THIS IS A VERY LIVE ISSUE, THIS IS AN ISSUE

THAT THE PEOPLE OF SAN DIEGO ARE VITALLY INTERESTED IN. THESE ARE PERTINENT QUESTIONS, I'M A SKILLED ATTORNEY, I HAVE AN EXPERTISE IN THIS AREA AND I THINK THAT IT IS IMPORTANT TO MAKE THIS RECORD ON BEHALF OF THE PEOPLE OF SAN DIEGO.

MADAFFER:
I RESPECT THAT. I'VE WATCHED PERRY MASON ENOUGH TIMES TO KNOW THAT THIS IS A MEETING OASIS AND I THINK THIS IS WHAT YOU ARE DOING HERE.

AGUIRRE:
THIS ISN'T ABOUT PERRY MASON.

MADAFFER:
I WOULD APPRECIATE IF THERE IS A SPECIFIC ISSUE OR POINT THAT YOU WANT TO MAKE THAT IS A LEGAL POINT FROM A LEGAL ADVISE STANDPOINT FROM THIS LEGISLATIVE BODY, I WOULD LIKE TO HEAR IT AND I THINK AT THAT POINT, I SEE MR. PETERS WOULD LIKE TO SPEAK AND I WOULD LIKE TO CALL ON HIM. IF THERE IS STILL SOME ADDITIONAL QUESTIONS THAN I WOULD CALL ON YOU ONCE AGAIN. I THINK WITH ALL DUE RESPECT TO THE BODY AND THE PROCESS WE ARE TRYING TO CONDUCT HERE. I WOULD APPRECIATE IF THERE ARE SPECIFIC CONCERNS OR ISSUES PLEASE PUT THEM ON THE TABLE AS OPPOSE TO GOING THROUGH A LEADING QUESTIONING PROCESS.

AGUIRRE:
I AM PUTTING THEM ON THE TABLE. WAIT A MINUTE, I'M SORRY BUT I'M PERFORMING MY RESPONSIBILITIES IN THE MOST PROFESSIONAL WAY I KNOW HOW. WE'VE SPENT THIRTY MINUTES OR FORTY MINUTES HANDING OUT AWARDS AND CERTIFICATES THIS MORNING. I'VE SPENT TEN MINUTES ON SOMETHING THAT COULD COST THE CITY MILLIONS OF DOLLARS AND THIS IS WHAT MY RESPONSIBILITIES ARE AND I WOULD APPRECIATE IT IF YOU WOULD ALLOW ME TO DO MY RESPONSIBILITIES TEN MINUTES OR

A FEW MOMENTS IT TAKES TO TALK ABOUT SPENDING THIS KIND OF MONEY IS APPROPRIATE UNDER THE CIRCUMSTANCES.

MADAFFER:
LET'S GO FOR ANOTHER FIVE MINUTES AND THEN I'LL CALL MR. PETERS.

AGUIRRE:
ALL RIGHT, SO LET'S GO BACK, RIGHT NOW YOU JUST SETTLED WITH THE U.S. GOVERNMENT AND AGREED TO PAY A PENALTY IN THE NATURE OF 650 MILLION DOLLARS, IS THAT CORRECT?

MORRIS:
456 MILLION.

AGUIRRE:
456 MILLION DOLLARS, NOW...

MORRIS:
THIS WAS RELATED TO A MATTER IN UNFORTUNATE CIRCUMSTANCE IN OUR TAX PRACTICE RELATING TO SOME PRODUCTS; IT HAD NOTHING TO DO WITH OUR AUDIT PRACTICE. I FAIL TO SEE THIS POINT AND TIME WHERE THIS QUESTION IS GOING FOR. IF YOU ARE JUST TRYING TO SIT THERE AND DISCREDIT US IN THE PROFESSION AND MY FIRM IN ITS ENTIRETY.

AGUIRRE:
IN OUR CITY WE ARE GOING TO ALLOW THE VOTERS TO MAKE A JUDGMENT AS TO WHERE THIS IS GOING AND THE COUNCIL MEMBERS AND OTHER OFFICIALS TO MAKE THAT JUDGMENT. IT'S NOT REALLY A JUDGMENT I'M LOOKING TO YOU TO MAKE. WHAT I WANT TO GO BACK TO IS THAT IF THERE IN FACT IS- IF YOU ISSUE A AUDIT OPINION AND THE CITY WHERE TO GO INTO BANKRUPTCY AND YOU WOULD FACE POSSIBLE LIABILITY THAT COULD HAVE A MAJOR IMPACT IN YOUR ABILITY TO FUNCTION ON AN ONGOING BASIS AS AN AUDIT FIRM. DO YOU AGREE OR DISAGREE?

MORRIS:
OUR PROFESSION WHEN WE RENDER AN ACCOUNT SUPPORT ON ANY ENTITY'S FINANCIAL STATEMENTS, THE EXTENT THAT WE HAVE ANY NEGLIGENCE INVOLVED, WE HAVE AN EXPOSURE. THAT IS WHY WE TAKE OUR RESPONSIBILITY VERY, VERY SERIOUS WITH RESPECT TO OPINING ON FINANCIAL STATEMENTS.

AGUIRRE:
DO YOU THINK IT WOULD FROM THE CITY'S POINT OF VIEW, IF WE HAD AN AUDITOR WHO HAD JUST SETTLED AND PAID A FULL 456 MILLION DOLLARS FINE FOR DEFRAUDING THE U.S. GOVERNMENT OUT OF 1.2 BILLION DOLLARS IN TAXES. IF WE HAD AN AUDITOR WHO DIDN'T FACE THAT TYPE OF EXPOSURE, THAT IT MIGHT BE EASIER FOR THAT AUDITOR TO ISSUE AN OPINION WITHOUT HAVING TO WORRY ABOUT POSSIBLE COMPANY ENDING LAWSUITS AS A RESULT OF THAT.

MORRIS:
THAT'S NOT THE ISSUE. I'M NOT EVEN THINKING ABOUT THAT, MY FIRM IS NOT THINKING ABOUT THAT. WE ARE SITTING HERE FOCUSING ON- WE BELIEVE WE ARE VIABLE AND PROFESSIONAL ENTITY GOING FORWARD. WE BELIEVE WE HAVE A RESPONSIBILITY TO ALL THE SHAREHOLDERS AND CITIZENS THAT WE REPRESENT WHEN WE DO OUR WORK WITH RESPECT TO OPINING ON FINANCIAL STATEMENTS, WE DO IT OUT OF A SET OF PRINCIPALS AND A BASIS FOR AUDITING. WE DON'T DO IT OUT OF SITTING HERE WITH A FEAR WITH RESPECT TO BANKRUPTCY OR OTHER FORM OF INTIMIDATION.

AGUIRRE:
DID ANYONE FROM THE WILLKIE-FARR FIRM HAVE ANY DISCUSSIONS WITH KPMG REGARDING THE PROSECUTION BY THE U.S. GOVERNMENT OF KPMG?

MORRIS:
I HAVE NO IDEA.

AGUIRRE:
LET'S GO BACK AND LET ME FINISH UP WITH THIS. YOU ARE MAKING THE CLAIM THAT THE KROLL COMPANY IS INDEPENDENT FROM THE CITY OFFICIALS IN THE CITY OF SAN DIEGO CORRECT?

STEVE:
JUST TO CLARIFY I THINK WHAT WE ASKED FOR FROM THE CITY WAS AN INDEPENDENT AND OBJECTIVE INVESTIGATION, WE DIDN'T SAY WHO THE INVESTIGATOR WAS GOING TO BE. WE NEED TO MAKE THE JUDGMENT THAT THE CITY SELECT SOMEONE THAT WE VIEW IS INDEPENDENT, WE HAVE NEVER RECOMMENDED ANY PARTICULAR INVESTIGATOR.

AGUIRRE:
MR. DEVEDER AND I APPRECIATE YOU MAKING THAT STATEMENT BECAUSE I THINK THAT IS A CORRECT STATEMENT BUT I BELIEVE MR. MORRIS, MY BELIEF IS THAT IN LISTENING TO YOU AND WHAT YOU SAID IN YOUR WRITINGS IS THAT YOU ACTUALLY ENDORSING THE KROLL COMPANY IN YOUR COMMENTS SAYING THAT IT'S ESSENTIAL, IT IS AN ESSENTIAL CONDITION FOR YOU TO ISSUE YOUR AUDIT OPINION THAT WE RETAIN AND MAINTAIN OUR RELATIONSHIP WITH THE KROLL COMPANY.

MORRIS:
NO, NO.

AGUIRRE:
SO YOU ARE NOT SAYING THAT?

STEVE:
WE ARE ENDORSING THE PROCESS THAT'S PUT IN PLACE.

AGUIRRE:
OK. ARE YOU FAMILIAR WITH KROLL'S BILLING PROCEDURES WITH REGARD TO THE CITY?

EXHIBIT 95

THE WALL STREET JOURNAL. ONLINE

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August 29, 2005 2:39 p.m. EDT

KPMG's Settlement Provides for New Start

Agreement With U.S. Prosecutors Avoids Criminal Indictment; Civil, Class-Action Suits Remain

By JONATHAN WEIL
Staff Reporters of THE WALL STREET JOURNAL
August 29, 2005 2:39 p.m.

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KPMG's $456 million settlement with federal prosecutors, expected to be announced today, gives the smallest of the Big Four accounting firms a new lease on life, by allowing it to avoid a criminal indictment over its sales of tax shelters it now admits were fraudulent. But the firm isn't completely out of the woods.

KPMG faces a potentially costly caseload of civil lawsuits by former tax-shelter clients, as well as class-action suits by investors over accounting irregularities at former audit clients, such as Xerox Corp. Other government probes are continuing, including criminal and civil investigations by the Mississippi attorney general's office related to a state-tax shelter KPMG sold to WorldCom Inc. during the 1990s. And while KPMG has said it has turned over a new leaf, further challenges lie ahead.

Prosecutors are scheduled today to submit KPMG's settlement agreement, signed Friday, for a judge's approval in a Manhattan federal court, according to people familiar with the matter.

With KPMG's settlement now finalized, lawyers involved in the case say the first wave of federal indictments against former KPMG partners is imminent, and additional indictments could follow in the coming months. Many former partners, including some who held senior leadership posts, are expected to demand jury trials, which could produce years of negative headlines for the firm.

Still, KPMG is expected to survive. Its once-booming tax practice will face significant restrictions. But its audit-client base is expected to remain intact, largely because big, global companies have so few other choices left. For that the firm can thank the government's 2002 indictment of former Enron Corp. auditor Arthur Andersen LLP, which collapsed after its audit clients responded by jumping ship, leaving just four major firms to handle the lion's share of audit work for big companies.

"I think the audit clients will stand by them, because as they survey the field, the alternatives are certainly no better, and hopefully KPMG has moved strenuously to correct the problems of the past," said former Securities and Exchange Commission Chairman Arthur Levitt, who leads a committee supervising KPMG's audit of the city of San Diego's finances.

At today's hearing, the government will file a statement of facts that includes a single charge of conspiracy to commit tax fraud, according to a person familiar with the matter. KPMG won't be criminally prosecuted on the charge, so long as the firm complies with the terms of its agreement with the government, which will remain in force through Dec. 31, 2006. Importantly, the government won't charge KPMG with obstruction of justice -- the charge levied in 2002 against Andersen, whose felony conviction was overturned this year.

In a statement Saturday, KPMG's chief outside counsel, Robert Bennett, said: "I am confident under the new leadership that KPMG will not only survive but will flourish." KPMG hired Mr. Bennett and his law firm, Skadden, Arps, Slate Meagher & Flom LLP, in late 2003 in the wake of Senate investigative hearings and government complaints that KPMG was blocking its tax-shelter investigations. A spokesman for KPMG declined to comment.

Under terms of the so-called deferred-prosecution agreement, KPMG will pay the $456 million in penalties -- equal to 11% of the firm's fiscal 2004 revenue -- in installments over the next 16 months and continue to cooperate with the government's tax-shelter probes. The penalties come to about $300,000 per partner, based on the 1,524 partners KPMG reported last year.

"Obviously, it takes away from their ability to invest in the future, " said Lynn Turner, a former SEC chief accountant and another member of the San Diego audit committee. "But many of these stories are going to be written in the context of 'Can this company survive?' The answer is yes. The Justice Department did a deferred-prosecution agreement so they wouldn't go out of business. They weren't going to ... levy a fine that would put them out of business."

KPMG's admissions are sure to help prosecutors at any future trials of former KPMG partners, as well as bankers, lawyers, outside advisers or, possibly, even some former KPMG clients who participated in the shelters. KPMG sold the shelters, which generated billions of dollars in false tax losses, to hundreds of wealthy Americans from 1996 to 2002. Among other things, under the agreement signed Friday, KPMG admitted the strategy it sold under the name "Bond Linked Issue Premium Structure," or Blips, was a fraudulent tax shelter, according to a person familiar with the matter. KPMG also admitted to fraudulent conduct in connection with two other shelters, known by the names Flip and Opis, although KPMG didn't admit those two shelters themselves were fraudulent, this person said.

Among the major banks that provided financing for the shelter transactions: **Deutsche Bank** AG, **HVB Group** and **UBS** AG. HVB on Saturday said it is cooperating with investigators but declined further comment. One former HVB executive, Domenick DeGiorgio, has pleaded guilty to fraud and conspiracy charges in connection with KPMG's Blips deals. Deutsche Bank, which also did Blips deals, declined to comment, as did UBS.

The U.S. Attorney's Office in Manhattan at some point may turn its focus to Big Four accounting firm Ernst & Young LLP, which paid $15 million in 2003 to settle a civil investigation by the Internal Revenue Service. Ernst last year said its past shelter sales were under criminal investigation; some involved strategies similar to Blips. To date, there have been few outward signs that the government's probe of Ernst is far along. An Ernst spokesman said the firm is cooperating, but he declined to comment further.

While no mass client exodus is expected at KPMG, the firm's admissions could place some audit relationships in jeopardy. Deutsche Bank, for one, is a KPMG audit client with shares listed on U.S. exchanges. The firm's admission that Blips was a fraudulent shelter raises further questions

about whether KPMG should be disqualified under federal auditor-independence rules, which generally bar accounting firms from entering business relationships with audit clients. HVB also is a KPMG audit client, but its shares aren't listed in the U.S. **Wachovia** Corp., a KPMG audit client, has disclosed that the SEC is investigating whether its marketing of KPMG tax shelters violated auditor-independence rules.

In a related agreement with KPMG, the IRS will forgo seeking further penalties against the firm over any tax shelters that had been the subject of IRS investigations, according to a person familiar with the matter. The IRS's original requests for information from KPMG in 2002 sought records pertaining to Blips, Flip and Opis, as well as numerous other types of KPMG tax shelters, most of which KPMG sold to large corporations, including audit clients.

Under the deferred-prosecution agreement, KPMG will open itself to supervision by an outside monitor, former SEC Chairman Richard Breeden. Mr. Breeden has first-hand experience with the tax-shelter issues that are now the subject of the criminal and civil investigations by the Mississippi state attorney general's office.

As the court-appointed independent monitor for WorldCom, Mr. Breeden supported the company's decision last year to continue using KPMG as its independent auditor, despite controversies over the KPMG shelter that WorldCom used to avoid hundreds of millions of dollars in state income taxes during the 1990s. WorldCom, now known as **MCI** Inc., hired KPMG in 2002 to replace Andersen as its auditor. MCI recently agreed to pay Mississippi $100 million to settle the state's tax claims; other states also are pursuing claims against MCI for back taxes. Mr. Breeden didn't return phone calls seeking comment.

Write to Jonathan Weil at jonathan.weil@wsj.com

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EXHIBIT 96

KPMG LLP
55 Second Street
San Francisco, CA 94105

Telephone 415 963 5100
Fax 415 963 8100
Internet www.us.kpmg.com

September 22, 2005

The Honorable Toni Atkins, Acting Mayor
Honorable Members of the City Council
City of San Diego

Kroll Associates, Inc., in its capacity as the
Audit Committee of the City of San Diego

Re: City of San Diego Fiscal Year 2003 Financial Statement Audit – Status Update

Dear Ladies and Gentlemen:

We have been asked for an update on the status of our audit. While we have provided regular status updates to City staff, the purpose of this letter is to update the Council on the key areas and issues that KPMG is currently addressing, as well as our ongoing procedures.

On April 13, 2004, KPMG was engaged to report upon our audit of the financial statements of the City of San Diego (City) as of and for the year ended June 30, 2003. We are conducting that audit in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*.

This letter is subject to the terms of our April 13, 2004 engagement letter, which specifically provides that KPMG must consent to the public dissemination of information pertaining to its services. This letter includes confidential information concerning the status of the City's audit, but based on the specific request of the City's staff, we hereby consent to the public dissemination of this letter.

The City's Investigation of Potential Illegal Acts

When engaged by the City, we understood that the City retained legal counsel to conduct an independent investigation of the City's disclosures relating to pension matters and certain other matters. The City agreed to provide complete and unrestricted access to the investigation and agreed that KPMG would determine when the investigation or any aspect thereof was sufficient to allow us to complete our audit.

KPMG views the Council's enactment of Resolution R-2005-933 and the retention of Messrs. Turner, Levitt and Dahlberg as a very positive step toward completion of an independent investigation. KPMG continues to believe that it is important to the completion of the independent investigation that Messrs. Turner, Levitt and Dahlberg continue to take any and all

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actions they deem necessary or appropriate to satisfy their obligations under the terms of their retention by the City of San Diego.

To facilitate a timely review of the investigation, KPMG has been working closely with the Audit Committee in order to help ensure that the investigation, when complete, is consistent with professional standards and sufficient for audit purposes. Such work has included attending interviews conducted by investigators, reviewing documents, reviewing emails, reviewing methodologies, and reviewing the level of documentation supporting the investigation. As investigation activity increases in the next several months, we anticipate our efforts in the area will also increase.

As we have previously discussed with the City, the independent investigation must encompass the San Diego City Employee Retirement System ("SDCERS"). Our understanding is that the Audit Committee is actively investigating activities occurring within SDCERS. We also understand that the Board of Administration has announced that it has hired Navigant Consulting, Inc. to provide certain investigative services that may relate to the matters being investigated by the Audit Committee.

We plan to continue to work with the Audit Committee to understand all of the procedures it is performing relating to this investigation, including such procedures that may be required relating to the newly provided SDCERS documents and the implications for the Audit Committee's investigation of the investigative work that SDCERS has apparently retained Navigant to perform.

The City's Financial Statements

The City has agreed to make representation to KPMG when they believe the City's 2003 financial statements are complete and prepared consistent with Generally Accepted Accounting Principles. Due to questions raised by KPMG, City staff, and the auditors of the 2004 financial statements, the City has not yet concluded that the 2003 financial statements are complete and prepared consistent with Generally Accepted Accounting Principles.

We have been working with City staff on open items and developing timelines for providing the necessary information to KPMG over the next several months. KPMG is also performing additional work based upon information provided to date by the Audit Committee and other auditors.

KPMG's Ongoing Procedures

- KPMG will continue to review the methodologies, findings, and issues being raised by the investigation, and will review the decisions made regarding the appropriateness of the remedial actions taken.
- KPMG will evaluate what additional audit procedures might be required as a result of the investigation.
- KPMG will evaluate what additional disclosures might be required as a result of the investigation.
- KPMG will continue to work with the City in addressing the open questions of KPMG, City staff and Macias Gini (the auditors conducting the audits of the City's 2004 and 2005 financial statements)
- KPMG will review subsequent events to evaluate whether issues occurring before June 30, 2003 have been properly reflected or disclosed in the June 30, 2003 financial statements and whether significant items occurring after June 30, 2003 are being properly disclosed in the 2003 financial statements.

Compensation and Timing

Through September 15, 2005, KPMG has billed the City $2,794,107 for its professional fees and out-of-pocket expenses.

With each semi-monthly bill, KPMG has provided the City with the detail of the hours and expenses of each individual working on the engagement.

Although several issues remain to be resolved, it is not possible to state when an audit opinion, if any, will be issued. However, we are committed to working with the City to complete this audit as soon as practical.

Very truly yours,

KPMG LLP

Steven G. DeVetter

Steven G. DeVetter
Partner

cc: Mr. Michael Aguirre, City Attorney

EXHIBIT 97

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.

AGUIRRE:
I'M SORRY. IT'S OUTLAID. IT'S OUTLINED IN YOUR ENGAGEMENT LETTER THAT YOU WOULD DISCUSS WITH THE SEC, U.S. ATTORNEY'S OFFICE, AND KPMG TO REVIEW AND DISCUSS V&E'S WORK PRODUCT AND RESULTS OF INVESTIGATION BEFORE YOU DISCLOSED THAT TO THE COUNCIL?

DAHLBERG:
WITH KPMG I BELIEVED IT WAS UNDERSTOOD THAT WE WOULD GO THROUGH AND DISCUSS IT YES IN THE ENGAGEMENT LETTER.

AGUIRRE:
I'M NOT SURE I READ THE ENGAGEMENT LETTER THAT WAY.

DAHLBERG:
BUT. IT'S WITHIN THE POWERS OF AN AUDIT COMMITTEE WITHIN SARBANES OXLEY.

AGUIRRE:
WELL, YOU ARE CONTRACTING WITH THE CITY OF SAN DIEGO AND YOU HAVE CERTAIN INDEPENDENCE BUT YOU ARE STILL A CONTRACTING PARTY AND YOU DO NOT COMPLETELY DICTATE EXACTLY HOW YOU ARE GOING TO PROCEED WHEN IT COMES TO PERFORMANCE OF YOUR OBLIGATIONS. GRANTED THAT YOU HAVE INDEPENDENCE BUT YOU DO NOT HAVE LICENSE AND THERE IS A DIFFERENCE BETWEEN LICENSE AND INDEPENDENCE. WHAT I'M SUGGESTING IS THIS, HAS V&E, ARE THEIR RESULTS OF ITS INVESTIGATION IN REGARDS TO MATTERS THAT AFTER IT'S REPORT IN LAST SEPTEMBER OF 2004? DID THEY DEVELOP ADDITIONAL RESULTS OF THEIR INVESTIGATION?

DAHLBERG:
YES.

AGUIRRE:
OK. ARE THOSE IN WRITING?

DAHLBERG:
YES.

AGUIRRE:
AND HAVE THOSE BEEN PROVIDED TO THE COUNCIL?

DAHLBERG:
NO.

AGUIRRE:
WHERE ARE THOSE?

DAHLBERG:
PROBABLY A NUMBER OF DIFFERENT PLACES BUT I MEAN WE HAVE A COPY OF THOSE.

AGUIRRE:
COULD YOU DESCRIBE THE FORM THAT THOSE HAVE TAKEN?

ATKINS:
CAN I INTERRUPT FOR A SECOND? YOU KNOW MRS. FRYE STARTED THE WHOLE GROUP OF REALLY RELEVANT QUESTIONS FOR THIS COUNCIL IN TERMS OF WHAT IT IS WE NEED TO GET AND WHAT IT IS WE WANT TO SEE AND I DON'T THINK. I CAN'T SPEAK FOR MY COLLEAGUES BUT THIS IS A SERIOUS ISSUE OF WANTING TO ACCOMMODATE THE U.S. ATTORNEY, THE SEC AND THE RELEVANT PARTIES WHO NEED THIS INFORMATION. I MEAN I THINK THESE ARE- OR THERE SHOULD BE A WAY FOR US TO KNOW AT WHAT POINT WE HAVE ACCESS TO THAT INFORMATION AS COUNCIL MEMBERS AND SO I KNOW YOU ARE GOING DOWN A LINE OF QUESTIONING TO TRY AND GET US TO THE ANSWERS. I JUST WANT TO

AGUIRRE:
YOU HAVE A RIGHT TO IT NOW.

ATKINS:
STEP IN AND SAY WE WANT TO DO THIS BUT WE ALSO WANT TO HAVE ACCESS TO THE INFORMATION AND TO KNOW THE EXTENT OF WHAT IT IS. WE WANT TO KNOW WHAT WE HAVE OUTSTANDING PROVIDING, YOU KNOW WHEN YOU SAY WE STILL

HAVE DOCUMENTS WITH PRODUCTION ISSUES WE'VE ASKED BEFORE AND WE'VE BEEN A GIVEN A LIST BEFORE AT ONE POINT I WANT TO KNOW WHAT'S STILL CONSIDERED OUTSTANDING AND WHAT WE NEED TO BE GETTING TO THE AUTHORITIES AND I KNOW MR. AGUIRRE PROBABLY HAS A WHOLE LOT OF QUESTIONS SO I'M GOING TO TRY, I'M GOING TO GO IN ORDER AND I'M GOING TO LET MR. AGUIRRE FINISH AND IF YOU WANT TO GO IN THE LIGHTS, GO AHEAD. NOW MR. PETERS HAS MORE COMMENTS SO I'M GOING TO LET MR. AGUIRRE FINISH UP IF YOU WANT TO WEIGH IN, WEIGH IN AND THEN I'M GOING TO MY COUNCIL COLLEAGUES BECAUSE THIS IS THEIR DISCUSSION AND IF THEY HAVE QUESTIONS OF YOU THEN THEY WILL ASK QUESTIONS OF YOU.

EWELL:
LET ME JUST REMIND THE CITY ATTORNEY THAT THE QUESTIONS ASKED WAS IS, ARE THEY LIMITED WAIVERS THAT YOU COULD PROVIDE SO THAT YOU COULD CONTINUE THE INVESTIGATION. THAT'S WHERE WE LEFT.

AGUIRRE:
WELL, NO THAT'S NOT WHERE I LEFT IT. I'M FOCUSING ON SOMETHING DIFFERENT THAT'S IN THE 1472 FOR THE PUBLIC THAT'S THE DOCUMENT WE USE TO FORM AND GET THE MATTER BEFORE THE CITY COUNCIL SO THAT ACTION CAN BE TAKEN. THE HISTORY QUICKLY IS THAT THERE WAS A REPORT ISSUED BY V&E THAT WAS FOUND TO BE INADEQUATE BY KPMG ON THE 11TH OF OCTOBER AND 29TH OF OCTOBER IN 2004. THE CITY ATTORNEY ISSUED A SERIES OF REPORTS. KROLL WAS HIRED TO RECONCILE THOSE TWO REPORTS BECAUSE THERE WAS A DIFFERENCE OF OPINION AND THEN THERE WAS AMBIGUITIES ABOUT WHEN V&E WOULD EVER. IF THEY WOULD ISSUE A WRITTEN REPORT AND WE HAVE NOT HAD A REPORT TO US INDICATING THAT V&E HAS IN FACT RESULTS OF ITS INVESTIGATION POST OR AFTER DECEMBER 16TH 2004. SO THAT IS WHERE I LEFT OF IN THE QUESTION JUST TO BRING EVERYONE UP TO SPEED. NOW DO YOU HAVE IN POSSESSION, CUSTODY, OR CONTROL A COPY OF A WRITING IN WHICH THE RESULTS OF V&E INVESTIGATION IS SET FORTH AS WE DESCRIBED THEM? POST SEPTEMBER OF 2004.

DAHLBERG:
YES.

AGUIRRE:
OK. WHERE ARE THOSE LOCATED?

DAHLBERG:
I BELIEVE THERE IS A COPY UPSTAIRS WELL I MEAN THE 9TH FLOOR.

AGUIRRE:
HAVE YOU SHARED THAT WITH ANYBODY ON THE COUNCIL, MAYOR, DEPUTY MAYOR HAVE YOU SHARED THAT WITH ANYONE? AND THE CITY MANAGER'S OFFICE?

DAHLBERG:
NO. WE GOT IT ABOUT MAYBE A WEEK AGO AND WE WHERE GOING TO MAKE A REPORT AS SCHEDULED A NUMBER OF WEEKS AGO FOR NEXT TUESDAY.

AGUIRRE:
OK. WOULD IT BE POSSIBLE FOR YOU TO GO UPSTAIRS AND MAKE A COPY OF THOSE FINDINGS AND MAKE THOSE AVAILABLE ON A CONFIDENTIAL BASIS TO THE COUNCIL NOW? WOULD THAT BE POSSIBLE?

DAHLBERG:
IT WOULD BE POSSIBLE

AGUIRRE:
IS THERE ANY WAY OR REASON YOU CAN THINK OF TO SAY THAT COULDN'T BE DONE?

DAHLBERG:
I GUESS THE ONLY REASON I CAN THINK OF IS THAT WE WORK FOR THE COUNCIL AND IF THE COUNCIL REQUESTED TO SEE IT THEN WE WOULD PROVIDE IT TO THEM.

AGUIRRE:
WELL THEN CAN I MAKE A SUGGESTION THAT WE TAKE A VERY SHORT BRIEF RECESS AND HAVE YOU RETRIEVE THAT SO THAT THE COUNCIL HAS THE FULL BENEFIT OF THOSE FINDINGS OR RESULTS OF INVESTIGATION SO THAT THEY CAN EVALUATE I'M NOT RECOMMENDING THE COUNCIL NOT TO APPROVE THE WAIVER BUT I JUST THINK THAT OUT OF COURTESY AND RESPECT AND DUE PROCESS TO THE COUNCIL THAT THEY WOULD HAVE AN OPPORTUNITY TO SEE THE RESULTS FO THIS INVESTIGATION AND BECAUSE I THINK THAT THEY ARE ENTITLED TO DO THAT AND I THINK THAT IT'S IMPORTANT THAT BE DONE.

DAHLBERG:
SO ARE YOU SAYING BASED ON THE RESULT AND FINDINGS YOU MAY NOT TURN IT OVER TO THE U.S. ATTORNEY'S OFFICE?

AGUIRRE:
OH, NOT AT ALL. I WOULD SAY JUST THE OPPOSITE.

ATKINS:
OK. I'M GOING TO INTERRUPT RIGHT NOW AND SUGGEST THIS; I THINK THE COUNCIL, IF MY COLLEAGUES SAY THEY WANT THIS INFORMATION, IT'S CONFIDENTIAL I DON'T THINK THAT PRECLUDES US FROM ACTUALLY INCLUDING IN THE MOTION, WE DO THIS IF A MOTION COMES FORWARD AND THAT WE REQUEST TO BE GIVEN THIS INFORMATION TODAY. I MEAN WE ARE BEING ASKED TO WAIVE PRIVILEGE AND WE NEED TO DO THAT AND WE ARE ASKING FOR SOME INFORMATION. I DON'T KNOW IF WE NEED TO TAKE A RECESS BUT WE NEED TO DIRECT THAT WE HAVE IT AS WE LEAVE HERE TODAY. WOULD BE MY RECOMMENDATION SO WE COULD KEEP MOVING.

AGUIRRE:
I AGREE WITH THAT. THAT'S THE WAY TO GO AND WAIVE IT, BUT I WOULD SAY JUST SO THAT THERE IS NO CONFUSION THAT AS SOON AS THE VOTE IS TAKEN THAT IT'S POSSIBLE THAT COUNSEL CAN RETRIEVE THE DOCUMENTS AND THE CITY ATTORNEY'S OFFICE WE'LL MAKE SURE THAT IT'S REPRODUCED AND CIRCULATED AND IF IT HAS TO BE MAINTAINED ON A

CONFIDENTIAL BASIS, THAT'S FINE. SO THAT COUNCIL HAS THAT HERE AND NOW AND THAT THERE COULD BE NO AMBIGUITY IN TERMS OF ACTUALLY TAKING POSSESSION OF IT.

FRYE:
AND IF WE COULD JUST TRAIL THIS THEN TO GET COPIES OF THOSE DOCUMENTS AND THEN WE CAN COME BACK AT THE END OF THE MEETING AND COMPLETE THIS BECAUSE I KNOW THAT THERE IS OTHER ITEMS AND THAT COULD GIVE THEM TIME TO MAKE COPIES OF THE DOCUMENTS. LET'S TAKE A QUICK LOOK AT THAT.

AGUIRRE:
I'M NOT SUGGESTING THAT YOU CONDITION THE WAIVER. I DO BELIEVE THAT SHOULD-

FRYE:
I'M NOT CONDITIONING THE WAIVER BUT MY SENSE OF THIS IS I DO NOT RECALL WAIVING PRIVILEGE ON ITEMS THAT I NEVER HAD THE OPPORTUNITY TO LOOK AT. I'M NOT CONDITIONING ON ANYTHING I'M JUST SAYING I WOULD LIKE TO KNOW WHAT DOCUMENTS I AM WAIVING PRIVILEGE ON. I DON'T KNOW WHAT THOSE ARE AND I THINK THAT IN ALMOST ALL OTHER INSTANCES WHEN WE HAVE DOCUMENTS OR WE HAVE BEEN ASKED TO WAIVE ATTORNEY CLIENT PRIVILEGE THAT IS NOT UNREASONABLE TO HAVE SOME KNOWLEDGE OF WHAT IS CONTAINED IN THOSE DOCUMENTS IS NOT A CONDITIONING OF ANYTHING IT IS JUST TO UNDERSTAND WHAT IT IS WE ARE WAIVING. TO ME THAT IS JUST A NORMAL COURSE OF EVENTS. I MEAN WE'VE WAIVED PRIVILEGE SO THAT THERE WERE DOCUMENTS THAT I BELIEVE YOU, THE SEC, AND WHOLE LOT OF PEOPLE COULD HAVE ACCESS TO. AND THOSE ARE DOCUMENTS THAT WE HAVE IN OUR PROCESSION SO WE KNEW WHAT THEY LOOKED LIKE AND WE KNEW WHAT WE WERE WAIVING.

ATKINS:
I'M GOING TO LET MR. MADAFFER TALK FIRST, HE'S BEEN WAITING. WE HAVE WE HAVE A MOTION AND A SECOND. WE WILL

EXHIBIT 98

Longest Resignation Ever

By SCOTT LEWIS
Voice Columnist
Monday, Nov. 28, 2005

It was really a love fest for P. Lamont Ewell in Santa Monica last week.

The San Diego city manager, who abruptly announced his immediate departure last week, was bursting with praise for that little burb to the north of Los Angeles the other day. And the Santa Monica City Council was similarly smitten with him.

When Santa Monica Mayor Pam O'Connor called for a council vote on whether to appoint Ewell as that city's new manager, the council members didn't just say "yes" when they recorded their votes.

They said things like: "A very enthusiastic yes!"

"Are we going to get into a 'who's-more-enthusiastic' contest?" asked Bobby Shriver, a Santa Monica city councilman.

Shriver wasn't complaining. He just didn't want to lose the contest. He voted "a more enthusiastic yes!"

Lamont Ewell first "resigned" from the city of San Diego more than a year ago. It was right after the Nov. 2, 2004 election during that weird period of time when it actually appeared as though City Councilwoman Donna Frye had won the mayor's race with an incredible write-in campaign.

So the first thought on people's minds when Ewell resigned then was that he didn't want to have anything to do with a city headed by Donna Frye. But he quickly clarified that it was actually another result of the 2004 election that had really disillusioned him: City voters had approved the "strong-mayor" charter change meaning that in 2006 the mayor would be the city's chief executive.

Ewell had made a career out of working in a manager-council relationship like San Diego had. And he didn't want to stick around any longer than he had to -- he was set to leave in June.

But then former Mayor Dick Murphy prevailed upon him and they both announced that Ewell had agreed to stay in San Diego "through Dec. 31, 2005."

Apparently he has since changed his mind again. His last day with San Diego is today.

More interesting than his indecisiveness, however, are the reasons he has given each time he changed his mind.

For instance, plastered on his Web site for months was this:

"I made the commitment to stay to: Get rid of the pension problem; get the audit done; and adopt a five-year financial plan to keep the city disciplined and focused on the highest priorities."

Hmmm. If he decided to stay to "get rid of the pension problem" does that mean he's leaving a month earlier than planned because it has successfully been gotten rid of?

Never mind that people don't necessarily want the city to get rid of the pension problem. It'd be nice, instead, if someone actually solved it. Getting rid of it has been the goal of far too many city administrators in the past.

But that's beside the point. Let's get back to the question: Is Lamont now leaving early because he has successfully gotten rid of the pension problem as he said was his No. 1 reason for staying.

No. We won't even go there.

How about his No. 2 reason for staying the extra year -- to get the audit done? This, of course, is a laudable goal. The city, without an audit of its 2003 finances -- let alone its 2004 and 2005 -- is fiscally paralyzed. If not for a special relationship with the Bank of America, core city functions would have to be curtailed and bankruptcy would be more than just a campaign threat. Even with Bank of America, the city cannot move forward on vital infrastructure projects.

But eight months after Ewell agreed to stay through the end of the year, there's no audit. The investigation that is supposedly needed to complete the audit is stalled.

He's 0 for 2. And as far as the third tier of his commitments -- to develop a five-year plan -- it's impossible to conceive true progress on that without achieving the first two goals.

Yet after a nationwide search, the Santa Monica City Council settled on Ewell as the best manager they could find.

The reason?

"He was promoted by the San Diego City Council from assistant city manager in 2004 -- to help the city navigate some very tough financial issues," said Mayor O'Connor. "The confidence the San Diego council showed in him and the experience he's gained throughout his career gave us every confidence that he is the right person at this time for Santa Monica."

That is true: The San Diego City Council did promote Ewell to succeed former City Manager Michael Uberuaga in the spring of 2004 and "to help the city navigate some very tough financial issues."

Funny how earning the confidence of the San Diego City Council was the main reason Santa Monica officials cited to explain supporting Ewell there.

In other places -- San Diego, for example -- the judgment of the San Diego City Council is not all that well-regarded. There's a reason why no mayoral candidate this year sought out and highlighted the endorsements of City Council members. In fact, the biggest insult about his opponent that Mayor-elect Jerry Sanders could come up with during the campaign was that she was a member of that disgraced body during some troubling times.

And there was something missing from the Santa Monica mayor's speech about Ewell. Yes, as she said, Ewell had been promoted to navigate the city through those troublesome financials straits. But she noticeably did not say whether he actually had done so.

That's because he didn't. And a month before his set date of departure, he's decided that he's not even going to try anymore.

Please contact Scott Lewis directly at scott.lewis@voiceofsandiego.org with your thoughts, ideas, personal stories or tips.

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EXHIBIT 99

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.

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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.

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July 1, 2004 NTI Internal Client Contract

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

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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.

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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.

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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

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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.

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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 _____

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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 _____

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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

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EXHIBIT 100

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 101

-----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 102

-----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 103

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

ANITA — Read These
Correspondence The c/o
Public Records To

- LAMONT
- Audit COMM

(1) When Find out
(2) How " "
(3) who Told
(4) When "
(5) conversations etc c Dahlberg,
Vito, ARTHUR, TURNER

∴ ALL Re These 57,000
DOCUMENTS

EXHIBIT 104

LexisNexis
Applied Discovery

COPY
SEP 13 2005
Anita

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

EXHIBIT 105

SignOnSanDiego.com
THE SAN DIEGO UNION-TRIBUNE

PRINT THIS

San Diego's Pension Crisis

Investigators get e-mail database

Council OKs money to expand system in pension probe

By Matthew T. Hall
UNION-TRIBUNE STAFF WRITER

December 21, 2005

Federal investigators are scouring an electronic database of San Diego city employee e-mail and other documents that private consultants began compiling in September for an internal probe into possible fraud and corruption.

The cost of the electronic repository grew yesterday as the City Council approved spending $272,300 to increase its capacity from 160 gigabytes to 240. It will soon hold the equivalent of 12 million pages.

Mayor Jerry Sanders also announced yesterday that his top aide, Ronne Froman, has boosted the contracts of two other firms by $142,000, to $302,000, for technical assistance in preparing the e-mail for use by investigators.

Kroll Inc., a New York risk-management firm hired as the city's audit committee, is conducting an independent investigation related to failures to disclose the depth of a pension deficit now pegged at $1.4 billion.

City officials first acknowledged a range of errors and omissions in bond disclosures nearly two years ago, prompting the Securities and Exchange Commission to investigate potential fraud and the U.S. attorney and the FBI to look into possible public corruption. Three annual audits are overdue.

City Attorney Michael Aguirre said that the process of giving the U.S. Attorney's Office access to the electronic database began yesterday and that SEC officials will decide today whether they want access to the information.

Aguirre, who has access to the database and has criticized the consultants' slow progress, says 90 percent of it is "irrelevant information" not related to investigations into the city's pension or wastewater systems.

The council gave a Washington firm, Electronic Evidence Discovery Inc., $727,500 in September to create the repository for the audit committee. Yesterday's increase boosted the contract to slightly less than $1 million, although Froman is tasked with ensuring that the additional costs are necessary.

Councilwoman Donna Frye voted against the contract both times.

Kroll and New York lawyers from Willkie, Farr & Gallagher, which represents the audit committee at city expense, have billed the city $7.8 million for a probe they now expect to last through May and cost up to $11 million more.

Sanders repeated a familiar refrain yesterday that he won't authorize that money until Kroll gives the city a final timeline, work plan and budget.

"The city will not give a blank check to anyone," Sanders said.

Councilman Scott Peters said the consultants will return to the council Jan. 17 for an update.

Yesterday, Sanders sent them a copy of a new report by City Auditor John Torell that criticizes the city's internal financial reporting controls. In the report, Torell says such factors as error-prone data entry and communication breakdowns between departments make it impossible for him to ensure the accuracy and timeliness of the city's financial reporting.

Councilman Jim Madaffer said the city's "lousy accounting system" is "one step above abacus" and suggested a replacement could cost $30 million.

The city has not issued an annual audit for three years – a delay that has sparked Wall Street to slash or suspend the city's credit rating and derailed city borrowing and capital projects.

Sanders said a senior official with the accounting firm KPMG has assured him that it will complete the city's long-delayed 2003 annual audit and that it supports the deliberate process the mayor has outlined to complete Kroll's investigation.

▪Matthew Hall: (619) 542-4599; **matthew.hall@uniontrib.com**

Find this article at:
http://www.signonsandiego.com/news/metro/pension/20051221-9999-1m21probe.html

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 106

RECOMMENDED PRACTICE

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

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

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

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

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

---

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

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

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

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

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

[6] Sarbanes Oxley Act, Section 301.

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

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

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

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

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

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

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

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

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

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

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

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

[9] Sarbanes Oxley Act, Section 407.

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

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

[12] Sarbanes Oxley Act, Section 301.

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

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

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

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

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

EXHIBIT 107

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

MICHAEL J. AGUIRRE

CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

April 10, 2006

San Diego County Grand Jury
Hall of Justice
330 W. Broadway, Suite 477
San Diego, CA 92101-3830

RE: *San Diego City Attorney Requests Grand Jury to Expand Investigation of City of San Diego's Use of Enterprise Funds to Pay for General Fund Costs*

Dear Sir or Madam:

This letter is a formal request to the San Diego County Grand Jury to expand its investigation into the City of San Diego's use of enterprise funds to pay for general fund services to include allocations paid for consulting work performed by Los Angeles-based forensic accounting firm, Kroll Inc. ("Kroll"), and New York City-based law firm, Willkie Farr & Gallagher, LLP ("Willkie Farr").

In 2005, the County Grand Jury launched an investigation into the City of San Diego's alleged utilization of enterprise fund monies for general fund expenses. As a result, the County Auditor is currently performing an audit of City of San Diego financial records to determine if, in fact, money was illegally diverted from San Diego's Water and Wastewater enterprise funds to pay for general fund services.

The City Attorney believes these money diversion schemes have occurred and as a result of past management deficiencies may still be occurring due to a lack of management oversight of Service Level Agreements, as outlined in the 9 April 2006 article titled "Managing or manipulating?" in The San Diego Union-Tribune.

The City Attorney believes that evidence exists to show that (1) Kroll and Willkie Farr have violated the internal accounting controls of the City of San Diego; and (2) the City of San Diego has inappropriately used monies from enterprise funds to pay invoices submitted by Kroll and Willkie Farr.

Kroll was contracted by the City of San Diego in February 2005. According to the Kroll engagement letter, "The City has requested that Kroll (1) receive, review and evaluate the

findings of the investigations by VINSON & ELKINS 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."[1]

Over the course of Kroll and Willkie Farr's work – which is ongoing – a series of invoices were submitted that fail to meet the accounting standards of the City of San Diego.

The City of San Diego maintains guidelines for billing by outside consultants and contractors. Specifically, City of San Diego Administrative Regulations state that all consulting agencies that contract with the City must:

> [E]xpressly warrant that the work is based upon its expertise and shall be done in accordance with good (audit, professional, etc.) practices. Where approval by the City, or representatives of the City is indicated, it is understood to be conceptual approval only and does not relieve the consultant of responsibility for complying with all laws, codes and good (audit, professional, etc.) practices.[2]

The San Diego City Attorney's Office has established a set of internal controls to be used when reviewing attorney and consultant billings. The City Attorney uses specific billing guidelines that require detailed billing. The guidelines require that the invoice shall be accompanied by a separate invoice briefly describing each task performed, the time spent on the task, the identity of the person who performed the work, and itemized reimbursable expenses.[3]

Kroll and Willkie Farr have sent more than 10 invoices to the City of San Diego without providing any detail of the work performed. The lack of accurate billing has rendered the City unable to properly monitor the engagements.[4]

Despite numerous request from the City Attorney[5], and a request sent by the City Auditor and Comptroller, for a line item accounting of what work was being done, the time spent on each task, and which employee was completing the work, the invoices have arrived with no detail other than cost. More than $1.5 million of Kroll's bills were accepted and paid by the City without itemization.

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[1] 10 February 2005. Letter from Troy Dahlberg to Mayor Richard Murphy and San Diego City Council. Re: Independent Services for the City of San Diego.

[2] City of San Diego Administrative Regulation. Appendix B-1. A Consultant is an Independent Contractor.

[3] San Diego City Attorney's Office Billing Guidelines for Outside Counsel.

[4] Copies of Kroll/Willkie Farr bills.

[5] Communications from City Attorney requesting detailed billings.

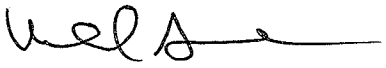
Over the course of the engagement, the City failed to require detailed billings from both Kroll and Wilkie Farr, and has not exerted control over the nature, timing, quantity, or quality of the work completed.

Meanwhile, at the 17 January 2006 meeting of the San Diego City Council, Councilmembers allocated an additional $10 million to Kroll and Willkie Farr for its work. At the meeting, City officials initially said that additional funds to pay for Kroll and Willkie Farr's investigation would in part be taken from City enterprise funds including funds for water, sewer, and a fund established to pay for the maintenance of municipal golf courses throughout the City of San Diego.[6]

However, a series of e-mails recovered from the computer of former City Manager P. Lamont Ewell illustrate that enterprise monies had been used to pay Kroll invoices since the company was first contracted by the City. The City Attorney believes that evidence exists to show that the City's payment of Kroll and Willkie Farr invoices illustrates that the City of San Diego has inappropriately used enterprise fund monies to pay for general fund expenses.

The City Attorney respectfully requests that the San Diego County Grand Jury expand its probe into the City of San Diego's use of enterprise funds to pay for general fund services to include the invoices and payments to Kroll and Willkie Farr.

Sincerely,



Michael J. Aguirre

MJA:meb

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[6] Hall, Mathew T. "Consultants' pay grows by $10 million." *The San Diego Union-Tribune.* 18 January 2006.