

RESOLUTION NO. 2007-473

Adopted by the Sacramento City Council

June 26, 2007

AUTHORIZATION TO SUBMIT AMICUS CURIAE LETTER IN SUPPORT OF SMUD'S PETITION FOR REVIEW OF COURT OF APPEAL DECISION IN CONDON-JOHNSON & ASSOCIATES V. SMUD

BACKGROUND

- A. The *Condon-Johnson & Associates v. SMUD* case involved a claim against SMUD on a public works construction contract, in which the contractor requested additional payment for costs arising from subsurface conditions.
- B. In April 2007, the California Court of Appeal issued a decision in this case prohibiting SMUD from relying on disclaimers in the contract specifications that otherwise would have limited SMUD's liability to the contractor for additional costs. The Court of Appeal decision has the potential to adversely affect all local public entities in California, including the City, that utilize disclaimers or other risk-shifting clauses in construction contracts.
- C. SMUD is filing a Petition for Review with the California Supreme Court to request that the Supreme Court review and overturn this decision.
- D. The City Attorney has requested authorization to file an *amicus curiae* letter with the California Supreme Court in support of SMUD's request that the Court grant review of this decision.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Attorney is authorized to file an *amicus curiae* letter with the California Supreme Court, on behalf of the City, in support of SMUD's Petition for Review of the Court of Appeal decision in *Condon-Johnson & Associates v. SMUD*.

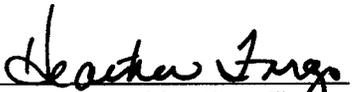
Adopted by the City of Sacramento City Council on June 26, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.



Mayor, Heather Fargo

Attest:



Shirley Concolino, City Clerk