



CITY COUNCIL
Special Meeting
Agenda
Feb. 6, 2024, 3:45 p.m.

Council Chamber
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Welcome to Your City Council Meeting

We welcome your interest and involvement in the city's legislative process. This agenda includes information about topics coming before the City Council and the action recommended by city staff. You can read about each topic in the staff reports, which are available on the city website and in the Office of the City Clerk. The City Clerk is also available to answer any questions you have about City Council meeting procedures.

How to Watch

In Person



City Council Chamber
1200 Carlsbad Village Drive

On TV



Watch the city's cable channel
Spectrum 24 and AT&T U-verse 99

How to Participate

If you would like to provide comments to the City Council, please:

- Fill out a speaker request form, located in the foyer.
- Submit the form to the City Clerk before the item begins.
- When it's your turn, the City Clerk will call your name and invite you to the podium.
- Speakers have three minutes, unless the presiding officer (usually the Mayor) changes that time.
- You may not give your time to another person, but can create a group. A group must select a single speaker as long as three other members of your group are present. All forms must be submitted to the City Clerk before the item begins and will only be accepted for items listed on the agenda (not for general public comment at the beginning of the meeting). Group representatives have 10 minutes unless that time is changed by the presiding officer or the City Council.

Reasonable Accommodations

Reasonable Accommodations Persons with a disability may request an agenda packet in appropriate alternative formats as required by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the City Manager's Office at 442-339-2821 (voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or manager@carlsbadca.gov by noon on the Monday before the meeting to make arrangements. City staff will respond to requests by noon on Tuesday, the day of the meeting, and will seek to resolve requests before the start of the meeting in order to maximize accessibility.

More information about City Council meeting procedures can be found in the Carlsbad Municipal Code Chapter 1.20.

The City Council also sits as the Carlsbad Municipal Water District Board, Public Financing Authority Board, Community Development Commission and Successor Agency to the Redevelopment Agency. When considering items presented to the Carlsbad Municipal Water District Board, each member receives an additional \$100 per meeting (max \$300/month). When considering items presented to the Community Development Commission each member receives an additional \$75 per meeting (max \$150/month).

CALL TO ORDER:

ROLL CALL:

ANNOUNCEMENT OF CONCURRENT MEETINGS: None.

PUBLIC COMMENT ON AGENDA ITEM:

CLOSED SESSION:

1. **CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION:** That the City Council, by motion, authorize a closed session regarding significant exposure to litigation of one case, pursuant to Government Code Section 54956.9(d)(2).

ADJOURNMENT:



CITY COUNCIL

Staff Report

Meeting Date: Feb. 6, 2024

To: Mayor and City Council

From: Cindie K. McMahon, City Attorney

Staff Contact: Cindie K. McMahon, City Attorney

Subject Conference with Legal Counsel Regarding Anticipated Litigation

Recommended Action

That the City Council, by motion, authorize a closed session regarding significant exposure to litigation of one case, pursuant to Government Code Section 54956.9(d)(2).

Exhibits:

1. Agreement between the Buena Sanitation District and City of Carlsbad for the Lease of Additional Capacity in the Encina Outfall

AGREEMENT BETWEEN THE BUENA SANITATION
DISTRICT AND CITY OF CARLSBAD FOR THE
LEASE OF ADDITIONAL CAPACITY IN THE
ENCINA OUTFALL

This Agreement, made and entered into this 15th day of December, 1987, by and between BUENA SANITATION DISTRICT, a county sanitation district, formed and existing under the County Sanitation District Act (Section 4700, et seq., Health and Safety Code) hereinafter referred to as "Buena" and the CITY OF CARLSBAD, a municipal corporation hereinafter referred to as "Carlsbad."

WITNESSETH:

1. Carlsbad and Buena Sanitation District entered into an Agreement for the lease of capacity in a land sewage outfall on June 20, 1966.

2. The City of Carlsbad and Buena Sanitation District rescinded the 1966 Agreement and replaced it with a new agreement in 1981.

3. Now the City of Carlsbad desires to temporarily lease additional capacity in the land sewage outfall from Buena.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. EFFECTIVE DATE: This agreement shall take effect July 1, 1988.

Section 2. LEASE OF CAPACITY: Buena agrees to lease to Carlsbad on a temporary basis .8 peak mgd until a replacement sewer is constructed in accordance with Section 3 of this Agreement.

Section 3. NEW CONSTRUCTION: When peak flows in the interceptor reach 75% of the depth of the pipe in any reach of the Encina Outfall, as determined by the Buena Sanitation District, Carlsbad shall construct a replacement outfall to eliminate the need for this lease. When the construction is completed this lease shall terminate. When flows reach 75% of the depth of flow of the pipe all payments required in Section 4 of this agreement shall double and they will double again each year until the flows are removed from the line. If other unanticipated capacity problems arise relating to this lease, Carlsbad, at Buena's request, will be required to pay their share to correct the problem.

Section 4. TERMS OF LEASE: Carlsbad shall pay to Buena \$7,500 per year for the term of this lease. If permanent capacity should become available for acquisition Carlsbad shall retain the option to acquire said capacity and apply previous lease payments towards the acquisition price.

Section 5. CONNECTIONS: Carlsbad, at its sole expense, shall be responsible for the construction, installation, maintenance, repair, replacement or reconstruction of any necessary transmission facilities from the Carlsbad Service Area to the Encina Outfall and for the connection of such transmission facilities together with any necessary appurtenances to the Encinas Outfall.

Section 6. ENGINEER'S APPROVAL: The location, installation, construction, repair (except emergency repairs) replacement and/or reconstruction of the connections to the Encinas Outfall shall be according to plans and specifications first approved by Buena's engineer.

Section 7. LIMITATIONS ON TYPE AND CONDITION OF SEWAGE: All sewage discharged by Carlsbad into Encina Outfall shall conform to the ordinances, resolution, rules and regulations which Buena must adopt in accordance with Agreements of the Encina Joint Powers concerning the condition of sewage and waste permitted to be discharged to the Joint System or any part thereof.

Section 8. METERING: Carlsbad shall, upon request of Buena, provide a device to meter the flow of sewage in the Encina Outfall at a point below any lateral connection, but above the Encina Sewage Treatment Facility. The meter will be installed and operated solely at Carlsbad's expense.

Section 9. INFILTRATION: It is understood and agreed that there will be inflow of water into the Encina Outfall because of leakage between the Carlsbad connection and the Encina Treatment Plant. Buena shall estimate the total waters that infiltrate the Encina Outfall between said connection and treatment plant (sometimes referred to herein as "infiltration") and apportion the same among all of such users of the Encina Outfall in the proportion that the amount of sewage discharged into the Encina Outfall by each such user bears to the total amount of sewage discharged into the Encina Outfall by all of such users of said Outfall. The amount of infiltration apportioned to each such user shall be deemed a part of the sewage of such user for all purposes.

Section 10. MAINTENANCE CHARGE:

1. During such period as Carlsbad is authorized to use a portion of the capacity of the Encina Outfall, whether as lessee or owner of such capacity, Carlsbad shall pay to Buena a share of the cost of the maintenance and operation of the Encina Outfall, said share of the cost to be in proportion to the average flow of sewage discharged into the Encina Outfall through Carlsbad's connections to said outfall as compared to the total average flow of sewage discharged into said Encina Outfall.

2. Buena shall bill Carlsbad for its share of the cost from time to time, but at least annually, and Carlsbad shall pay its share of the cost to Buena within thirty (30) days after being so billed.

3. Buena shall keep accurate records of this cost of maintaining and operating the Encina Outfall and such records shall be open to inspection by Carlsbad at all reasonable times.

Section 11. CHARGE AGAINST CAPACITY RIGHTS IN ENCINA TREATMENT PLANT AND OCEAN OUTFALL: All sewage discharged into the Encina Outfall through Carlsbad's connection, under the terms of this Agreement and thereafter discharged into the Encina Treatment Plant, and all infiltration allocable to Carlsbad as determined by Section 9 of this Agreement, shall be charged against Carlsbad's capacity rights in and to the Encina Treatment Plant and Ocean Outfall.

Section 12. REPAIRS: The Encina Outfall Sewer shall be maintained by Buena in good repair and working order in accordance with sound engineering practices. It shall be the duty of Buena to make repairs on said Encina Outfall required to keep such outfall sewer in good operating condition. Except as provided in Section 13, the cost of all repairs shall be part of the maintenance cost of the Encina Outfall.

Section 13. INTERRUPTION OF SERVICE: In the event of an interruption of services to Carlsbad in the Encina Outfall, as a result of disaster, operation of State or Federal law, discontinuance or interruption of service to Buena by the Encina Treatment Plant or Ocean Outfall, or any other cause beyond the control of Buena, Buena shall bear no liability and shall be held harmless by Carlsbad from any claims and liabilities for any injury to or damage to any person or persons or property or for the death of any person or persons arising from or out of such interruption of service or for any other damages or costs incurred by Buena as a result of such interruption of service.

Section 14. ARBITRATION: Except as otherwise provided herein, all controversies arising out of the interpretation or application of this agreement or the refusal of either party to perform the whole or any part thereof shall be settled by arbitration in accordance with the provisions of this section and where not provided by this section, in accordance with statutory provisions of the State of California then in force. The controversy shall be submitted to a board of three (3) arbitrators which shall be appointed, one by Buena, one by Carlsbad and the third by the first two. The party desiring arbitration shall notify the other party by a written notice stating the following: (1) that it desires arbitration, (2) the controversy to be arbitrated, (3) that it has appointed its nominee, and (4) that it request the other party to appoint its nominee. Within thirty (30) days from the receipt of said notice the other party shall appoint its nominee. Within fifteen (15) days after the last party has appointed its nominee the two nominees shall appoint the third. None of the arbitrators shall be a resident of, or taxpayer in, or own property in, or have a place of business in, or be employed in or by, or have any contract with, or be an officer or employee of, either party. The arbitration board shall hold at least one hearing and, at least ten (10) days before said hearing, shall give each party written notice thereof. The arbitration shall be restricted to matters relative to that stated in the notice requesting arbitration. The arbitration board shall have no authority to add to or subtract from this agreement. Each party shall be given an opportunity to be heard and to present evidence. Upon conclusion of the hearing or hearings, the arbitration board shall reduce their findings of fact, conclusions of law and the award to writing, and shall sign the same and deliver one signed copy thereof to each public agency. Such award shall be final and binding upon both parties. A majority finding shall govern if the arbitrators' determination is not unanimous. Each party shall pay its own expenses, including the expenses of the arbitrator which it nominates. The expenses of the third arbitrator and the administrative costs of the arbitration proceedings shall be shared equally.

Any Controversy which can be determined by an engineer's findings and which under this section could be submitted to arbitration may, if the parties thereto agree in writing to do so, be submitted to a named engineer who shall be the sole arbitrator.

Such engineer shall be a member of the American Society of Civil Engineers and shall be disinterested as hereinbefore in this section required of arbitrators on an arbitration board. He shall proceed in the same manner and shall make findings, conclusion and an award in the manner provided herein for an arbitration board.

Section 15. NOTICE: Notice required or permitted under this agreement shall be sufficiently given if in writing and if either served personally upon or mailed by registered or certified mail to the clerk or secretary of the governing body of the affected party to this agreement.

Section 16. LIABILITY: Nothing herein contained shall operate to relieve Carlsbad of any liability for damages to persons or property arising from or out of the installation, construction, operation, maintenance, repair, replacement or reconstruction of the aforesaid sewer connections and appurtenances or from any action or inaction of Carlsbad or its officers, agents or employees in connection therewith.

And except as provided in Section 17 nothing herein contained shall operate to relieve Buena of any liability for damages to persons or property arising from or out of the installation, construction, operation, maintenance, repair, replacement and/or reconstruction of the aforesaid sewer connections and appurtenances or from any action or inaction of Buena or of its officers, agents or employees in connection therewith.

Section 17. INDEMNITY: To the extent it may legally do so, Carlsbad shall defend and save and hold free and harmless Buena and its agents, officers and employees from any claims, liabilities, penalties or fines for injury to or damage to any person or property or for the death of any person arising from or out of any act or omission of Carlsbad, its agents, officers, employees or contractors, arising from or out of any defects in the installation, construction, operation, maintenance, repair, replacement or reconstruction of said sewer connections or appurtenances.

Section 18. TIME OF ESSENCE: Time is of the essence of this agreement.

Section 19. SEVERABILITY: If any section, subsection, sentence, clause, phrase or word of this agreement, or the application thereof, to any party, or to any other person or circumstance is for any reason held invalid, it shall be deemed severable and the validity or the remainder of the agreement or the application of such provision to the other parties or to any other persons or circumstances shall not be affected thereby. Each party hereby declared that it would have entered into this agreement and each section, subsection, sentence, clauses, phrase and work thereof irrespective of the fact that one or more sections, subsections, sentences, clauses, phrases or words, or the application thereof to any party or any other person or circumstance be held invalid.

Section 20. This agreement shall be binding upon the parties hereto and the successors and assigns of each of them.

IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by its respective governing body caused this agreement to be executed the date first above written.

BUENA SANITATION DISTRICT

By Matthew A. Nelson
Clerk of the Board of Directors

APPROVED BY THE
DISTRICT BOARD OF DIRECTORS

12-15-87(3)

Matthew A. Nelson
CLERK OF THE DISTRICT BOARD OF DIRECTORS

City of Carlsbad
By Claude A. Lewis
CLAUDE A. LEWIS, Mayor

2008	15000
2009	30000
2010	60000
2011	120000
2012	240000
2013	480000
2014	960000
2015	1920000
2016	3840000
2017	7680000
2018	15360000
2019	30720000
2020	61440000
2021	122880000
2022	245760000
2023	491520000

TOTAL (all years) = 983025000

TOTAL (last 4 yrs) = \$ 921600000