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JERRY SANDERS
MAYOR

June 20, 2006

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**SAN DIEGO
COUNTY GRAND JURY**

Honorable Janis Sammartino
Presiding Judge
San Diego County Superior Court
Main Courthouse, Third Floor
220 West Broadway
San Diego, CA 92101

Dear Judge Sammartino:

Subject: 2005-2006 Grand Jury Report entitled "San Diego City Street Conditions"

Pursuant to California Penal Code Section 933.05(a), (b), and (c), the City of San Diego provides the following responses to the findings and recommendations in the above-entitled Grand Jury Report.

As clarification to the facts presented in the Grand Jury Report, there are actually five different departments designated to handle various aspects of trenching and resurfacing of City streets: Engineering & Capital Project Department, General Services Department, Water Department, Metropolitan Wastewater Department, and Development Services Department (DSD). Engineering & Capital Project Department oversees work by City contractors. General Services Department, Water Department, and Metropolitan Wastewater Department workers perform utilities and streets projects for the City. DSD issues permits to private developers, property owners and their contractors for work in the streets.

All public utilities, including the City's Water and Wastewater Departments, must abide by the City's Trench Cut Ordinance, found in Municipal Code sections 62.1201 *et seq.* The Trench Cut Ordinance was enacted in September of 2003. It imposes limited moratoriums on trenching recently repaved and slurry-sealed streets. The Trench Cut Ordinance also requires public utilities to provide an excavation warranty, execute a resurface agreement, or pay an excavation fee in conjunction with trenching City streets.

Additionally, the variety of code requirements to be met by private companies and the City departments include Standard Specifications for Public Works Construction, Regional Supplement Amendments to the Standard Specifications for Public Works

Construction, City of San Diego Supplement to Standard Specifications for Public Works, and Regional Standard Drawings.

Finding: This Grand Jury finds that there is inconsistent enforcement of policies and procedures in place to assure the repair of trenching. Non-compliance with these requirements by private companies and public utilities should trigger proceedings to forfeit their compliance bonds, or reimbursement to the City. There is no procedure followed to notify the City Attorney to commence reimbursement proceedings.

Agree. There are four general categories of projects involving trenching that are performed in the City of San Diego.

1. Contracted projects - projects for which the City contracts with and pays a contractor to perform all project work.
2. Permitted projects - projects for which non-City entities contract with and pay a contractor to perform work which must be permitted by the City.
3. Franchise Utility projects - projects for which a utility company with a franchise agreement with the City contracts with and pays their own contractor to perform all project work or performs the work with their own crews.
4. City Forces projects - projects performed by employees of the City as part of their normal job duties.

While there is no written procedure in place, generally the City Attorney's Office is notified by City staff when a contractor fails to perform according to the terms of its contract or permit on Contracted and Permitted projects. For these projects, the policies and procedures are strictly enforced by the City during construction. This ensures that repairs to trenches and adjacent infrastructure are performed in accordance with applicable standards and specifications. Then, after project completion and acceptance, on or about the tenth month of the one-year warranty period, an interdepartmental memorandum is issued to client departments requesting a deficiency/discrepancy report on the completed project. Any reported deficiencies or discrepancies are forwarded to the responsible contractor for repairs.

As required by San Diego City Charter Section 94, for all Contracted projects (public works projects) over \$100,000 the City requires contractors to post a surety bond to ensure the work is done properly. In the event that a contractor is not responsive to requests to repair a trench, the issue is referred to the City Attorney's office to notify the bonding company to make the necessary repairs. In emergency situations, repairs are completed by City Forces and a claim process is initiated with the City Attorney's office to seek reimbursement from the contractor and/or bonding company.

In the case of Franchise Utility projects¹, the utility companies are bound by an agreement with the City of San Diego to maintain their infrastructure in perpetuity. When a trench failure is identified as being the responsibility of a franchise utility, then the utility company is required to make the necessary repairs. No reimbursement proceedings are required in these cases.

For City forces projects, trench repairs and correction of deficiencies or discrepancies are completed by the City forces. Municipal Code section 62.1209 requires the City department responsible for the work to complete repairs within 30 days of receiving notice of the failure. Both temporary and permanent repair work is performed by City forces, depending on the status of the utility work. No reimbursement proceedings are required for correction of these discrepancies.

Finding: This Grand Jury finds that there is no enforced policy or procedure to assure compliance with Municipal Ordinances and Standard Drawings.

Partially Disagree. All Contracted and Permitted projects administered by City departments and including trench work in the Right-of-Way are governed by the "Standard Specifications for Public Works Construction," City of San Diego Regional Standard Drawings, and the recently adopted Trench Cut Ordinance. This work is inspected by City staff for compliance with said documents and the construction contract documents. The work is not accepted until all requirements and standards are met.

It should be noted that trench restoration is completed in two phases:

1. After underground work is completed, the trench is restored temporarily to allow use by traffic until permanent repair and restoration is made.
2. Permanent restoration of the trench occurs when all underground work is complete and the required permanent work can be scheduled to minimize disruption of traffic. For projects which involve larger areas (i.e., several streets), this can mean that work completed for the underground portions can wait several months for final paving.

The City forces have backlogs of two years or more for permanent repair and restoration work on completed projects.

Finding: Inspection of work performed by private companies, contactors and City Departments is sporadic at best. Once inadequate performance is discovered, follow-up to ensure compliance or referral for compensation is rarely done.

¹ Please note that page 4 of the Grand Jury report erroneously identifies SBC (now AT&T) as having a franchise agreement with the City. AT&T operates under a state-wide franchise granted by the California Public Utilities Code.

Partially Disagree. Contracted and Permitted projects are inspected by City staff during construction and prior to expiration of the one-year warranty period. There is no program in place for inspections after the expiration of the warranty period. Franchise Utility Companies generally hire contractors to perform the project work, and typically provide their own testing and inspection. Work performed by city forces is inspected by supervisory personnel who are trained in inspection methods and requirements.

Recommendation 06-14: Review the policies and procedures of the departments under the control of the City having jurisdiction over the care, maintenance and inspection of all City Streets.

Response: This recommendation requires further analysis. A concerted effort by all City Departments is being undertaken to evaluate time and resources necessary to implement a uniform program of care, maintenance, and inspection of all City streets. Factors that are being analyzed include:

1. Departments that historically have not rigorously inspected work performed by City forces will require additional training and tools in order to ensure that work being performed meets applicable City and industry standards.
2. Utilities under franchise utility agreements with the City of San Diego generally perform their own inspection of work performed by third party contractors. This work may require additional quality assurance oversight by the City.
3. All work done in the City, whether by City forces or contractors, should be included in a reporting and tracking program that will quickly identify the responsible party when problems arise. This tracking system will eliminate confusion in determining utility ownership and facilitate repair response time to meet the 30-day requirement in the Trench Cut Ordinance.
4. City construction management (Engineering & Capital Project Department) that provide construction inspection services and quality assurance services for Contracted projects involving trenches will need to evaluate the potential increased need for street repair/restoration quality assurance services citywide.
5. Analyze the effectiveness of the current one-year warranty period and perform a cost-benefit analysis of a longer warranty period.

The objective for this analysis is to ensure consistently high quality street repairs and to allow City departments to share and have access to information on trench work being performed throughout the City. The time required for this analysis will not exceed six months, at which time the Mayor will respond in writing with the results of this analysis.

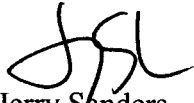
Recommendation 06-15: Consult with City Attorney to determine the best possible method to pursue the recovery of the cost of completing work done by the City and not presently reimbursed.

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Response: This recommendation has been implemented. Instances of trench repairs performed by the City that are the responsibility of contractors or public utilities will be referred to the Chief Deputy City Attorney of the Public Works Unit in the City Attorney's Office. The Chief Deputy City Attorney will review each matter and ensure it is assigned to the appropriate Deputy City Attorney for pursuit of cost recovery or respond that the cost is not recoverable, as applicable.

Please contact Richard Haas, Deputy Chief of Public Works, at (619) 236-6750, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Sanders', written in a cursive style.

Jerry Sanders
Mayor

cc: San Diego County Grand Jury
City Council
Chief Operating Officer
Deputy Chief of Public Works
Citizens Assistance Manager
City Clerk
City Attorney