

#50

(0-95-26)

18106

ORDINANCE NUMBER O- (NEW SERIES)

ADOPTED ON OCT 31 1994

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THAT THE EMTEK LOAN COMMITTEE MEMBERS BE INDEMNIFIED FROM PERSONAL LIABILITY WHEN SERVING WITHIN THE SCOPE OF THEIR DUTIES.

WHEREAS, on January 11, 1994, the City received Grant Award No. 07-49-02681 in the amount of \$5.8 million from the U.S. Department of Commerce, Economic Development Administration ("EDA") to implement a Defense Conversion Program; and

WHEREAS, an integral component of the Defense Conversion Program is the establishment of a seed capital revolving loan fund pursuant to Title IX of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, et seq.), which was funded by EDA in the amount of \$750,000 with a \$250,000 match from the City of San Diego (the "City"); and

WHEREAS, pursuant to EDA grant application requirements, the City submitted an Administrative Plan to EDA fully describing the establishment and operating guidelines for the seed capital revolving loan fund to be known as the San Diego Emerging Technology Seed Capital Fund ("EmTek Loan Program") and the Administrative Plan was approved by EDA and must be followed in administering the grant; and

WHEREAS, the Administrative Plan calls for the creation of the EmTek Loan Committee consisting of disinterested members of the local private sector with expertise in such areas as commercial credit/lending, venture capital/corporate finance,

law, accounting and relevant emerging technologies; and

WHEREAS, the Administrative Plan describes the duties of the EmTek Loan Committee as having responsibility for reviewing loan applications and make recommendations to the City Manager concerning funding of EmTek Fund loans; and

WHEREAS, the City Manager has solicited and appointed members to the EmTek Loan Committee which is now ready to begin consideration of loan applications; and

WHEREAS, the EmTek Loan Committee has and will be devoting countless hours of their time and substantial private resources in assisting the City in administering the EmTek Loan Program; and

WHEREAS, the voluntary efforts of the professionals serving as members of the EmTek Loan Committee are of inestimable value to the citizens of the City of San Diego; and

WHEREAS, concerns expressed by members of the EmTek Loan Committee about personal exposure to liability and litigation are jeopardizing the ability of the City Manager to retain quality professionals as member of the EmTek Loan Committee; and

WHEREAS, Section 40 of the Charter of the City provides, inter alia, that the City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require; and

WHEREAS, the Council of The City of San Diego finds and declares that the provision of legal services by the City Attorney and the indemnification against damages resulting from a judgment against any member of the EmTek Loan Committee serving and acting in such capacity would constitute expenditure of

public funds which serves the highest public interest and purpose; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. Except as hereinafter provided, the Office of the City Attorney shall defend and The City of San Diego shall indemnify the EmTek Loan Committee as established pursuant to the Administrative Plan of the EmTek Loan Program against any claim or action against such committee or member if all of the following circumstances exist:

A. The person seeking indemnification is a duly recognized member of the EmTek Loan Committee appointed by the City Manager; and

B. The alleged act or omission occurred during a lawful meeting of the EmTek Loan Committee; and

C. The alleged act or omission was within the reasonable scope of duties of the EmTek Loan Committee as described in the Administrative Plan and the Standard Terms and Conditions for administration of revolving loan fund grants, published by EDA; and

D. The member has made a request in writing to the City for defense and indemnification within five (5) working days of having been served such legal papers; and

E. The member has performed his or her duty in good faith with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Section 2. The City of San Diego may decline to represent a member or a committee that would otherwise be entitled to defense and indemnification under this ordinance if either of the following circumstances exist:

A. The member does not reasonably cooperate with the City Attorney in the defense of the claim or action; or


B. The member acted or failed to act because of fraud, corruption, actual malice or bad faith; or

C. The alleged act or omission relates to a legal obligation of the member to comply with state or local conflict of interest laws, including any disclosure or disqualification requirements under The Political Reform Act of 1974 or Government Code section 1090.

Section 3. In the event the City Attorney determines that a member or the committee is not entitled to or should not receive a defense and indemnification under this ordinance, the City Attorney shall advise the City Council and the member or committee.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

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Or.Dept:EDS
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Passed and adopted by the Council of The City of San Diego on OCT 31 1994
 by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Harry Mathis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Christine Kehoe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Warden	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juan Vargas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

(Seal)

SUSAN GOLDING
 Mayor of The City of San Diego, California.

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

By George Ryan Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on OCT 17 1994, and on OCT 31 1994

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

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

By George Ryan Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number <u>0-18106</u>	Adopted <u>OCT 31 1994</u>

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OCT 31 1994

CITY CLERK'S OFFICE
SAN DIEGO, CA

TO: [Illegible]

FROM: [Illegible]

OCT 1 1994

OCT 31 1994

SUBJECT: [Illegible]

ATTENTION: [Illegible]

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OCT 31 1994