

114  
12/5/06

(R-2007-587)  
CORR.COPY

RESOLUTION NUMBER R- 302169

ADOPTED ON DEC 15 2006

WHEREAS, the defense of the legal issues raised in Border Business Park, Inc., and related entitles, as set forth in the litigation of Otay Acquisition v. City of San Diego, San Diego Superior Court Case No. GIC 753247, and National Enterprise v. City of San Diego, San Diego Superior Court Case No. GIC 730011, and Border Business Park, Inc. v. City of San Diego, San Diego Superior Court Case No. 692794, require extensive resources necessary to coordinate and research several substantive and procedural legal matters, as well as to prepare and respond to legal documentation; and

WHEREAS, the law firm of Horvitz & Levy, attorneys at law, have been retained by the City of San Diego to provide services with respect to the appeal in the matters of Border Business Park, Inc., and related litigation; and

WHEREAS, the previous authorizations for Horvitz & Levy were in an amount not to exceed \$700,000; and

WHEREAS, additional services are needed from Horvitz & Levy and the current authorization is insufficient for that purpose; and

WHEREAS, this item was considered in Closed Session on November 14, 2006, and on that date, the Council voted unanimously (8-0) to authorize additional funding for the law firm of Horvitz & Levy as outside counsel in an amount not to exceed \$200,000. The Council further determined that the funding for this action was to come from the public liability fund. The

motion was made by Council President Peters with a second by Councilmember Hueso; NOW,  
THEREFORE,

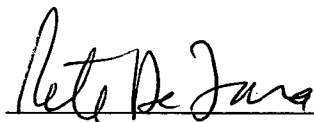
BE IT RESOLVED, by the Council of the City of San Diego, that a fourth amendment to the Retainer Agreement by and between the City of San Diego and Horvitz & Levy, for appellate legal services in Otay Acquisition v. City of San Diego, San Diego Superior Court Case No. GIC 753247, and National Enterprise v. City of San Diego, San Diego Superior Court Case No. GIC 730011, and Border Business Park, Inc. v. City of San Diego, San Diego Superior Court Case No. 692794, for certain legal services is hereby authorized.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller be authorized to appropriate and transfer \$200,000 from the General Fund Unallocated Reserve to the Public Liability Fund to pay these expenditures.

BE IT FURTHER RESOLVED, that the expenditure of an additional amount not to exceed \$200,000 from Liability Fund 81140, is hereby authorized, solely and exclusively for the purpose of providing funds for the above project.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By




Pete De Lara  
Deputy City Attorney

PD:mm  
11/3/06  
11/21/06 CORR.COPY  
11/22/06 CORR. COPY

Or.Dept:Atty  
R-2007-587  
MMS #4072

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC - 5 2006.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 12-15-06  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 2700394

ORIGINATING

DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$200,000.00

Vendor: Horvitz & Levy

Purpose: Authorizing the appropriation and transfer from the General Fund Unallocated Reserve to the Public Liability fund and to expend for appellate outside counsel services in Otay Acquisition v. City (GIC 753247); National Enterprises v. City (GIC 730011); Border Business Park v. City (GIC 692794); and related matters.

Date: November 21, 2006 By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	100			9544					200,000.00
TOTAL AMOUNT										\$200,000.00

FUND OVERRIDE

*R-* 302169

DEC 05 2006

Passed by the Council of The City of San Diego on DEC 05 2007, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

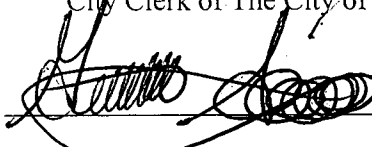
Date of final passage DEC 15 2007

AUTHENTICATED BY:

JERRY SANDERS  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 302169