

RESOLUTION NUMBER R- 305044
DATE OF FINAL PASSAGE JUL 21 2009

AUTHORIZING CONTINUED RETENTION OF LATHAM & WATKINS, LLP FOR LEGAL SERVICES AND EXPENSES IN THE MONITORING OF THE SETTLEMENT AGREEMENT BETWEEN THE CITY AND ISOP, AND TO NEGOTIATE ADDITIONAL INSURANCE PAYMENTS FROM ANOTHER INSURER, UNITED NATIONAL, IN THE MATTER OF INSURANCE CO. OF THE STATE OF PENNSYLVANIA, ET AL. V. CITY OF SAN DIEGO, USDC CASE NO. 02CV0694 BEN (CAB).

WHEREAS, since 1995, the City has defended itself in litigation surrounding an Otay Mesa industrial park initiated by business entities owned or controlled by developer Roque De La Fuente [De La Fuente]. The City tendered its defense to the City's general liability insurer, Insurance Company of the State of Pennsylvania [ISOP], who declined to defend and indemnify the City in these matters; and

WHEREAS, in 2002, ISOP sued the City seeking a judicial declaration that it had no duty to defend or indemnify the City. The City counter-claimed for a defense and bad faith; and

WHEREAS, in 2004, the Ninth District Court of Appeals held ISOP has a duty to defend the City in the De La Fuente matters; and

WHEREAS, despite the Ninth Circuit's order, ISOP continued to fail to pay the City's defense costs. The City then obtained permission to expedite its bad faith case over ISOP's objection. In response, ISOP paid \$6,000,000 of the City's previously incurred defense costs. Another insurer, United National, paid \$2,000,000 of the City's defense costs under an excess insurance policy. Shortly before trial on the bad faith action, ISOP settled the dispute by paying

the City an additional \$5,500,000, and agreeing pay 100 percent of all future defense costs. The parties also agreed to reserve litigation on the issue of indemnity should the De La Fuente judgments for the City be reversed on appeal; and

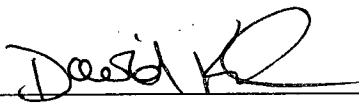
WHEREAS, the money paid by ISOP represents approximately 80 percent of previously incurred City defense costs. With the assistance of Latham & Watkins, the City is seeking to recoup the remaining 20 percent of the defense costs from United National. The funds sought in this matter [\$50,000] will be used to pay for any additional legal work undertaken by Latham & Watkins to monitor compliance of the ISOP settlement agreement and to negotiate with United National for the remaining unpaid defense costs in the De La Fuente matters; and

WHEREAS, the item was considered in Closed Session on February 24, 2009, the Council unanimously approved the expenditure.

BE IT RESOLVED that the City Comptroller is authorized and empowered to expend from the Public Liability Fund 81140, the sum of \$50,000.00 to pay the above expenditures.

BE IT FURTHER RESOLVED, that the Comptroller is authorized and empowered to appropriate up to \$50,000 from the Public Liability Fund 81140 to meet this obligation.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

David J. Karlin
Deputy City Attorney

DJK:aml
06/15/2009
Or.Dept:City Attorney
R-2009-1303

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 7 2009.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 7-11-09
(date)

[Signature]
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor