

RESOLUTION NUMBER R- 305046

DATE OF FINAL PASSAGE JUL 21 2009

RESOLUTION AUTHORIZING THE CONTINUED RETENTION, PAYMENT FOR INVOICES AND FUTURE RESERVE FUNDING FOR LATHAM & WATKINS, LLP FOR LEGAL SERVICES AND EXPENSES INCURRED IN DEFENSE OF THE CITY IN BORDER BUSINESS PARK, INC. V. CITY, SDSC CASE NO. GIC 692794; NATIONAL ENTERPRISES V. CITY, SDSC CASE NO. GIC 730011; AND OTAY ACQUISITION V CITY, SDSC CASE NO. GIC 753247 IN THE AMOUNT NOT TO EXCEED \$625,000.00

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 De La Fuente matters include: Border Business Park, Inc. v. City, SDSC Case No. GIC 692794; National Enterprises v. City, SDSC Case No. GIC 730011; and Otay Acquisition v City, SDSC Case No. GIC 753247; and

WHEREAS, in 2001, a jury awarded \$94,500,000 in damages to De La Fuente in the Border Business Park matter; and

WHEREAS, shortly thereafter, the law firm of Latham & Watkins, LLP was retained by the City to pursue post-trial motions and an appeal; and

WHEREAS, in 2006, the Court of Appeal reversed the entire Border judgment. The court ordered that judgment be entered for the City on the inverse condemnation claims, and ordered the remain breach of contract claim returned to the trial court; and

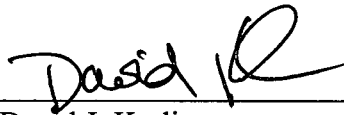
WHEREAS, upon return to the trial court, the City successfully moved to dismiss amended complaints in all three De La Fuente matters based on a failure to comply with the Government Claims Act. De La Fuente filed appeals in all three cases; and

WHEREAS, this matter seeks approval of continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for legal services and expenses incurred in defense of the City in Border Business Park, Inc. v. City, SDSC Case No. GIC 692794; National Enterprises v. City, SDSC Case No. GIC 730011; and Otay Acquisition v City, SDSC Case No. GIC 753247; and

WHEREAS, this item was considered in Closed Session on February 24, 2009 and on that date, the Council voted unanimously (8-0) to authorize additional funding for the law firm of Latham & Watkins as outside counsel in an amount not to exceed \$625,000 to defend the City of San Diego in the De La Fuente matters listed above. The Council further determined that the funding for this action was to come from the Public Liability Fund 81140; NOW THEREFORE,

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$625,000 from Public Liability Fund No. 81140, is hereby authorized, solely and exclusively for the purpose of providing funds for the above agreement.

APPROVED: JAN I. GOLDSMITH, City Attorney

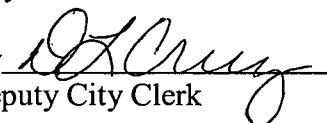
By 

David J. Karlin
Deputy City Attorney

DJK:aml
June 4, 2009
Or.Dept:
R-2009

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 
Deputy City Clerk

Approved: 7-21-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

R- 305047

DATE OF FINAL PASSAGE JUL 21 2009

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE SETTLEMENT
AGREEMENT BETWEEN JULIANN KRECA AND THE CITY
OF SAN DIEGO, IN THE SUM OF ONE HUNDRED AND
TWENTY FIVE THOUSAND DOLLARS

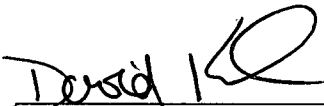
WHEREAS, in Closed Session on May 12, 2009, by motion of Councilmember Young and seconded by Councilmember Emerald, the City Council voted unanimously, and approved the following motion:

To approve the settlement agreement of each and every claim against the City of San Diego, resulting from the injury claim of Juliann and Michael Kreca and the Estate of Michael T. Kreca, United States District Court Case No. 06cv17891 (AJB), NOW THEREFORE,

BE IT RESOLVED, that the City Comptroller be and is hereby authorized to issue a check in the amount of, but not exceeding, \$125,000 made payable to Juliann and Michael Kreca and their attorney of record, Gerald Singleton, in full and final settlement of all claims.

BE IT FURTHER RESOLVED, that the City Council is hereby authorized to pay the sum of \$125,000 from the Public Liability Fund 81140.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

David J. Karlin
Deputy City Attorney

DJK:aml
06/04/2009
Or.Dept: City Attorney
AC #
R-2009-1245

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 
Deputy City Clerk

Approved: 7-21-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2900885

DEPT. NO.: 45

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: _____

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: \$125,000.00

Vendor: Singleton & Associates, Juliann Kreca & Michael Kreca

Purpose: Authorize the Mayor to pay said sum in settlement of every claim against the City of SD, Elmer Edwards and Samantha Fleming resulting from the civil rights and wrongful death action filed-US District Court Case No. 06cv1789MJL(AJB). Auth. the Comptroller to issue one check expended against the Public Liability Fund.

Date: June 15, 2009 By: *Tom Halbut* 6/15/09

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3501	4823	081141				125,000.00
TOTAL										\$125,000.00

AC-361 (REV 2-92)

FUND OVERRIDE

AC 2900885

R 305047

JUL 07 2009