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RESOLUTION NUMBER R- 306778
DATE OF FINAL PASSAGE MAY 11 2011

RESOLUTION AUTHORIZING THE CONTINUED RETENTION, PAYMENT OF INVOICES AND FUTURE RESERVE FUNDING FOR LATHAM & WATKINS, LLP FOR LEGAL SERVICES INCURRED IN DEFENSE OF THE CITY IN BORDER BUSINESS PARK, INC. V. CITY, SDSC CASE NO. GIC 692794; NATIONAL ENTERPRISES, INC. V. CITY, SDSC CASE NO. GIC 730011; OTAY ACQUISITION LLC V. CITY, SDSC CASE NO. GIC 753247; OTAY TRUCK PARKING L.P. V. CITY, SDSC CASE NO. 37-2009-00095661-CU-EI-CTL IN THE AMOUNT NOT TO EXCEED \$500,000

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 litigation matters include: Border Business Park, Inc. v. City, SDSC Case No. GIC 692794; National Enterprises, Inc. v. City, SDSC Case No. GIC 730011; Otay Acquisition, LLC v City, SDSC Case No. GIC 753247; and Otay Truck Parking L.P. v. City, SDSC Case No. 37-2009-00095661-CU-EI-CTL; and

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

WHEREAS, shortly thereafter, the law firm of Latham & Watkins, LLP was retained by the City to defend against the De La Fuente litigation matters; and

WHEREAS, Latham & Watkins was also retained by the City in litigation with its general liability insurer, Insurance Company of the State of Pennsylvania [ISOP]. The ISOP litigation stemmed from ISOP's rejection of the City's claim that ISOP defend and indemnify the City in De La Fuente litigation matters;

WHEREAS, in 2006, the Border Business Park judgment was reversed on appeal. Judgment was entered in favor of the City on the inverse condemnation claims and the remaining breach of contract claim was returned to the superior court. Thereafter, the City successfully moved to dismiss the Border Business Park, National Enterprises and Otay Acquisitions lawsuits.

WHEREAS, in June 2010, the appellate court reversed the dismissal of these lawsuits, and the matters have been returned to the superior court for further proceedings and trial;

WHEREAS, the City and ISOP settled their dispute, with ISOP paying the City \$11,500,000 for previously incurred attorney's fees and costs in the De La Fuente litigation matters and agreeing to 80 percent of all future attorney's fees and 100 percent of all future defense costs;

WHEREAS, this matter seeks approval for the continued retention, payment of invoices and future reserve funding for the payment of the City's 20 percent responsibility of all future attorney's fees generated by Latham & Watkins incurred in defense of the City in Border Business Park, Inc. v. City, SDSC Case No. GIC 692794; National Enterprises, Inc. v. City, SDSC Case No. GIC 730011; Otay Acquisition, LLC v. City, SDSC Case No. GIC 753247; Otay Truck Parking L.P. v. City, SDSC Case No. 37-2009-00095661-CU-EI-CTL; and related insurance matters;

WHEREAS, this item was considered in Closed Session on February 15, 2011;

NOW THEREFORE,

BE IT RESOLVED, that the City Comptroller is authorized and empowered to expend the sum of \$500,000 from the Public Liability Fund No. 720045 to pay the above expenditures; and

BE IT FURTHER RESOLVED, that the City Comptroller is authorized and empowered to appropriate up to \$500,000 from the Public Liability Fund No. 720045 to meet this obligation.

APPROVED: JAN I. GOLDSMITH, City Attorney

By David J. Karlin
David J. Karlin
Deputy City Attorney

DJK:
2/28/2011
Or.Dept: City Attorney

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of ~~APR 26 2011~~

ELIZABETH S. MALAND
City Clerk

By Carmen J. Trajano
Deputy City Clerk

Approved: 5.11.11
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor