

ORDINANCE NUMBER O- 20194 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 02 2012

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING ADDITIONAL FUNDING FOR THE LEGAL SERVICES AGREEMENTS WITH LATHAM & WATKINS, LLP IN BORDER BUSINESS PARK, INC. V. CITY, SDSC CASE NO. GIC692794; NATIONAL ENTERPRISES, INC. V. CITY, SDSC CASE NO. GIC730011; OTAY ACQUISITION, LP V. CITY, SDSC CASE NO. GIC753247; OTAY TRUCK PARKING L.P. V. CITY, SDSC CASE NO. 37-2009-00095661-CU-EI-CTL; BORDER BUSINESS PARK V. CITY, SDSC CASE NO. 37-2011-00090494-CU-EI-CTL; AND RELATED MATTERS IN AN AMOUNT NOT TO EXCEED \$250,000

WHEREAS, the City of San Diego (the "City") has been named as a defendant in five related cases, entitled *Border Business Park v. City of San Diego*, San Diego Superior Court Case No. GIC692794 ("Border IIP"); *National Enterprises, Inc. v. City of San Diego*, San Diego Superior Court Case No. GIC730011 ("National Enterprises"); *Otay Acquisitions, LP v. City of San Diego*, San Diego Superior Court Case No. GIC753247 ("Otay Acquisitions"); *Otay Truck Parking, L.P. v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00095661-CU-EI-CTL ("Otay Truck Parking"); *Border Business Park v. City of San Diego*, San Diego Superior Court Case No. 37-2011-00090494-CU-EI-CTL ("Border IV")(collectively the "De La Fuente cases"); and

WHEREAS, the City has determined that it is in its best interests to retain outside counsel to defend it in the *De La Fuente* cases; and

WHEREAS, the law firm of Latham & Watkins LLP (“Latham & Watkins”) has a national reputation for expertise in trial work and as special counsel in the field of municipal land use, and has the necessary skills and experience to assist the City in the *De La Fuente* cases; and

WHEREAS, Latham & Watkins has represented the City in defense of the *De La Fuente* cases since 2001 pursuant to an Engagement Letter dated February 6, 2001, an Amended Engagement Letter dated March 21, 2001, conflict of interest waivers dated February 6, 2001 and March 21, 2001, and supplements thereto; and

WHEREAS, since their initial retention in 2001, Latham & Watkins has provided legal services related to the *De La Fuente* cases, including, but not limited to: (1) the reversal of a \$94,500,000 jury award in *Border III*; (2) the pursuit of an insurance bad faith action against the City’s general liability insurer, Insurance Company of the State of Pennsylvania (“ISOP”), for failure to defend and indemnify the City in the *De La Fuente* cases; (3) the settlement of the insurance bad faith action against ISOP, wherein ISOP agreed to indemnify the City in the amount of \$11,500,000 for previously incurred attorneys’ fees and costs, and to pay 80 percent of all future attorneys’ fees and 100 percent of all future defense costs in *Border III*, *National Enterprises* and *Otay Acquisitions*; (4) negotiations with one of the City’s excess insurers, United National, resulting in payment of up to \$4,000,000 towards the remaining 20 percent of all future attorneys’ fees as called for in the ISOP settlement; and (5) numerous pretrial and post-judgment appearances and actions in both Superior Court and the Court of Appeals; and

WHEREAS, on May 29, 2001, the City Council adopted Resolution R-294915 approving the retention of Latham & Watkins, and approved funding in an amount not to exceed \$1,600,000; and

WHEREAS, on September 24, 2001, the City Council adopted Resolution R-295493 approving an amendment to the retainer agreement, and approved funding in an amount not to exceed \$2,800,000; and

WHEREAS, on July 12, 2004, the City Council adopted Resolution R-299422 approving a second amendment to the retainer agreement, and approved funding in an amount not to exceed \$750,000; and

WHEREAS, on November 29, 2004, the City Council adopted Resolution R-299891 approving a third amendment to the retainer agreement, and approved funding in an amount not to exceed \$400,000; and

WHEREAS, on November 21, 2005, the City Council adopted Resolution R-301053 approving an amendment to the retainer agreement, and approved funding in an amount not to exceed \$250,000; and

WHEREAS, on December 15, 2006, the City Council adopted Resolution R-302168 approving a sixth amendment to the retainer agreement, and approved funding in an amount not to exceed \$200,000; and

WHEREAS, on July 21, 2009, the City Council adopted Resolution R-305046 approving the continued retention of Latham & Watkins, and approved funding in an amount not to exceed \$625,000; and

WHEREAS, on May 11, 2011, the City Council adopted Resolution R-306778 approving the continued retention of Latham & Watkins, and approved funding in an amount not to exceed \$500,000; and

WHEREAS, Latham & Watkins has notified the City that it has expended the full \$500,000 authorized by Resolution R-306778 and is in need of additional funding; and

WHEREAS, under Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by Ordinance approved by a two-thirds majority vote of the City Council; NOW THEREFORE,

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

Section 1. That the Mayor, or his designee, is authorized to increase the contract amount by \$250,000, and continue the retention of Latham & Watkins in the *De La Fuente* cases and any insurance-related work in these cases.

Section 2. That the expenditure of an amount not to exceed \$250,000, is authorized for the purpose of payment of invoices and future reserve funding, contingent upon the Chief Financial Officer first certifying that the funds necessary for this expenditure are, or will be, available from Public Liability Fund 720045.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

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

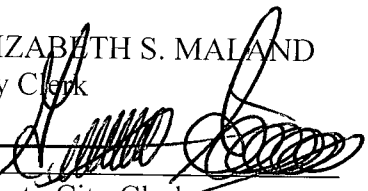
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
David J. Karlin, Deputy City Attorney

DJK:lla
June 7, 2012
Or.Dept.: City Attorney

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 18 2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10.2.12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor