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9/25

RESOLUTION NUMBER R- 307703

DATE OF FINAL PASSAGE OCT 11 2012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE PAYMENT OF OUTSIDE COUNSEL FEES INCURRED BY THE MAYOR, A COUNCILMEMBER, AND PRESENT AND FORMER CITY EMPLOYEES IN TESTIFYING BEFORE THE CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD.

WHEREAS, four of the City of San Diego's (City) recognized employee organizations (San Diego Municipal Employees' Association (MEA), Deputy City Attorneys Association, American Federation of State, County, Municipal Employees, Local 127, and San Diego City Firefighters, I.A.F.F. Local 145) have filed Unfair Practice Charges with the Public Employment Relations Board (PERB) against the City of San Diego, alleging that the City violated the Meyers-Miliias-Brown Act by not meeting and conferring before the citizens' initiative, Proposition B, was placed on the June, 2012 ballot; and

WHEREAS, in those administrative proceedings, MEA caused subpoenas to be issued requiring the testimony of and the production of documents by the Mayor of San Diego, a San Diego City Councilmember, and present and former City employees (collectively Employees) working in the Mayor's office. The subpoenas sought documents and testimony as to communications and meetings, City elected officials and Employees had about pension related San Diego Charter amendment proposals and more specifically, Proposition B; and

WHEREAS, Council approval was sought for the retention of outside counsel to represent and advise the subpoenaed elected officials and Employees during their testimony before PERB; and

WHEREAS, this request was consistent with the City's prior policy of providing counsel for those City employees questioned by the Securities & Exchange Commission (SEC). In that matter, separate lawyers were retained for each employee. In this matter, our office proposed retaining one lawyer for all witnesses to provide legal representation during all four days of the PERB administrative hearing in which they testified; and

WHEREAS, on June 26, 2012, the motion before the City Council to approve the retention failed by a four to four vote; and

WHEREAS, as a result, the subpoenaed elected officials and City Employees were compelled to retain counsel at their own expense. The Mayor, a Councilmember and City Employees working in the Mayor's office retained Mark Zebrowski of the firm of Morrison & Foerster to represent and advise them during their subpoenaed testimony before PERB. Mr. Zebrowski did in fact represent the Mayor, a Councilmember and City Employees staff during their subpoenaed testimony before PERB during the week of July 17, 2012. The cost of this representation to date is approximately \$35,000; and

WHEREAS, the hearing has now been completed, it is now known that the virtual entirety of the questioning of the Mayor and City Employees was City-related. Based on this new knowledge, the matter is being brought to Council with the recommendation that Council approve the payment of the outside legal fees and associated costs incurred by the Mayor, a Councilmember and City Employees in testifying before PERB; and

WHEREAS, Section 995.9 of the California Government Code authorizes the City to defend and/or indemnify any employee who is called to testify in a criminal, civil or administrative proceeding; and

WHEREAS, that authority is discretionary, and may be based on any relevant factors including, but not limited to, when it is in the public interest. As the Mayor and City Employees were called to testify and did testify due to their capacity as a City official and City Employees, and their testimony was assistive to the City's defense in the PERB admin proceedings, the costs they incurred in doing so should be paid by the City; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego authorizes payment of attorneys' fees and associated costs incurred by the Mayor, a Councilmember and City Employees for the retention of Outside Counsel Mark Zebrowski of the firm of Morrison & Foerster to represent them in conjunction with their subpoenaed testimony before PERB.

BE IT FURTHER RESOLVED, that the Council authorizes the Chief Financial Officer to expend an amount not to exceed \$50,000 in accordance with the Citywide FTE Allocation Schedule for the funding of outside counsel for the provision of legal services referenced above.

BE IT FURTHER RESOLVED, that the Chief Financial Officer first furnishes one or more certificates certifying that funds necessary for expenditure under established agreement funding are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
William Gersten  
Deputy City Attorney

WG:jdf  
09/07/12  
Or.Dept: City Attorney  
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I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 25 2012

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

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

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

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

Please note the Mayor did not sign this resolution within the specified time limit. See San Diego City Charter Section 280 (c) (4).