

RESOLUTION NUMBER R- **308624**

DATE OF FINAL PASSAGE DEC 24 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE SETTLEMENT BETWEEN
CROSS-COMPLAINANT CITY OF SAN DIEGO AND CROSS-
DEFENDANT, ROBERT FILNER

WHEREAS, on July 22, 2013, Irene McCormack Jackson filed suit titled *Irene McCormack Jackson v. City of San Diego and Robert Filner* San Diego Superior Court Case No. 37-2013-0058613-CU-OE-CTL and on July 30, 2013, the City of San Diego filed a Cross-Complaint in said lawsuit against Filner;

WHEREAS, in closed session on August 23, 2013, the City Council approved and authorized settlement of each and every claim by the City against Filner;

WHEREAS, the settlement included a requirement that the City authorize payment of certain outside counsel fees incurred by Robert Filner in an amount not to exceed the sum set forth below;

WHEREAS, pursuant to the terms of the settlement Filner resigned as Mayor of the City of San Diego effective August 30, 2013;

WHEREAS, pursuant to the terms of the settlement, the City shall defend and indemnify Filner in the Jackson lawsuit except as to any punitive damages assessed against Filner individually as part of a judgment;

WHEREAS, pursuant to the terms of the settlement, the City has dismissed its Cross-Complaint in the Jackson lawsuit against Filner with prejudice;

WHEREAS, pursuant to the terms of the settlement, the City retains the sole and exclusive decision-making authority as to settlement of the Jackson lawsuit, provided however that the City shall not settle said lawsuit without obtaining a complete release of all claims and

potential claims, known or unknown, against Filner related to the subject matter of the Jackson lawsuit;

WHEREAS, pursuant to the terms of the settlement, the City shall provide a civil legal defense to Filner for any civil claims (whether known or unknown at this time), by current or past City employees, City volunteers, or independent contractors of City arising out of alleged acts of sexual harassment and alleged torts, subject to the following:

- a. Such claims are made against Filner in his capacity as Mayor of San Diego;
- b. Such defense will be provided with a reservation of rights, including the right of the City to seek reimbursement, indemnity and/or contribution from Filner as to any judgment entered against Filner and the City which will only be filed, if at all, after entry of said judgment; but the City will not file any Cross-Complaint against Filner during the pendency of the underlying action.
- c. Notwithstanding anything that might be interpreted to the contrary, City shall not be responsible for any punitive or exemplary damages awarded against Filner and the City is not obligated to defend or indemnify Filner as to any criminal charges.
- d. Filner must sign a complete waiver of any conflict of interest in form or content that permits the San Diego City Attorney's office to provide such defense in its capacity as the City's lawyers. (A copy of the agreement as to the McCormack Jackson case is attached hereto as Exhibit A, and a sample of the City Attorney's Office format to be used in other cases is attached hereto as Exhibit B.)
- e. Filner may obtain outside legal counsel to advise and appear on his behalf in any case subject to this paragraph, provided however that, subject to the City's commitment to pay

up to \$98,000, any fees and costs for such outside counsel are at his sole expense and not at the City's expense;

f. The City shall retain the sole and exclusive decision-making authority as to settlement of any such claims or lawsuits, provided however that the City shall not settle said lawsuits or claims without obtaining a complete release of all claims and potential claims, known or unknown, against Filner related to the subject matter of those claims or lawsuits;

WHEREAS, pursuant to the terms of the settlement, nothing contained in the agreement shall limit Filner's rights to obtain a defense and indemnification from the City or limit the City's obligations under the California Government Code to defend and indemnify Filner, as a former employee, for conduct within the course and scope of employment, including, but not limited to, civil actions arising out of the transaction between the City and Sunroad;

WHEREAS, pursuant to the terms of the settlement, in all cases in which the City provides a defense, and as a condition of continuing to provide a defense, Filner shall be obligated to cooperate with defense counsel in good faith;

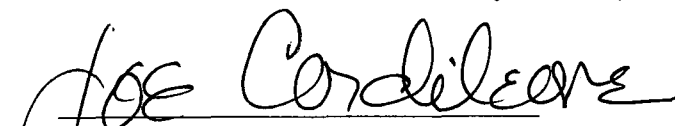
WHEREAS, pursuant to the terms of the settlement, notwithstanding any other provision of the agreement, the City shall reimburse Filner for all defense and professional fees and costs incurred by Filner related to any claims arising from or related to his position as Mayor of San Diego not to exceed \$98,000.00;

WHEREAS the City may be required to pay additional sums in future to individuals with claims against Filner, however, if said sums are required, they would also be based upon the City being strictly liable by virtue of Mr. Filner being a supervisor employed by the City so no additional liability is incurred as a result of the settlement;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Diego, that the sum of ninety-eight thousand dollars shall be made available from the Public Liability Fund No. 720045, payable to Filner and/or law firms designated by him in payment of attorney fees incurred in defense of claims against him alleging sexual harassment or related matters.

BE IT FURTHER RESOLVED that the City Comptroller is authorized to expend an amount not to exceed \$98,000 from the Public Liability Fund, solely and exclusively for the purpose of providing funds for the above described legal services and litigation expenses.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Joe Cordileone
Chief Deputy City Attorney

JBC:ctm
10/1/2013
Or. Dept: City Attorney
CC No. 3000006483
Doc. No. 645224

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 10 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i).

(date)

TODD GLORIA, Council President

The City of San Diego
 COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING DEPT NO: CC 3000006483

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: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Funcional Area	G/L Account	Business Area	Cost Center	WBS	Original 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: \$98,000.00

Vendor: Robert Filner and/or Law firms designated

Purpose: Authorizing the Mayor or his designee to pay the sum of \$98,000 from the Public Liability Fund in settlement to Robert Filner and/or law firms designated by him in payment of attorney fees incurred in defense of claims against him alleging sexual harassment or related matters.

Date: November 1, 2013 By: Jaylie Vang

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Funcional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
	720045				512042	1515	1515000011		\$98,000.00
TOTAL AMOUNT									\$98,000.00

CC-361 (REV 7-09)

FUND OVERRIDE

CC 3000006483

DEC 10 2013

308624

Passed by the Council of The City of San Diego on DEC 10 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 24 2013.

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Zumaeta*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- **308624**