3/1/2022 #116 (R-2022-276) COR. COPY

RESOLUTION NUMBER R- 313940

DATE OF FINAL PASSAGE MAR 0 3 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT BETWEEN SAN DIEGO MUNICIPAL EMPLOYEES ASS'N (MEA), DEPUTY CITY ATTORNEYS ASS'N OF SAN DIEGO (DCAA), AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 127 (LOCAL 127), SAN DIEGO FIREFIGHTERS LOCAL 145 (LOCAL 145) AND THE CITY OF SAN DIEGO

WHEREAS, four of the City's recognized employee organizations, the San Diego Municipal Employees Association (MEA); Deputy City Attorneys Association (DCAA); American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 (AFSCME Local 127); and San Diego City Firefighters, Local 145 (Local 145) (collectively referred to as the "Unions"); challenged Proposition B on the grounds that the City violated the Meyers-Milias-Brown Act (MMBA) when former Mayor Jerry Sanders failed to engage in meet and confer with the City's impacted employee organizations; and

WHEREAS, the Unions filed unfair practice charges against the City with the California Public Employment Relations Board (PERB). San Diego Municipal Employees Ass'n et al. v. City of San Diego, PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M. After an administrative hearing, on December 29, 2015, PERB found that the City violated the MMBA and PERB regulations. City of San Diego, PERB Dec. No. 2464-M (2015) (PERB Decision); and

WHEREAS, the City filed a writ of extraordinary relief, appealing the PERB Decision to the Court of Appeal, which found in the City's favor and determined that PERB erred. *Boling v. Public Employment Relations Bd.*, 10 Cal. App. 5th 853 (2017); and

WHEREAS, the Unions successfully petitioned the California Supreme Court for review, and on August 2, 2018, the Court of Appeal opinion was reversed. *Boling v. Public Employment Relations Bd.*, 5 Cal. 5th 898 (2018). The California Supreme Court remanded the case back to the Court of Appeal to address the appropriate judicial remedy for the identified MMBA violation. The City filed a Petition for Certiorari with the United States Supreme Court on First Amendment grounds which was denied on March 18, 2019. *City of San Diego v. Public Employment Relations Bd.*, 139 S.Ct. 1337 (2019); and

WHEREAS, on March 25, 2019, the Court of Appeal issued its opinion on remand addressing the appropriate judicial remedy with minor modifications to PERB's Decision. *Boling v. Public Employment Relations Bd.*, 33 Cal. App. 5th 376 (2019); and

WHEREAS, on May 2, 2019, PERB issued a decision modifying its original order to comply with the Court of Appeal's remedy opinion. The May 2, 2019 PERB Decision states, in pertinent part, "Upon request by the Unions, [the City] join in and/or reimburse the Unions' reasonable attorneys' fees and costs for litigation undertaken to rescind the provisions of Proposition B, and to restore the status quo as it existed before the adoption of Proposition B." *City of San Diego*, PERB Decision No. 2464a-M, at 5 (May 2, 2019); and

WHEREAS, the Unions contend the City is responsible under PERB's Decision for their attorneys' fees and costs for legal services incurred in their defense of the PERB Decision, including the period after the initial PERB Decision (December 29, 2015 through to the March 2019 decision by the Court of Appeal (the "Pre-March 2019 attorneys' fee and cost claims")); and

WHEREAS, in Special Closed Session on January 10, 2022, the City Council, by the following votes: Yeas, Districts 1, 2, 3, 4, 6, 8, and 9; Nays, None, and Recused, Districts 5, and 7; approved the Settlement of the Pre-March 2019 attorneys' fee and cost claims for an amount consistent with the amounts set forth below; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council:

1) Authorizes the Mayor or his designee to pay the sum of \$667,249.91 from Public Liability Fund No. 720045, in settlement of any and all Pre-March 2019 claims for costs and fees of any type, including attorneys' fees and interest, against the City of San Diego, its agents and employees, arising from the Unions' defense of PERB Decision No. 2464-M (2015); and

Authorizes the Chief Financial Officer to expend an amount not to exceed
\$667,249.91 from Public Liability Fund No. 720045, for the purpose of settling this claim.

APPROVED: MARA W. ELLIOTT, City Attorney

By <u>/s/M. Travis Phelps</u> M. Travis Phelps Senior Chief Deputy City Attorney

MTP:msb February 9, 2022 March 2, 2022 COR. COPY Or.Dept: City Attorney CC No. 3000014613 Doc. No.: 2905356

(R-2022-276) COR. COPY

I certify that the foregoing Resolution was pass meeting of MAR 0 Lo2022/2	sed by the Council of the City of San Diego, at this
	ELIZABETHS. MALAND City Clerk By Deputy City Clerk
Approved: $3/2/22$ (date)	TODIC GLORIA, Mayor
Vetoed: (date)	TODD GLORIA, Mayor

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The City of San Diego COMPTROLLER'S CERTIFICATE

				CERTIFICATE O	F UNALLOT	TED BALAN	ICE		3000014613
								ORIGINATING DEPT. NO.	
				uired for the allotm Treasury, and is ot			pose set forth in th	e foregoing resolu	tion is available
Amoun	ıt:	\$667,249.91 Fund:					720	720045	
Purpose:		Settlement of Atto 37-2015-0003338	464-M, SDSC Case	<u>) No.</u>					
								·····	
Date:			Fe	abruary 11, 2022			By: <u>Nicholas C</u>	D'Donnell Nicker	
			Fe		CCOUNTING DATA	Business	By: <u>Nicholas C</u>		
Doc.	Fund	Funded Program	Fe Internal Order		CCOUNTING DATA G/L Account		By: <u>Nicholas C</u> Cost Center		
Date: Doc. Item	Fund 720045	Funded Program			G/L Account	Business		COMPTROLLER'S DEP	ARTMENT
Doc. Item	_	Funded Program		A Functional Area	G/L Account	Business Area	Cost Center	COMPTROLLER'S DEP	Original Amount
Doc. Item	_	Funded Program		A Functional Area	G/L Account	Business Area	Cost Center	COMPTROLLER'S DEP	Original Amount

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:		-
Vendor:		
Purpose:		
Date:	Ву:	COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc.						Business			
Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Area	Cost Center	WBS	Original Amount
							•		
					1				
TOTAL AMOUNT									

CC-361 (REV 7-09)

FUND OVERRIDE

Passed by the Council of	The City of San Diego on _	MAR 01 2022 , b	by the following	vote:
	/ / / / /		,	

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	Z			
Jennifer Campbell	Ź			
Stephen Whitburn	Z			
Monica Montgomery St	eppe 🛛			
Marni von Wilpert	Z			
Chris Cate	\square			
Raul A. Campillo	Z			
Vivian Moreno	Z			
Sean Elo-Rivera	Ź			

Date of final passage _____ MAR 0 3 2022

(Please note: When a resolution is approved by the 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 Mayor of The City of San Diego, California.

ELIZABETH S. MALAND					
City Clerk of The City of San Diego, California.					
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Office of the City Clerk, San Diego, California					
Resolution Number R	313940				

(Seal)