

RESOLUTION NUMBER R- 315038

DATE OF FINAL PASSAGE JUL 18 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FIRST AMENDMENT TO THE LEGAL SERVICES AGREEMENT WITH BUCHALTER APC AS OUTSIDE COUNSEL TO PROVIDE CONTINUING LEGAL SERVICES RELATED TO INSURANCE COVERAGE RECOVERY ON THE DE ANZA MATTER AND INDEMNIFICATION ON THE 101 ASH MATTER.

WHEREAS, the City of San Diego (City) has been involved in several litigation matters relating to De Anza Cove (De Anza Matter) and has retained the services of attorney Cecilia Miller as outside counsel since 2009 to obtain recovery from the City's insurance carriers to cover a portion of the settlement amounts that the City is obligated to pay in those matters;

WHEREAS, the City has also retained the services of attorney Cecilia Miller as outside counsel since February 2020 to assist the City in identifying potential sources of indemnification on behalf of the City for the purchase and renovation of the building at 101 West Ash Street (101 Ash Matter);

WHEREAS, on June 25, 2021, by San Diego Resolution R-2021-412 (June 25, 2021), the Council approved the retention of the Buchalter Law Firm (Law Firm), where Ms. Miller is a Shareholder, to pursue indemnification and recovery of insurance proceeds against the City's insurance carriers in the De Anza Matter and to identify potential sources of indemnification in the 101 Ash Matter. The contract with the Law Firm was approved, with a not-to-exceed amount of \$600,000 pursuant to the Purchasing and Contracting Director's execution of a sole source

certification memo to proceed with retention of the Law Firm because the City receives no competitive advantage by conducting a more formal competitive solicitation;

WHEREAS, the City Attorney's Office (Office) is now seeking an increase only to the not-to-exceed amount of the Contract and does not seek any other amendment to the Contract;

WHEREAS, the proposed First Amendment to increase the Contract by an additional \$800,000 is necessary to allow the Law Firm to represent the City in litigation against the City's insurers in the De Anza Matter and to continue to pursue indemnification for the City in the 101 Ash Matter, because the City Attorney's Office lacks the expertise as relates to the unique insurance and indemnification recovery issues of these two matters;

WHEREAS, this Office seeks Council approval of the First Amendment to the Contract;  
NOW, THEREFORE,

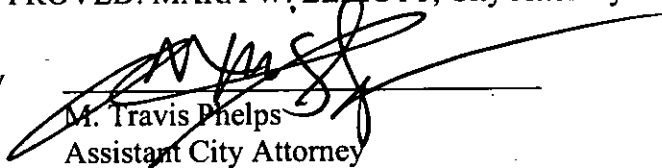
BE IT RESOLVED, by the City Council of the City of San Diego, that the Council approves and authorizes the Mayor or his designee to execute the First Amendment to the Contract with the Law Firm, to increase the total not to exceed amount to \$1,400,000 from \$600,000, for a total of \$800,000 for the First Amendment.

BE IT FURTHER RESOLVED, that the Council authorizes the appropriation and expenditure of an amount not to exceed \$800,000 (with a total not to exceed amount of \$1,400,000 for the contract) from the Public Liability Fund No. 720045 for purposes of funding the First Amendment to the Contract, with this authorization contingent upon the adoption of the

Annual Appropriation Ordinance for the applicable fiscal year in which the funds will be expended and the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
M. Travis Phelps  
Assistant City Attorney

MTP

June 2023

Or.Dept: City Attorney

CC No: 300015924

Doc. No. 3331239

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 11 2023

DIANA J.S. FUENTES  
City Clerk

By   
Deputy City Clerk

Approved: 7/18/23  
(date)

  
TODD GLORIA, Mayor

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

\_\_\_\_\_  
TODD GLORIA, Mayor

The City of San Diego  
**COMPTROLLER'S CERTIFICATE**

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING

CC 3000015924  
 DEPT. NO.: 1211

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: \$800,000.00

Purpose: Approval of First Amendment to Agreement to Retain Buchalter APC to Provide Continued Legal Services on De Anza and 101 Ash Matters

Date: June 21, 2023

By: Lauren Rehkopf *Lauren Rehkopf*  
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
1	720045			OTHR-00000000-GG	512042	1515	1515000011		\$800,000.00
TOTAL AMOUNT									\$800,000.00

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: \_\_\_\_\_

Vendor: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

COMPTROLLER'S DEPARTMENT

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

FUND OVERRIDE

Passed by the Council of The City of San Diego on JUL 11 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 18 2023.

**(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.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristhell Medina, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- <u>315038</u>