

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: December 10, 2007
TO: Michelle Strauss
FROM: Jane Boardman, Deputy City Attorney
SUBJECT: *La Jolla Alta Master v. City of San Diego*
San Diego Superior Court Case No. 822281

Attached please find a resolution R-2008-410 setting forth the approval of the City Council in Closed Session on May 8, 2007. The Auditor's Certificate was not requested prior to Council action in Closed Session. The vote taken in Open Session shall be the official vote.

Pursuant to the requirements, it is appropriate for this resolution to be placed on the next available Council docket for Council adoption confirming the Council's action in Closed Session.

It is, therefore, requested that it be calendared for the next available docket.



Attachment

001747

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

AC 2800436

TO:
CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

CITY ATTORNEY

2007 DEC -3 AM 8:44

3. DATE:

11-15-07

4. SUBJECT:
AGREEMENT WITH CSAC EIA TO ACCEPT DEFENSE ^{W.S.D} WITHOUT RESERVATION OF RIGHTS AND PAY ANY JUDGMENT AND ATTORNEY'S FEE AWARD IN CONSIDERATION FOR THE CITY'S PAYMENT OF THE REMAINING SELF INSURED RETENTION AMOUNT. CITY FILE # LP04-0534-0724

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

Jane M. Boardman, 533-5899

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

Helen Metteer, Extension 533-5809, M.S. 59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140		
DEPT.	81140		
ORGANIZATION	3302		
OBJECT ACCOUNT	4824 4141		
JOB ORDER	081141		
C.I.P. NUMBER			
AMOUNT	\$952,586.00		

9. ADDITIONAL INFORMATION / ESTIMATED COST:

\$952,586.00 - Total

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT		11/19/07	8	DEPUTY CHIEF		
2	RISK MANAGEMENT		11-20-07	9	COO		11.29.07
3	GENERAL SERVICES		11/23/07	10	CITY ATTORNEY		
4	LIAISON OFFICE		12/4/07	11	ORIGINATING DEPARTMENT		11/19/07
5	FINANCIAL MGT		12/4/07	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6	AUDITOR		12/16/07	<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 1/18/08			
7							

11. PREPARATION OF:

RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the Mayor to pay the City's remaining self insured retention amount of \$952,586.00 to CSAC EIA, who in turn has agreed to pay any and all judgment and attorney's fee award that results from the lawsuit *La Jolla Alta Master Council v. City of San Diego, et al.*, San Diego Superior Court Case No. GIC822281.
2. Authorizing the City Auditor and Comptroller to issue one check in the amount of \$952,586.00 made payable to CSAC EIA.

11A. STAFF RECOMMENDATIONS:

Approve the resolution

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 2

COMMUNITY AREA(S): La Jolla Alta

ENVIRONMENTAL IMPACT: This matter is exempt from CEQA pursuant to State CEQA Guidelines 15061(b)(3).

HOUSING IMPACT: None

OTHER ISSUES: None

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: November 15, 2007 REPORT NO:
ATTENTION: Counsel President and City Council
ORIGINATING DEPARTMENT: City Attorney
SUBJECT: Agreement with CSAC EIA. La Jolla Alta Master Council.
City File #LP04-0534-0724.
COUNCIL DISTRICT(S): 2
CONTACT/PHONE NUMBER: Jane Boardman (619) 533-5899

REQUESTED ACTION: Authorizing the Mayor to pay the City's remaining self insured retention amount of \$952,586.00 to CSAC EIA, who in turn has agreed to pay any and all judgment and attorney's fee award that results from the lawsuit *La Jolla Alta Master Council v. City of San Diego, et al.*, San Diego Superior Court Case No. GIC822281.

STAFF RECOMMENDATION: Approve the resolution

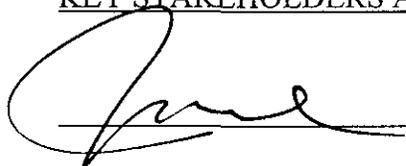
EXECUTIVE SUMMARY: By paying the remaining balance of the City's self insured retention amount to CSAC EIA, the City's excess insurance carrier (CSAC EIA) will then be obligated to pay any and all judgment and attorney's fee award that results from the lawsuit *La Jolla Alta Master Council v. City of San Diego, et al.*, San Diego Superior Court Case No. GIC822281, as well as the cost of defense of the action.

FISCAL CONSIDERATIONS: The total cost will be paid from the Public Liability Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: This matter was approved 8 to 0 by the City Council in Closed Session on May 8, 2007. The motion was made by Council President Pro Tem Tony Young and seconded by Councilmember Atkins.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: n/a

KEY STAKEHOLDERS AND PROJECTED IMPACTS: n/a



Originating Department



Deputy Chief/Chief Operating Officer

001751

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800436

ORIGINATING

DEPT. NO.:

45

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: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	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: \$952,586.00

Vendor: CSAC EIA

Purpose: Authorize the Mayor to pay the City's remaining self insured retention amount to CSAC EIA, who in turn has agreed to pay any and all judgement and attorney fee award that results from the lawsuit La Jolla Alta Master Council v. City of San Diego. Authorize City Comptroller to issue one check for \$952,586.00 to CSAC EIA.

Date: December 6, 2007

By: *[Signature]* 12/6/07
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3302	4141	081141				\$952,586.00
TOTAL AMOUNT										\$952,586.00

AC-381 (REV 2-92)

FUND OVERRIDE

AC 2800436

RESOLUTION NUMBER _____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY'S PAYMENT OF THE REMAINING AMOUNT IN ITS SELF INSURED RETAINED LIMIT TO CSAC EIA IN THE DEFENSE OF *LA JOLLA ALTA MASTER COUNCIL V. CITY OF SAN DIEGO*

WHEREAS, the City's excess carrier insurers CSAC EIA has withdrawn their reservations of rights and accepted the City's tender of defense and duty to indemnify the City up to the policy limits in connection with the defense of the litigation entitled *La Jolla Alta Master Council v. City of San Diego, et al.*, San Diego Superior Court Case No. GIC822281; and

WHEREAS, in exchange for the City's excess carrier insurers CSAC EIA to withdraw its reservations of rights and accept the City's tender of defense and duty to indemnify the City up to the policy limits, the City has agreed to pay CSAC EIA the remaining retained limit of \$952,586 which represents the difference between \$2 million and what has already been paid or incurred as charges for the defense of the underlying claim and litigation; and

WHEREAS, in the Closed Session Meeting of May 8, 2007, in the matter of *La Jolla Alta Master Council v. City of San Diego, et al.*, San Diego Superior Court Case No. GIC822281, the City Council voted 8 to 0 to authorize the City Attorney's Office to enter into an agreement with CSAC EIA wherein the carriers accept the tender of the City's defense, without any reservation of rights, and pay any judgment and attorney's fee award that results from the lawsuit, in consideration for the City's payment of the remaining retained limit of \$952,586. The motion was made by Council President Pro Tem Young with a second by Councilmember Atkins.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney be and he is hereby fully authorized to enter into an agreement with CSAC EIA wherein the carriers accept the tender of the City's defense, without any reservation of rights, and pay any judgment and attorney's fee award that results from the lawsuit, in consideration for the City's payment of the remaining retained limit of \$952,586.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller be and he is hereby authorized to transfer within the Public Liability Fund the sum of \$952,586 to provide funds for the above agreement with CSAC EIA, and expend said funds as requested.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By  _____
Jane M. Boardman
Deputy City Attorney

JMB:hm
11/07/07
Aud.Cert: 2800436
Or.Dept: City Attorney

I hereby certify that the foregoing resolution was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor