

#335
6/15/2021

(R-2021-412)
COR. COPY

RESOLUTION NUMBER R- 313599

DATE OF FINAL PASSAGE JUN 25 2021

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

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; and

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); and

WHEREAS, attorney Cecilia Miller (Ms. Miller) was formerly a partner at the law firm of Procopio, Cory, Hargreaves & Savitch, LLP (Procopio), and has now moved as a partner to a different law firm, Buchalter APC (Law Firm); and

WHEREAS, due to the fact that the City's engagement agreements for the De Anza Matter and 101 Ash Matter were with Procopio, the City needs to terminate those engagements with Procopio and retain the services of the Law Firm in order to have Ms. Miller continue to represent the City on these matters; and

WHEREAS, due to the complexity of the indemnity and insurance coverage issues related to the De Anza Matter and 101 Ash Matter, the City requires the continued assistance and expertise of outside counsel to ensure that the City is indemnified and obtains the greatest recovery amount possible; and

WHEREAS, with Ms. Miller's representation of the City to date on the De Anza Matter, the City has recovered over \$21 million in insurance coverage benefits for the City including \$12 million in indemnity payments and bad faith damages as well as reimbursement of over \$9 million in defense fees and costs; and

WHEREAS, there is still one final source of insurance recovery for liabilities associated with the De Anza Matter from the City's Joint Powers Authority, formerly known as CSAC, now known as PRISM, where the City could potentially recover up to \$20 million in additional insurance coverage benefits through arbitration with PRISM, which is scheduled in September; and

WHEREAS, on the 101 Ash Matter, the City has been utilizing the services of Ms. Miller and her team since February 2020 to provide counseling and assistance with respect to complicated insurance issues in that matter; and

WHEREAS, pursuant to San Diego City Charter Article 5, section 40, the City Council is empowered to employ outside counsel when such assistance or advice is necessary; and

WHEREAS, insurance coverage is a highly specialized area of law requiring specific expertise and experience and the City Attorney's Office does not have insurance coverage expertise in-house; and

WHEREAS, the City needs to continue to retain Ms. Miller to timely and competently proceed with the continued work necessary for the De Anza Matter and 101 Ash Matter and to avoid the costly and unnecessary expense of retaining new outside counsel and getting such counsel adequately informed on over a decade worth of legal history and work; and

WHEREAS, the Law Firm is able to continue to perform the requested services at an hourly rate, substantially lower than the rates typically billed at with the Law Firm and discounted from the rates billed at for the work previously being done for the City on these matters with Procopio; and

WHEREAS, based on the foregoing, the Purchasing and Contracting Director has executed 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; and


WHEREAS, the amount of the contract with the Law Firm (Legal Services Agreement) is for an amount not to exceed \$600,000, which requires City Council approval of the contract itself pursuant to San Diego Municipal Code section 22.3207(a); NOW, THEREFORE,

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

1. That the City Attorney's Office is authorized to retain the Law Firm as outside counsel to provide legal services to the City on the De Anza and 101 Ash Matters under a contract with an amount not to exceed \$600,000 for a term of up to five years.
2. That the Chief Financial Officer or his designee is authorized to appropriate and expend an amount not to exceed \$600,000 from the Public Liability Fund to provide funds for the contract, contingent upon the adoption of the Appropriation Ordinance

for the applicable Fiscal Year, and contingent upon the Chief Financial Officer first
furnishing one or more certificates that the funds necessary are, or will be, on deposit
in the City Treasury.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Kenneth R. So
Deputy City Attorney

KRS:soc
04/22/2021
06/22/2021 Cor. Copy
Or.Dept:City Attorney
Doc. No.: 2636417_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this
meeting of 06/15/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Stacy D. Ready
Deputy City Clerk

Approved: 6/25/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUN 15 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input 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"/>
Chris Cate	<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 JUN 25 2021.

(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)

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

By *Aty Cruch*, Deputy

Office of the City Clerk, San Diego, California

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