

(R-2003-390)

RESOLUTION NUMBER R-297335

ADOPTED ON NOVEMBER 18, 2002

RESOLUTION OF THE CITY OF SAN DIEGO AGREEING  
TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE  
MEMBERS OF THE BOARD OF ADMINISTRATION FOR  
THE SAN DIEGO CITY EMPLOYEES' RETIREMENT  
SYSTEM IN THE PERFORMANCE OF THEIR DUTIES

WHEREAS, section 141 of the charter for The City of San Diego (Charter) created the San Diego City Employees' Retirement System (SDCERS); and

WHEREAS, Charter section 144 provides that SDCERS be administered by a thirteen (13) member governing board known as the Board of Administration (Board); and

WHEREAS, Charter section 144 and Article X, Section 7 sets forth the composition of the Board; and

WHEREAS, three members of the Board are elected by the General Members of SDCERS, one member is elected by the retirees of SDCERS, two members are elected by the Safety Members of SDCERS, one for Police and one for Fire, respectively, three members are ex officio and serve by virtue of their position as City Manager, City Auditor and City Treasurer, and four citizen members, one of which must be an officer of a local bank, are appointed by the Council and serve without compensation; and

WHEREAS, Charter section 117 provides that citizen members of the City's boards and commissions are deemed to be unclassified employees of the City; and

WHEREAS, Charter section 144 grants the Board the sole authority to determine the rights to benefits from SDCERS, administer SDCERS, and invest the SDCERS trust fund; and

WHEREAS, the Board Members may, from time to time be subjected to claims and suits for actions taken in their capacity as such; and

WHEREAS, there is a need to protect and encourage individuals who volunteer their time and their talent to serve in the public interest; NOW THEREFORE;

BE IT RESOLVED, by the Council of The City of San Diego that the City shall defend, indemnify and hold harmless all past, present and future members of the Retirement Board against all expenses, judgments, settlements, liability and other amounts actually and reasonably incurred by them in connection with any claim or lawsuit arising from any act or omission in the scope of the performance of their duties as Board Members under the Charter.

BE IT FURTHER RESOLVED, that in the event the City Attorney for the City of San Diego is unable or unwilling to provide such defense, the City shall pay for any and all costs and expenses of a Board Member related to such defense, which obligation it may satisfy in its sole discretion by engaging outside counsel at its sole expense.

BE IT FURTHER RESOLVED, that the City shall have no obligation to provide any defense or indemnification under this Resolution to any Board Member who: (1) fails or refuses to cooperate with the City Attorney or such other attorney who may be engaged to represent the Board Member; or (2) refuses to consent to a settlement (a) which does not require the Board Member to make any payment or perform any act; and (b) by which the settling plaintiff(s)/ claimant(s) dismiss the Board Member from the complaint (if any) and generally release the Board Member from all liability arising from the acts or omissions which are the subject of the claim or lawsuit.

BE IT FURTHER RESOLVED, that nothing in this Resolution shall obligate The City of

San Diego to pay any portion of a claim or judgment against a Board Member for punitive or exemplary damages.

BE IT FURTHER RESOLVED, that The City of San Diego will indemnify Board Members for punitive or exemplary damages in accordance with the provisions of Government Code section 825, only if the San Diego City Council, acting in its sole discretion, finds that:

(1) the claim or judgment is based on any act or omission of the Board Member acting within the course and scope of his or her employment as such; (2) at the time of the act or omission giving rise to liability, the Board Member acted or failed to act in good faith, without actual malice and in the apparent best interests of the City of San Diego and/or the SDCERS; and (3) payment of the claim or judgment would be in the best interests of the City of San Diego and/or the SDCERS.

APPROVED: CASEY GWINN, City Attorney

By \_\_\_\_\_  
Michael Rivo  
Deputy City Attorney

MR:ms  
9/19/02  
Or.Dept: Retirement  
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