

REPORT TO THE CITY COUNCIL

DATE ISSUED: July 17, 2007 REPORT NO.:

ATTENTION: Council President and Council Members

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Expenditures Related to SEC/USAO Investigations

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Todd F. Bradley, Deputy City Attorney (619) 533-6173

REQUESTED ACTION: Approve the resolution and authorize payments requested. Approve the allocation and expend of the \$150,000 across all funds using an allocation based upon full-time equivalent salaries and authorizing the Auditor and Comptroller to appropriate and expend \$106,305 from the Public Liability Fund to cover the General Fund portion of the costs.

STAFF RECOMMENDATION: Approve the Resolution

EXECUTIVE SUMMARY:

Requested action relates to additional funding for the ongoing SEC/US Attorney/District Attorney investigations.

In February of 2004, the SEC and USAO informed the City that they were undertaking investigations into certain financial disclosure practices by the City. Additionally, the District Attorney's Office has initiated its own investigation into the propriety of acts relating to the granting of pension benefits. Also, several City employees have been interviewed and subpoenaed in connection with the investigation and litigation of *SDCERS v. Aguirre, et al.*, SDSC, Case No. GIC 841845.

These investigations remain ongoing, with each agency requesting and/or issuing subpoenas requiring City employees to appear for interview and/or testimony. For the past 6 months, City employees also were responding to the SEC report. In order to facilitate the conduct of necessary interviews and testimony, and yet provide necessary advice to affected City employees, the City Council, acting pursuant to the discretion provided by Government Code section 995.8, has determined that it is in the best interests of the City to provide independent representation to employees.

The total cost allotted for the representation thus far was \$2,975,000, apportioned among a number of represented individuals, and appropriated as a result of seven requests: \$250,000 (AC 2401177, dated June 17, 2004); \$75,000 (AC 2500664, dated November 14, 2004); \$150,000 (AC 2500688, dated on January 25, 2005); \$200,000 (AC 2500802, dated on March 7, 2005); \$350,000 (AC 2501122, on June 28, 2005); \$500,000 (AC 2600236, dated October 11, 2005); \$450,000 (AC 2600542, dated January 18, 2006); \$250,000 (AC 2600902, dated June 13, 2006); and \$750,000 (AC 2700396, dated November 21, 2006).

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Over 30 current and former City employees have requested and/or retained outside legal counsel, and have submitted bills to be reviewed and processed by the City Attorney's Office. These totals do not include elected officials, the former Mayor, Council, and their staff.

Several firms have submitted significant invoices on behalf of their clients. As of June 30, 2007, the following firms had incurred the largest expenses:

- **Shartsis Friese** – More than \$950,000 for clients including former City Manager Lamont Ewell and former Assistant City Attorney Les Girard;
- **Wertz McDade Wallace Moot & Brower** – More than \$242,000 for client Ed Ryan;
- **DLA Piper Rudnick** – More than \$350,000 on behalf of three clients, including two Deputy City Attorneys; and
- **McKenna Long & Aldridge** – More than \$300,000 on behalf of clients including former City Manager Michael Uberuaga.

It is recommended that the City Attorney continue to execute and monitor the contracts on behalf of the City for the representation of individual current and former City employees. It is also recommended that each employee be permitted to retain only one law firm for representation. To pay outstanding invoices of approximately \$150,000 for outside counsel obligations.

FISCAL CONSIDERATIONS:

The Council is being asked to authorize the expenditure of \$150,000 across all funds using an allocation based upon full-time equivalent salaries including \$106,305 from the Public Liability Fund to cover the General Fund portion of the costs.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

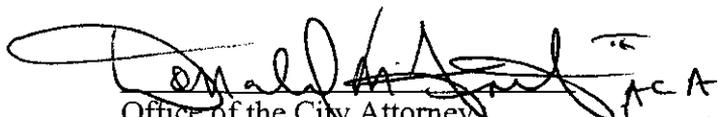
As described above, there have been numerous Council actions approving outside counsel fees for counsel retained related to the ongoing Securities Exchange Commission, United States Attorneys Office and District Attorneys Office investigations into City finances, and the litigation of *SDCERS v. Aguirre, et al.*

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Various law firms including the firms of Shartsis Friese; Wertz McDade Wallace Moot & Brower; DLA Piper Rudnick and McKenna Long & Aldridge.


Office of the City Attorney

000577 REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 280040					
TO: CITY COUNCIL	2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY	3. DATE: July 17, 2007					
4. SUBJECT: CONTINUING PROVISIONS OF LEGAL SERVICES FOR FORMER AND CURRENT CITY OFFICIALS AND STAFF RELATED TO SEC, DISTRICT ATTORNEY AND U.S. ATTORNEYS INVESTIGATIONS.							
5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Todd F. Bradley (619) 533-6173		7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: <input checked="" type="checkbox"/> X					
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND		9. ADDITIONAL INFORMATION / ESTIMATED COST: Estimated costs not-to-exceed \$150,000. General Fund portion (\$106,305) to be expended from Public Liability Fund for these purposes.					
DEPT.							
ORGANIZATION	Refer to attached line of accounting.						
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT	\$150,000.00						
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/18/07				
2	FINANCIAL MANAGEMENT	<i>[Signature]</i>	7/19/07				
3	AUDITOR	<i>[Signature]</i>	7/19/07				
4	RISK MANAGEMENT	<i>[Signature]</i>	7/19/07				
5	CFO	<i>[Signature]</i>	7-18-07				
6	CITY ATTORNEY	<i>[Signature]</i>	7/19/07	✓			
7	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/18/07				
				MGR. DOCKET COORD: _____ COUNCIL REP. _____			
				RULES COMMITTEE <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION		DATE: 7/30/07	
				<input type="checkbox"/> REFER TO: _____			
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1. Authorizing an additional amount not to exceed \$150,000 for the purpose of paying attorney's fees for the representation of past and present City employees related to their participation in interviews and proceedings, including compliance with subpoenas, and in responding to the SEC report, related to investigations by the Securities and Exchange Commission [SEC], United States Attorneys' Office [USAO], and the San Diego District Attorney's Office [DA].							
2. Authorizing the City Auditor and Comptroller to allocate and expend \$150,000 across all funds using an allocation based upon full-time equivalent salaries and authorizing the Auditor and Comptroller to appropriate and expend \$106,305 from the Public Liability Fund to cover the General Fund portion of the costs.							
3. Suspending the authorization for the above attorney's fees and costs if criminal charges are brought against any such past or present employees, and reserving the City's right to terminate payment of fees and seek reimbursement of fees and costs paid in the event that criminal charges are brought against any past or present employees, or if a conviction is obtained.							
11A. STAFF RECOMMENDATIONS: Adopt the resolution and authorize the fund appropriation and transfer.							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)							
COUNCIL DISTRICT(S):		N.A.					
COMMUNITY AREA(S):		N.A.					
CITY CLERK INSTRUCTIONS:		CLERK REQUESTED TO PROVIDE DEPUTY CITY ATTORNEY TODD BRADLEY (15 TH FLOOR CCP, 533-6173) WITH A CERTIFIED COPY OF RESOLUTION					
ENVIRONMENTAL IMPACT:		This action is not a "project" subject to CEQA.					

Distribution of Expenses
Pensionable Salaries

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Total Amount of invoice: \$150,000.00

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	82240	Litigation Expense-Public Liability		4151	082240	70.87%	106,305.00
002	0	41400	730	Golf Course	100	4151	002150	0.87%	1,305.00
003	0	41200	750	Environmental Protection	1001	4151	001002	0.20%	300.00
004	0	41200	751	Waste Reduction & Enforcement	1002	4151	001500	0.41%	615.00
005	0	41200	752	Refuse Disposal	1000	4151	000110	0.81%	1,215.00
006	0	41200	753	Resource Management	010	4151	002000	0.28%	420.00
007	0	41200	754	Collection Services	020	4151	004229	0.08%	120.00
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.19%	285.00
009	0	41210	757	Collection Services	020	4151	004229	0.97%	1,455.00
010	0	41210	758	Environmental Protection	010	4151	001001	0.06%	90.00
011	0	41210	759	Resource Management	010	4151	002010	0.19%	285.00
012	0	41500	760	Water	163	4151	000163	8.28%	12,420.00
013	0	41506	776	MWWD-Administration	455	4151	776260	9.53%	14,295.00
014	0	41100	720	Airports	2000	4151	001101	0.18%	270.00
015	0	50050	850	ECP-Water & Sewer Design	2000	4151	085010	1.25%	1,875.00
016	0	50050	5431	E&CP Water Wastewater Field Eng.	100	4151	543100	0.61%	915.00
017	0	41300	1311	Develop. Services-Management	1100	4151	001110	0.04%	60.00
018	0	41300	1312	Develop. Services-Support Services	1250	4151	000100	0.43%	645.00
019	0	41300	1313	Develop. Services-Division of Building	1310	4151	001310	1.55%	2,325.00
020	0	41300	1314	Develop. Services-Inform & Appl. Ser	1410	4151	001110	0.91%	1,365.00
021	0	41300	1316	Develop. Services-Land Development	1610	4151	001110	1.41%	2,115.00
022	0	41300	1317	Develop. Services-Project Mgmt	1720	4151	001110	0.88%	1,320.00
								100.00%	<u>150,000.00</u>

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING ADDITIONAL EXPENDITURES TO PAY ATTORNEY FEES FOR THE REPRESENTATION OF CITY EMPLOYEES RELATED TO THEIR PARTICIPATION IN THE FINANCIAL DISCLOSURES INVESTIGATION.

WHEREAS, in February of 2004, the Securities and Exchange Commission and the United States Attorney's Office informed the City of San Diego [City] that they were undertaking investigations into certain financial disclosure practices by the City; and

WHEREAS, the District Attorney's Office has initiated its own investigation into the propriety of acts relating to the granting of pension benefits; and

WHEREAS, these investigations are ongoing, with each agency requesting and/or issuing subpoenas requiring City employees to appear for interview and/or testimony. In addition, for the past six months, City employees were also responding to the SEC report. In order to facilitate the conduct of necessary interviews and testimony, and yet provide necessary advice to affected City employee witnesses, the City Council, acting pursuant to the discretion provided by Government Code section 995.8, has determined that it is in the best interests of the City to provide independent representation to employees and staff members; and

WHEREAS, the funds allotted for the representation thus far were \$2,975,000, apportioned among a number of represented individuals, and appropriated as a result of six requests:

\$250,000 (AC 2401177, dated on June 17, 2004); \$75,000 (AC 2500664, dated November 14, 2004); \$150,000 (AC 2500688, dated January 25, 2005); \$200,000

(AC 2500802, dated March 7, 2005); \$350,000 (AC 2501122, June 28, 2005); \$500,000 (AC 2600236, dated October 11, 2005); \$450,000 (AC 2600542, dated January 18, 2006); \$250,000 (AC 2600902, dated June 13, 2006); and \$750,000 (AC 2700396, dated November 21, 2006); and

WHEREAS, over thirty (30) current and former City employees have requested and/or retained outside legal counsel and will submit or have submitted bills to be reviewed and processed by the City Attorney's Office. These totals do not include elected officials, the Mayor, Council, and some of their staff; and

WHEREAS, the current outstanding invoices are approximately \$150,000; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that an additional amount not to exceed \$150,000 is hereby authorized to pay attorney's fees for the representation of past and present City employees related to their participation in interviews and proceedings, including compliance with subpoenas, and in responding to the Securities and Exchange Commission [SEC] report, related to investigations by the SEC, United States Attorneys' Office, and the San Diego District Attorney's Office.

BE IT FURTHER RESOLVED that the Council authorizes the City Auditor and Comptroller to allocate and expend \$150,000 across all funds using an allocation based upon full-time equivalent salaries and authorizing the Auditor and Comptroller to appropriate and expend \$106,305 from the Public Liability Fund to cover the General Fund portion of the costs, to pay the above described attorney's fees provided that the City Auditor and Comptroller first furnish one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

BE IT FURTHER REVOLVED that newly-represented employees or former employees must make use of legal counsel already familiar with and engaged to assist other City clients on the financial disclosures investigation matters, and that, in the event this requirement is not satisfactory to the employee or former employee, that individual shall be required to request a separate authorization for their retention of legal counsel.

BE IT FURTHER RESOLVED that the authorization for the above attorney's fees is to be suspended if criminal charges are brought against any past or present City employee, and that the City shall reserve its right to terminate the payment of fees and seek reimbursement of fees paid in the event that criminal charges are brought against any past or present employee, or if a conviction is obtained.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Todd Bradley
Deputy City Attorney

TB:bas
07/10/07
Or.Dept:CityAtty
R-2008-27

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor