

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: July 11, 2007 REPORT NO:
 ATTENTION: Mayor and City Council members
 ORIGINATING DEPARTMENT: City Attorney
 SUBJECT: Authorizing continued retention, payment for invoices and
 future reserve funding for Latham & Watkins, LLP in
McGuigan v. City of San Diego, San Diego Superior Court
 Case No. GIC 849883

COUNCIL DISTRICT(S): Not applicable
 CONTACT/PHONE NUMBER: Don McGrath, 533-5860 or Todd Bradley, 533-3173

REQUESTED ACTION: Approve continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP, in *McGuigan v. City of San Diego*, San Diego Superior Court Case No. GIC 849883

STAFF RECOMMENDATION: Adopt the resolution and authorize the Auditor to appropriate and issue an Auditor's Certificate to fund this obligation.

EXECUTIVE SUMMARY:

On May 30, 2006, the City Council retained Latham & Watkins LLP as outside counsel in *McGuigan v. City of San Diego*, San Diego Superior Court Case No. GIC 849883. The lawsuit was filed on behalf of a retired City employee against the City of San Diego requesting that the Court order the City to immediately pay all unfunded employer contributions from 1996 to 2005 into the retirement system.

The City settled this underfunding class action lawsuit in June 2006. After extended hearings, the settlement was approved and judgment entered in December 2006. The parties then agreed to arbitrate the issue of plaintiffs' counsel's claim for attorneys' fees (counsel sought \$2 million to \$25 million in fees). In March 2007, the arbitrator awarded \$1 (one dollar) in fees to plaintiffs' counsel. Plaintiffs' counsel moved to disqualify the arbitrator, filed a motion to vacate the award and sought to have the court re-determine fees. After discovery and settlement negotiations, the parties reached an agreement to settle the fee dispute.

The Police Officers' Association has appealed the judgment on the settlement of the underlying case and the City is continuing to defend that appeal.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding.

Outstanding Invoices Currently Due: \$ 225,000.00 – Latham & Watkins

Request for Future Reserve: \$ 50,000.00 - Latham & Watkins

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The total amount requested for this case in this resolution is thus \$275,000 for Latham & Watkins.

FISCAL CONSIDERATIONS: Authorize an additional \$275,000.00 to defend the City of San Diego in the *McGuigan v. City of San Diego* matter.

With this action, the Council will authorize the Auditor and Comptroller to appropriate \$275,000.00 from the Public Liability Fund to meet this obligation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has been informed in Closed Session of the invoices due and the requests for future reserves detailed above.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Latham & Watkins



Assistant City Attorney

RESOLUTION NUMBER R-_____

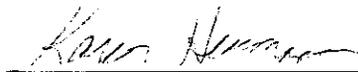
DATE OF FINAL PASSAGE _____

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$275,000, to provide legal services in *McGuigan v. City of San Diego*, SDSC Case No. GIC 849883.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to expend an amount not to exceed \$275,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditures are, or will be, on deposit in the City Treasury.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Karen A. Heumann
Assistant City Attorney

KAH:als
07/12/07
Or.Dept:City Atty.
Aud.Cert:2800022

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