

000155

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE)  
AC 2900361 102  
12/09  
3. DATE: 10/16/08

TO: CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

4. SUBJECT: Authorizing continued retention and future reserve funding for Latham & Watkins, LLP for legal services in *Marcus Abbe et al. v. City of San Diego*, USDC Case No. 05 CV 1629 and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL.

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) George Schaefer 533-5861  
6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Lawrence Tomanek 533-5878  
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	81140				
ORGANIZATION	3501				
OBJECT ACCOUNT	4141				
JOB ORDER	081141				
C.I.P. NUMBER					
AMOUNT	\$500,000				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	CITY ATTORNEY		8	CFO, IF REQUIRED	MARY LEWIS	11-4-08
2	RISK MGMT.		10-20-08	9	COO, IF REQUIRED	JAY GOLDSTONE	11/4/08
3	LIAISON	ED PLANK	10/22/08	10	CITY ATTORNEY	LAWRENCE TOMANEK	11/18/08
4	FINANCIAL MANAGEMENT		10/22/08	11			
5	COMPTROLLER		11/3/08		DOCKET COORD:	COUNCIL LIAISON	SC 11/25/08
6					<input checked="" type="checkbox"/> COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7					<input type="checkbox"/> REFER TO:	COUNCIL DATE: 12/9/08	

11. PREPARATION OF:  RESOLUTIONS  ORDINANCE(S)  AGREEMENT(S)  DEED(S)

1. Authorizing continued retention of Latham & Watkins, LLP for legal services in *Marcus Abbe et al. v. City of San Diego*, USDC Case No. 05 CV 1629 and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL.
2. Authorizing the City Comptroller to expend \$500,000 from the Public Liability Fund to pay the above expenditures.
3. Council considered the authorization request in Closed Session on September 9, 2008. Council President Pro Tem Madaffer moved to authorize the continued retention which was seconded by Councilmember Hueso. The motion passed 7 to 0 with Councilmember Young absent.

11A. STAFF RECOMMENDATIONS:  
Adopt the resolution and authorize the Comptroller to appropriate and issue an Auditor's Certificate to fund this obligation.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)  
COUNCIL DISTRICT(S): ALL  
COMMUNITY AREA(S): NOT APPLICABLE  
ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA  
HOUSING IMPACT: N.A.  
OTHER ISSUES: CLERK REQUESTED TO PROVIDE DEPUTY CITY ATTORNEY GEORGE F. SCHAEFER (11<sup>TH</sup> FLOOR CCP, 533-5861) WITH A CERTIFIED COPY OF RESOLUTION.

000157

**EXECUTIVE SUMMARY SHEET**  
**City of San Diego**

**DATE ISSUED:** October 16, 2008

**ATTENTION:** Mayor and City Council Members

**ORIGINATING DEPARTMENT:** City Attorney

**SUBJECT:**

Authorizing continued retention and funding for Latham & Watkins, LLP for Legal Services in *Marcus R. Abbe, et al. v. City of San Diego*, USDC Case No. 05cv1629 DMS (SDPOA #2) and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL (SDPOA #7).

**COUNCIL DISTRICT(S):** N.A.

**CONTACT/PHONE NUMBER:**

George F. Schaefer, Deputy City Attorney, 619/533-5861 or Chief Deputy City Attorney, Lawrence V. Tomanek 619/533-5878.

**REQUESTED ACTION:**

Approve continued retention and funding for Latham & Watkins, LLP for Legal Services in *Marcus R. Abbe, et al. v. City of San Diego*, USDC Case No. 05cv1629 DMS (SDPOA #2) and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL (SDPOA #7).

**STAFF RECOMMENDATION:**

Adopt the resolution and authorize the Comptroller to fund this obligation from the Public Liability Fund up to an additional \$500,000.

**EXECUTIVE SUMMARY:**

SDPOA #2 and SDPOA #7 have been combined for billing purposes at this time.

1. ***Marcus R. Abbe, et al. v. City of San Diego*, USDC Case No. 05cv1629 DMS (SDPOA #2)**

On August 16, 2005 current and former San Diego Police Department officers filed a lawsuit against the City in the case of *Marcus R. Abbe, et al. v. City of San Diego*, USDC Case No. 05cv1629 DMS. The case has been consolidated by the United States District Court with a related case, *Burkett v. City of San Diego*, USDC Case No. 06cv0538 DMS. There are approximately 1500 Plaintiffs.

The Plaintiffs contend that their rights to compensation, including overtime pay, under the Fair Labor Standards Act have been violated by the City. The Plaintiffs are demanding \$250 million in compensation. The District Court has granted partial summary judgment in favor of the City. The Plaintiffs are in the process of appealing the summary judgment ruling and the District Court has stayed proceedings in the interim.

2. ***San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL (SDPOA #7)**

After the District Court in SDPOA #2 determined that the Plaintiff police officers are subject to an exemption under the Fair Labor Standards Act ("§ 207(k) exemption") for payment of overtime, the SDPOA filed this lawsuit in State Court. The SDPOA seeks a writ of mandate for violation of the Meyer-Milias Brown Act. The SDPOA contends that the City cannot unilaterally impose such an exemption from payment of overtime.

In closed session on September 9, 2008, the Council was informed of the status of SDPOA #2 and SDPOA #7. The Council was informed of the need for additional funding and that funding would come from the Public Liability Fund.

The total amount requested for these two cases in this resolution is an additional \$500,000 for Latham & Watkins. An additional request for \$2 million will be made in January to cover the legal expenses of the upcoming trial.

**FISCAL CONSIDERATIONS:**

Authorize an additional \$500,000 to provide the defense to the City of San Diego in SDPOA #2 *Marcus R. Abbe, et al. v. City of San Diego*, USDC Case No. 05cv1629 DMS and SDPOA #7 *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

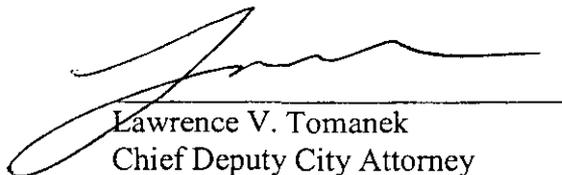
On September 9, 2008, the City Council voted in Closed Session on Item CS-5, *Marcus Abbe, et al. v. City of San Diego*, U.S. District Court Case No. 05cv1629 and 06cv538 DMS (RBB)("POA"II), to authorize continued retention of Latham & Watkins LLP, and \$500,000 of additional funding for outside counsel. The motion was made by Council President Pro Tem Madaffer and the second by Councilmember Hueso. The motion passed 7 to 0 with Councilmember Young absent.

The Council was informed in Closed Session on January 22, 2008 for the need for additional authorized funding for defense of POA #2 and POA #7. Councilmember Frye moved to authorize the additional funding which was seconded by Council President Peters. The motion passed 5 to 1 with Councilmember Hueso voting "No." Councilmember's Falconer and Atkins were absent.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** N/A.

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

Latham & Watkins, LLP.



Lawrence V. Tomanek  
Chief Deputy City Attorney

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The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE  
ORIGINATING

AC 2900366  
DEPT. NO. 045

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: \$500,000.00

Vendor: Latham & Watkins, LLP

Purpose: Authorize continued retention of Latham & Watkins, LLP for legal services in Marcus Abbe et al. v. City of San Diego and San Diego Police Officers' Association v. City of San Diego. Authorize the City Comptroller to expend \$500,000 from the Public Liability Fund (81140) to pay for these expenditures.

Date: November 3, 2008 By: *Pam Walker* 11/3/08  
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	3501	4141	081141					\$500,000.00
TOTAL AMOUNT											\$500,000.00

FUND OVERRIDE

AC 2900366

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING ADDITIONAL EXPENDITURES FOR CONTINUED RETENTION OF LATHAM & WATKINS LLP WITH REGARD TO ONGOING LITIGATION IN THE CASES OF *MARCUS R. ABBE, ET AL. V. CITY OF SAN DIEGO*, USDC CASE NO. 05CV1629 DMS [SDPOA#2] AND *SAN DIEGO POLICE OFFICERS' ASSOCIATION V. CITY OF SAN DIEGO*, SUPERIOR COURT CASE NO. 37-2007-00082592-CU-OE-CTL [SDPOA #7].

WHEREAS, on August 16, 2005 current and former San Diego Police Department officers filed a lawsuit against the City in the case of *Marcus R. Abbe, et al. v. City of San Diego*, USDC Case No. 05cv1629 DMS [SDPOA#2]. The case has been consolidated by the United States District Court with a related case, *Burkett, et al. v. City of San Diego*, USDC Case No. 06cv538 DMS. There are approximately 1500 Plaintiffs; and

WHEREAS, on September 9, 2008, the City Council voted in Closed Session on Item CS-5, *Marcus Abbe, et al. v. City of San Diego*, U.S. District Court Case No. 05cv1629 and 06cv538 DMS (RBB) [SDPOA #2] and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL [SDPOA #7] approving the case strategy and to authorize continued retention of Latham & Watkins, LLP. The motion was made by Council President Pro Tem Madaffer and the second by Councilmember Hueso. The motion passed 7 to 0 with Councilmember Young absent; and

WHEREAS, the total amount requested for these two cases is an additional \$500,000 for Latham & Watkins; NOW THEREFORE,

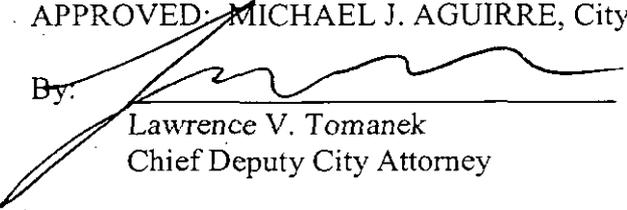
000162

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 \$500,000, to provide legal services in *Marcus Abbe, et al v. City of San Diego*, USDC Case No. 05 CV 1629 and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL.

BE IT FURTHER RESOLVED that the City Comptroller is authorized to expend an amount not to exceed \$500,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By:

  
Lawrence V. Tomanek  
Chief Deputy City Attorney

LVT:ca  
11/18 /2008  
Aud. Cert.: AC #2900366  
Or.Dept: City Attorney  
R-2009-628

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