

<b>000991</b>	<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) <b>AC 2900111</b>
TO: CITY COUNCIL	2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY	3. DATE: 331 July 3, 2008 07/29

4. SUBJECT: CONTINUING PROVISIONS OF LEGAL SERVICES FOR FORMER AND CURRENT CITY OFFICIALS AND STAFF RELATED TO SEC, DISTRICT ATTORNEY AND U.S. ATTORNEY'S INVESTIGATIONS.

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Lawrence Tomanek, (619) 533-5878	6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Todd F. Bradley (619) 533-6173	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>
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**8. COMPLETE FOR ACCOUNTING PURPOSES**

FUND	SEE ATTACHED	9. ADDITIONAL INFORMATION / ESTIMATED COST: Estimated costs not-to-exceed \$125,000. General Fund Portion <del>\$92,375</del> to be expended from Public Liability Fund for these purposes. <b>94,037.50</b> <i>LT</i>
DEPT.		
ORGANIZATION		
OBJECT ACCOUNT		
JOB ORDER		
AMOUNT		

**10. ROUTING AND APPROVALS**

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	CITY ATTORNEY <i>[Signature]</i>	July 23, 08	8	CFO	MARY LEWIS <i>[Signature]</i>	7/17/08
2	RISK MGMT.	<i>[Signature]</i>	7-11-08	9	COO	JAY GOLDSTONE	
3	LIAISON OFFICE	<i>[Signature]</i>	7-14-08	10			
4	FIN. MGMT.	Jello Bynul <i>[Signature]</i>	7/15/08	11	CITY ATTORNEY	LAWRENCE TOMANEK <i>[Signature]</i>	7/3/08
5	COMPTROLLER	Pam Vallet <i>[Signature]</i>	7/16/08	DOCKET COORD: _____ COUNCIL LIAISON: <i>sc</i>			
6				✓	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____    COUNCIL DATE: 7/29/08		
7							

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

1. Authorizing an additional amount not to exceed \$125,000 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 Securities and Exchange Commission [SEC] report, related to investigations by the SEC, United States Attorneys' Office [USAO], and the San Diego District Attorney's Office [DA].
2. Authorizing the City Comptroller to allocate and expend \$125,000 based upon the attached allocation methodology of full-time equivalent salaries and authorizing the Comptroller to appropriate and expend ~~\$92,375~~ from the Public Liability Fund to cover the General Fund portion of the costs.  
**94,037.50 LT**
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 rights 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.

11 A. 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

ENVIRONMENTAL IMPACT:    THIS ACTION IS NOT A "PROJECT" SUBJECT TO CEQA

HOUSING IMPACT:             N/A

OTHER ISSUES:

## EXECUTIVE SUMMARY SHEET

DATE ISSUED: July 3, 2008 REPORT NO.: \_\_\_\_\_

ATTENTION: Council President and Council Members

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Authorizing additional expenditures to pay attorney fees for the representation of City employees related to their participation in the financial disclosures investigations.

COUNCIL DISTRICT(s): All

CONTACT/PHONE NUMBER: Lawrence Tomanek, Chief Deputy City Attorney  
(619) 533-5878**REQUESTED ACTION:**

Approve the resolution and authorize payments requested. Approve the 2009 FTE allocation and expend the \$125,000 across funds using an allocation based upon full-time equivalent salaries and authorizing the Comptroller to appropriate and expend \$94,037.50 from the Public Liability Fund to cover the General Fund portions of the costs.

**STAFF RECOMMENDATION:** Approve the Resolution.**EXECUTIVE SUMMARY:**

Requested action relates to additional funding for representation of employees and former employees for the ongoing the Securities and Exchange Commission [SEC] and the United States Attorney's Office [USAO] investigations.

In February of 2004, the SEC and the USAO informed the City of San Diego [City] that they were undertaking investigations into certain financial disclosure practices by the City and the roles of certain employees and former employees.

These investigations are ongoing, with each agency requesting and/or issuing subpoenas requiring City employees to appear for interview and/or testimony. In addition, City employees also responded 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, staff members and certain former employees.

The funds allotted for the representation thus far are \$3,550,000, apportioned among a number of represented individuals, and appropriated as a result of eleven 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); \$750,000 (AC 2700396, dated November 21, 2006); \$150,000 (AC 2800040, dated July 19, 2007); and \$425,000 (AC 2800425, dated December 4, 2007).

Over thirty 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 Mayor, Council, and some of their staff.

On May 13, 2008, Council voted, Item 330, R-303689, to deny payment of the above attorney's fees to four former employees (Ryan, Webster, Vattimo, and Frazier) and suspended a decision as Mr. Uberuaga pending further review by the City Attorney, since the SEC brought charges against these individuals.

The City Attorney's Office will discuss the decision to request to continue to pay the payment of further fees for Mr. Uberuaga in a separate action.

The current outstanding invoices are approximately \$75,000 for representation up to April 7, 2008, the date the Securities and Exchange Commission [SEC] filed a Complaint against five individuals. If the case continues several past and present City employees might incur additional costs, which are difficult to determine at this time.

**FISCAL CONSIDERATIONS:**

The Council is being asked to authorize an additional amount not to exceed \$125,000 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 SEC report, related to investigations by the SEC, United States Attorneys' Office, and the San Diego District Attorney's Office.

The City Council authorizes the City Attorney to reserve the City's 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.

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

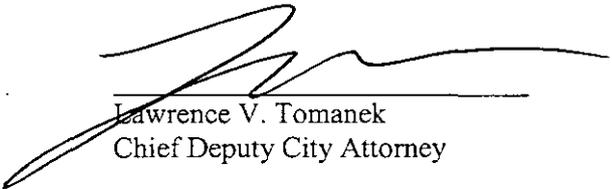
As described above, there have been numerous Council actions approving outside counsel fees for counsel retained related to the ongoing SEC/USAO investigations into City finances.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

N/A

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

Various law firms representing over thirty current and former City employees.



\_\_\_\_\_  
Lawrence V. Tomanek  
Chief Deputy City Attorney

The City of San Diego  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

000995

**CERTIFICATE OF UNALLOTTED BALANCE**  
ORIGINATING

AC 2900046  
 DEPT. \_\_\_\_\_  
 NO. 45

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: \$125,000.00

Vendor: N/A

Purpose: Authorize \$125,000 for the purpose of paying attorney's fees for the representation of past & present City employees for the ongoing investigation by the SEC, USAO & DA. Authorize the City Comptroller to allocate and expend \$125,000, of which \$94,037.50 is from the Public Liability Fund and the remainder allocated per the FY09 FTE sch.

Date: July 16, 2008 By: *Paul Hallut*  
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
		SEE	ATTACHED								125,000.00
TOTAL AMOUNT											\$125,000.00

FUND OVERRIDE

000997

FY 2009 FTE Allocation W/O MADS

SEC REPRESENTATION

Total Amount of AC/DP/Invoice:

\$ 125,000.00

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	82240	Public Liability Fund	—	4151	82240	75.23%	94,037.50
002	0	41400	730	Golf Course	100	4151	002150	0.95%	1,187.50
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	87.50
005	0	41200	752	Refuse Disposal	1000	4151	000110	1.19%	1,487.50
006	0	41200	753	Resource Management	010	4151	002000	0.18%	225.00
007	0	41200	754	Collection Services	020	4151	004229	0.09%	112.50
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.23%	287.50
009	0	41210	757	Collection Services	020	4151	004229	1.05%	1,312.50
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	37.50
011	0	41210	759	Resource Management	010	4151	002010	0.13%	162.50
012	0	41500	760	Water	163	4151	000163	7.76%	9,700.00
013	0	41509	776	MWWD-Administration	475	4151	776260	8.38%	10,475.00
014	0	41100	720	Airports	2000	4151	001101	0.19%	237.50
017	0	41300	1300	Developmental Service Enterprise	1100	4151	001110	4.52%	5,650.00
TOTAL								100.00%	125,000.00

prepared by R.Khouri x55713

RECEIVED  
JUL 15 2008

*[Signature]*  
Financial Management

*[Faint handwritten notes]*

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, City employees responded 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 are \$3,550,000, apportioned among a number of represented individuals, and appropriated as a result of eleven 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); \$750,000 (AC 2700396, dated November 21, 2006); \$150,000 (AC 2800040, dated July 19, 2007); and \$425,000 (AC 2800425, dated December 4, 2007).

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 \$75,000; NOW  
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that an additional amount not to exceed \$125,000 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.

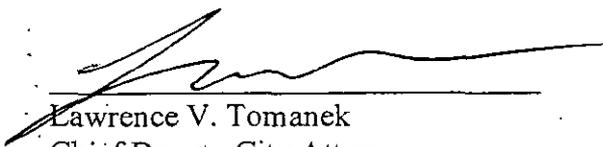
BE IT FURTHER RESOLVED that the Council authorizes the City Comptroller to allocate and expend \$125,000 across all funds using an allocation based upon full-time equivalent salaries and authorizing the Comptroller to appropriate and expend \$94,037.50 from the Public Liability Fund to cover the General Fund portion of the costs, to pay the above described attorney's fees.

BE IT FURTHER RESOLVED 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

  
Lawrence V. Tomanek  
Chief Deputy City Attorney

LVT:ca

7/16/08

Aud. Cert: AC 2900046

Or.Dept:CityAtty

R-2009-22

001002

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

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