

001003

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE C... 07/29

AC 2900045

TO: CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: July 7, 2008

4. SUBJECT: PROVISION OF LEGAL SERVICES FOR FORMER CITY OFFICIAL MICHAEL UBERUAGA 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 [X]

8. COMPLETE FOR ACCOUNTING PURPOSES

Table with columns: FUND, DEPT., ORGANIZATION, OBJECT ACCOUNT, JOB ORDER, AMOUNT. Row 1: SEE ATTACHED

9. ADDITIONAL INFORMATION / ESTIMATED COST: Estimated costs not-to-exceed \$435,000. General Fund Portion \$321,465 to be expended from Public Liability Fund for these purposes. 327,250.50 g.t.

10. ROUTING AND APPROVALS

Table with columns: ROUTE (#), APPROVING AUTHORITY, APPROVAL SIGNATURE, DATE SIGNED. Includes routing for ORIG. DEPT, RISK MGMT, LIAISON OFFICE, FIN. MGMT, and COMPTROLLER.

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

- 1. Authorizing an amount not to exceed \$435,000 for the purpose of paying attorney's fees for the representation of former City Manager Michael Uberuaga...
2. Authorizing the City Comptroller to allocate and expend \$435,000 based upon the attached allocation methodology...
3. Suspending the authorization for the above attorney's fees and costs and reserving the City's rights to terminate payment of fees and seek reimbursement of fees and costs paid in the event that 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 7, 2008

ATTENTION: Council President and Council Members

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Authorizing additional expenditures to pay attorney fees for the representation of former City Manager Michael Uberuaga related to his 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 \$435,000 across funds using an allocation based upon full-time equivalent salaries and authorizing the Comptroller to appropriate and expend \$327,250.50 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 the former City Manager, 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.

001006

On April 7, 2008 the SEC filed a "Complaint for Violation of the Federal Securities Laws", (Federal District Court Case No. 08 CV 0621 DMS LSP) against Defendants Michael T. Uberuaga [Uberuaga], the former City Manager; Edward P. Ryan [Ryan], the former City Auditor and Comptroller; Patricia Frazier [Frazier], the former Deputy City Manager for Finance; Teresa A. Webster [Webster], the former Assistant City Auditor and Comptroller; and Mary E. Vattimo [Vattimo], the former City Treasurer. The SEC alleges that Uberuaga, Ryan, Frazier, Webster, and Vattimo acted recklessly in failing to disclose material facts to investors and to rating agencies.

On August 8, 2006, Kroll, Inc. and Willkie Farr & Gallagher LLP, issued their "Report of the Audit Committee of the City of San Diego". The Report in its, "Conclusions as to Individual Culpability", found that evidence supports a determination Ryan, Frazier, Webster, and Vattimo acted with wrongful intent, and that Uberuaga was negligent.

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

Upon further deliberation and discussion with outside counsel the City Attorney believes that the City should continue to pay the fees and cost of representation of Mr. Uberuaga.

Mr. Uberuaga is represented by McKenna Long & Aldridge LLP and the current outstanding invoices are approximately \$75,000 for representation since April 7, 2008, the date the SEC filed a Complaint, through May 31, 2008. The estimated fees for the next six months are \$360,000. Therefore, we are requesting a total of \$435,000 be authorized.

FISCAL CONSIDERATIONS:

The Council is being asked to authorize an amount not to exceed \$435,000 to pay attorney's fees for the representation of Michael Uberuaga related to his participation in interviews and proceedings, including compliance with subpoenas, and in responding to the SEC, related to the Complaint by the SEC, and other proceedings by the 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 suspend and to terminate the payment of fees and seek reimbursement of fees paid in the event that a conviction is obtained.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

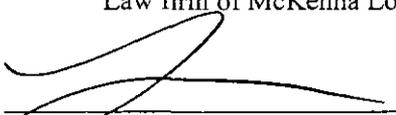
As described above, there have been numerous Council actions approving outside counsel fees for counsel retained related to the ongoing SEC/USAO investigations into City finances. This request is solely for the representation of Michael Uberuaga.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Law firm of McKenna Long & Aldridge LLP.


Lawrence V. Tomanek
Chief Deputy City Attorney

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

001007

CERTIFICATE OF UNALLOTTED BALANCE
 ORIGINATING

AC 290045
 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: \$435,000.00

Vendor: N/A

Purpose: Authorize \$435,000 for the purpose of paying attorney's fees for the representation of former City Manager Michael Uberuaga for the ongoing investigation by the SEC, USAO & DA. Authorize the City Comptroller to allocate and expend \$435,000, of which \$327,250.50 is from the Public Liability Fund and the remainder allocated per the FY09 FTE sch.

Date: July 16, 2008 By: *Pam Wallert* 7/16/08
 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								435,000.00
TOTAL AMOUNT											\$435,000.00

FUND OVERRIDE

001009

FY 2009 FTE Allocation W/O MADS

87

UBERUAGA REPRESENTATION

Total Amount of AC/DP/Invoice:

\$ 435,000.00

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	82240	Public Liability Fund	-	4151	82240	75.23%	327,250.50
002	0	41400	730	Golf Course	100	4151	002150	0.95%	4,132.50
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	304.50
005	0	41200	752	Refuse Disposal	1000	4151	000110	1.19%	5,176.50
006	0	41200	753	Resource Management	010	4151	002000	0.18%	783.00
007	0	41200	754	Collection Services	020	4151	004229	0.09%	391.50
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.23%	1,000.50
009	0	41210	757	Collection Services	020	4151	004229	1.05%	4,567.50
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	130.50
011	0	41210	759	Resource Management	010	4151	002010	0.13%	565.50
012	0	41500	760	Water	163	4151	000163	7.76%	33,756.00
013	0	41509	776	MWWD-Administration	475	4151	776260	8.38%	36,453.00
014	0	41100	720	Airports	2000	4151	001101	0.19%	826.50
017	0	41300	1300	Developmental Service Enterprise	1100	4151	001110	4.52%	19,662.00
TOTAL								100.00%	<u>435,000.00</u>

prepared by R.Khoury x55713

RECEIVED
 JUL 15 2008
Tom O...
 Financial Management

001011

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING EXPENDITURES TO PAY ATTORNEY FEES FOR THE REPRESENTATION OF FORMER CITY MANAGER MICHAEL UBERUAGA RELATED TO HIS PARTICIPATION IN THE FINANCIAL DISCLOSURES INVESTIGATION.

WHEREAS, 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; 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 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; 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); and

WHEREAS, 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; and

WHEREAS, on April 7, 2008 the SEC filed a "*Complaint for Violation of the Federal Securities Laws*", (Federal District Court Case No. 08 CV 0621 DMS LSP) against Defendants Michael T. Uberuaga [Uberuaga], the former City Manager; Edward P. Ryan [Ryan], the former City Auditor and Comptroller; Patricia Frazier [Frazier], the former Deputy City Manager for Finance; Teresa A. Webster [Webster], the former Assistant City Auditor and Comptroller; and Mary E. Vattimo [Vattimo], the former City Treasurer. The SEC alleges that Uberuaga, Ryan, Frazier, Webster, and Vattimo acted recklessly in failing to disclose material facts to investors and to rating agencies; and

WHEREAS, on August 8, 2006, Kroll, Inc. and Willkie Farr & Gallagher LLP, issued their "*Report of the Audit Committee of the City of San Diego*". The Report in its, "*Conclusions as to Individual Culpability*", found that evidence supports a determination Ryan, Frazier, Webster, and Vattimo acted with wrongful intent, and that Uberuaga was negligent; and

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

WHEREAS, upon further deliberation and discussion with outside counsel the City Attorney believes that the City should continue to pay the fees and cost of representation of Mr. Uberuaga; and

WHEREAS, Mr. Uberuaga is represented by McKenna Long & Aldridge LLP and the current outstanding invoices are approximately \$75,000 for representation since April 7, 2008, the date the SEC filed a Complaint. The estimated fees for the next six months are \$360,000. Therefore, we are requesting a total of \$435,000 be authorized; NOW THEREFORE,

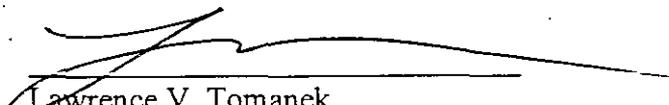
BE IT RESOLVED, by the Council of the City of San Diego, amount not to exceed \$435,000 is hereby authorized to pay attorney's fees for the representation of Michael Uberuaga related to his

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 RESOLVED that the Council authorizes the City Comptroller to allocate and expend \$435,000 based upon the attached allocation methodology of full-time equivalent salaries and authorizing the Comptroller to appropriate and expend \$327,250.50 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, the City shall reserve its right to terminate the payment of fees and seek reimbursement of fees paid in the event that a conviction is obtained.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Lawrence V. Tomanek
Chief Deputy City Attorney

LVT:ca
7/15/08
Aud. Cert: AC 2900045
Or.Dept:CityAtty
R-2009-70

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