

**REQUEST FOR COUNCIL ACTION**  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)  
2900308

TO: CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT):  
CITY ATTORNEY

3. DATE:  
September 29, 2008

4. SUBJECT: AUTHORITY TO ENTER INTO CONTRACT FOR LEGAL SERVICES WITH PAUL PLEVIN SULLIVAN & CONNAUGHTON, LLP. RE: JAMES M. CHAPIN AND PENNY L. CASTLEMAN VS CITY OF SAN DIEGO.

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)  
Walter Chung, (619) 533-5804

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)  
Lawrence Tomanek, (619) 533-5878

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

**8. COMPLETE FOR ACCOUNTING PURPOSES**

FUND	81140			
DEPT.	81140			
ORGANIZATION	3501			
OBJECT ACCOUNT	4141			
JOB ORDER	081141			
AMOUNT	\$150,000.00			

9. ADDITIONAL INFORMATION / ESTIMATED COST:

**10. ROUTING AND APPROVALS**

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	CITY ATTORNEY	<i>Kathryn Burton</i>	8	CFO, IIF REQUIRED	MARY LEWIS	
2	RISK MGMT.	GREG BYCH	<i>G. Bych</i>	9	COO, IF REQUIRED	JAY GOLDSTONE	<i>Jay Goldstone</i>
3	LIAISON OFFICE	ED PLANK	<i>E. Plank</i>	10			
4	FIN. MGMT.		<i>Julio Wong</i>	11	CITY ATTORNEY	LAWRENCE TOMANEK	<i>L. Tomanek</i>
5	COMPTROLLER		<i>Pam Walbert</i>		DOCKET COORD:	COUNCIL LIAISON	
6					COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
7					REFER TO:	COUNCIL DATE: 11/10/08	

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

1. Authorize the City Attorney to continue the contract with Paul Plevin Sullivan & Connaughton, LLP, for outside counsel services in the amount not to exceed an additional \$150,000 for the case *James M. Chapin and Penny L. Castleman vs City of San Diego*.
2. Authorize the City Comptroller to expend the full amount from the Public Liability Fund.

11 A. STAFF RECOMMENDATIONS: Adopt the resolution and authorize the expenditures.

**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: September 29, 2008 REPORT NO.: \_\_\_\_\_

ATTENTION: Council President and Council Members

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Contract with Paul Plevin Sullivan & Connaughton, LLP for outside counsel services.

COUNCIL DISTRICT(S): N/A

CONTACT/PHONE NUMBER: Walter Chung, Deputy City Attorney (619) 533-5804;  
Lawrence Tomanek, Chief Deputy City Attorney (619) 533-5878

**REQUESTED ACTION:**

Authorize the City Attorney to continue a contract with Paul Plevin Sullivan & Connaughton, LLP, for outside counsel services for an additional amount not to exceed \$150,000 for legal services to defend any and all claims by James M. Chapin and Penny L. Castleman against the City and Michael Aguirre, for alleged wrongful termination and retaliation, filed in Federal District Court, Southern District of California, Case No. 05 CV 1906 R (POR).

**STAFF RECOMMENDATION:**

Approve the Resolution.

**EXECUTIVE SUMMARY:**

On or about October 6, 2005, James M. Chapin and Penny L. Castleman filed a complaint for wrongful constructive termination in Federal District Court. The City needed outside legal counsel to represent the City in the case titled Chapin and Castleman v. Aguirre and City of San Diego because the parties are former city employees and the complaint arises out of the actions allegedly taken by the City Attorney's Office and The City of San Diego. Paul Plevin Sullivan & Connaughton, LLP, has been identified as the firm best able to provide the necessary services within the required time frame.

For the defense against Penny L. Castleman initial representation was authorized for up to \$100,000 and has been paid from Contract No. C-13218 filed with the Office of the City Clerk on March 24, 2005.

For the defense against James M. Chapin initial representation was authorized for up to \$100,000 and has been paid from Contract No. C-13318 filed with the Office of the City Clerk on June 27, 2005.

Representation costs to date has been approximately \$254,000, of which approximately \$54,000 is currently outstanding and payable.

**FISCAL CONSIDERATIONS:**

Authorize an additional amount of up to \$150,000 to be paid from the Public Liability Fund, for a cumulative cost not to exceed \$350,000.

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

On September 16, 2008, the City Council in Closed Session on Item CS-6, heard an update of *Chapin and Castleman v. Aguirre and City of San Diego, et al.*, Federal District Court Case No. 05CV1906 R (POR) and approved the case strategy and the continued retention of outside counsel. The motion was made by Council President Peters and the second by Council President Pro Tem Madaffer. The motion passed 7 to 1 with Councilmember Hueso voting "No".

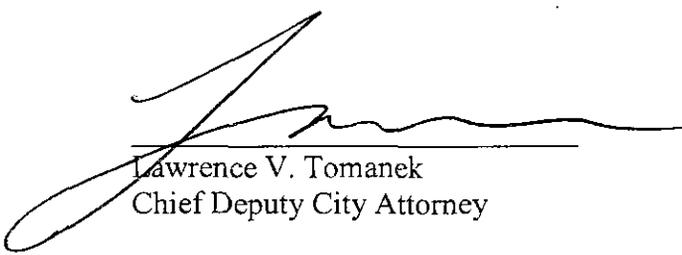
On January 15, 2008, the City Council in Closed Session, Item CS-4, heard a settlement offer by the Plaintiff. The offer was rejected.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

N/A

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

Paul Plevin Sullivan & Connaughton, LLP.



Lawrence V. Tomanek  
Chief Deputy City Attorney

000275

The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2900308

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: \$150,000.00

Vendor: Paul Plevin Sullivan & Connaughton, LLP

Purpose: Authorize the City Attorney to continue an agreement with the above stated vendor for outside counsel services for an add'l amount not to exceed \$150,000 for the case James M. Chapin & Penny L. Castleman vs. City of San Diego. Authorize the City Comptroller to expend the full amount from the Public Liability Fund (81140).

Date: October 15, 2008 By: *Pam Dallett* 10/15/08

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				\$150,000.00
TOTAL AMOUNT										\$150,000.00

FUND OVERRIDE

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

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

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO CONTINUE AN AGREEMENT WITH PAUL PLEVIN SULLIVAN & CONNAUGHTON, LLP IN AN ADDITIONAL AMOUNT UP TO \$150,000 TO PROVIDE LEGAL SERVICES IN CONNECTION WITH THE DEFENSE OF *JAMES M. CHAPIN AND PENNY L. CASTLEMAN V. OFFICE OF THE CITY ATTORNEY, CITY OF SAN DIEGO, ET AL.*, AND AUTHORIZING THE COMPTROLLER TO EXPEND RELATED FUNDS

WHEREAS, on or about October 10, 2005, James M. Chapin and Penny L. Castleman filed a complaint for wrongful constructive termination in the case titled *Chapin and Castleman v. Aguirre and City of San Diego*, Federal District Court, Southern District of California, Case No. 05 CV 1906 R (POR); and

WHEREAS, outside legal counsel was necessary to represent the City because the parties are former city employees and the complaint arises out of the actions allegedly taken by the City Attorney's Office and The City of San Diego; and

WHEREAS, the firm of Paul Plevin Sullivan & Connaughton, LLP has the necessary skills and experience to assist the City in defense of this matter within the required time frame; and

WHEREAS, for the defense against Penny L. Castleman initial representation was authorized for up to \$100,000 and has been paid from Contract No. C-13218 filed with the Office of the City Clerk on March 24, 2005.

WHEREAS, for the defense against James M. Chapin initial representation was authorized for up to \$100,000 and has been paid from Contract No. C-13318 filed with the Office of the City Clerk on June 27, 2005; and

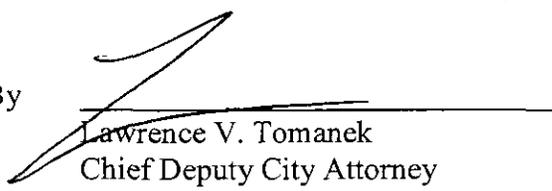
WHEREAS, On September 16, 2008, the City Council in Closed Session on Item CS-6, heard an update of *Chapin and Castleman v. Aguirre and City of San Diego, et al.*, Federal District Court Case No. 05CV1906 R (POR) and approved the case strategy and the continued retention of outside counsel. The motion was made by Council President Peters and the second by Council President Pro Tem Madaffer. The motion passed 7 to 1 with Councilmember Hueso voting "No"; NOW, THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue the contract with Paul Plevin Sullivan & Connaughton, LLP for outside counsel services for an additional amount not to exceed \$150,000 to defend any and all claims by *James M. Chapin and Penny L. Castleman v. Office of The City Attorney, City of San Diego*.

BE IT FURTHER RESOLVED, that the City Comptroller is authorized to expend up to \$150,000 from the Public Liability Fund.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Lawrence V. Tomanek  
Chief Deputy City Attorney

LVT:ca  
10/16/08  
Aud. Cert.: AC #2900308  
Or.Dept:ATTY  
R-2009-401

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