

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) AC 2900664		
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): City Attorney		DATE: 02/12/2009		
SUBJECT: Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for legal services in Marcus Abbe et al. v. City of San Diego, USDC Case Nos. 05cv1629 and 06cv0538 DMS (RBB)						
PRIMARY CONTACT (NAME, PHONE): George Schaefer, DCA,619-533-5861				SECONDARY CONTACT (NAME, PHONE): Ginger Botha, Secretary, 619-533-6372		
COMPLETE FOR ACCOUNTING PURPOSES						
FUND	81140					
DEPT.	81140					
ORGANIZATION	3501					
OBJECT ACCOUNT	4141					
JOB ORDER	081141					
C.I.P. NUMBER						
AMOUNT	\$2,000,000.00	0.00	0.00	0.00	0.00	0.00
FUND						
DEPT.						
ORGANIZATION						
OBJECT ACCOUNT						
JOB ORDER						
C.I.P. NUMBER						
AMOUNT	0.00	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): Previously authorized: \$1,500,000 This request: \$2,000,000 Total Contract Value: \$3,500,000						
ROUTING AND APPROVALS						
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY		APPROVAL SIGNATURE		DATE SIGNED
Risk Management		ORIG DEPT.		Bellows, Christina		2/18/2009
Liaison Office		CFO		Lewis, Mary		3/18/2009
Financial Management		DEPUTY CHIEF		Jones, Andrew		3/19/2009
Comptroller		COO				
		CITY ATTORNEY				
		COUNCIL PRESIDENTS OFFICE		Halsey, Keely		3/19/2009
PREPARATION OF:		<input checked="" type="checkbox"/> RESOLUTIONS		<input type="checkbox"/> ORDINANCE(S)		<input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)
1. Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for legal services in Marcus Abbe et al. v. City of San Diego, USDC Case Nos. 05cv1629 and 06cv0538 DMS (RBB);						
2. Authorizing the City Auditor and Comptroller to expend \$2,000,000 from the Public Liability Fund 81140						

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to pay the above expenditures;

STAFF RECOMMENDATIONS:

Adopt the resolution and authorize the Comptroller to fund this obligation from the Public Liability Fund 81140 for an additional \$2,000,000.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA.

CITY CLERK INSTRUCTIONS: CLERK REQUESTED TO PROVIDE DEPUTY CITY ATTORNEY GEORGE F. SCHAEFER (12TH FLOOR CCP, 533-5861) WITH A CERTIFIED COPY OF RESOLUTION.

PROVIDE ONE (1) EXECUTIVED COPY TO JANICE ELLIS M.S. 51B

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 02/12/2009

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: *Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for legal services in Marcus Abbe et al. v. City of San Diego, USDC Case Nos. 05cv1629 and 06cv0538 DMS (RBB)*

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: George Schaefer, DCA/619-533-5861

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 Nos. 05cv1629 and 06cv0538 DMS (RBB) (SDPOA #2).

STAFF RECOMMENDATION:

Adopt the resolution and authorize the Comptroller to fund this obligation from the Public Liability Fund 81140 for an additional \$2,000,000.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

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 (RBB). The case was consolidated by the United States District Court with a related case, Burkett v. City of San Diego, USDC Case No. 06cv0538 DMS (RBB). 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. A defense verdict was rendered in the jury trial of 8 "test" plaintiffs.

FISCAL CONSIDERATIONS:

Authorize an additional \$2,000,000n from the Public Liability Fund 81140 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 Nos. 05cv1629 and 06cv0538 DMS (RBB).

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): Not Applicable.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On November 18, 2008, the City Council voted in Closed Session on Item CS-3, Marcus Abbe, et al. v. City of San Diego, U.S. District Court Case No. 05cv1629 and 06cv538 DMS (RBB)("POA 2"), to authorize continued retention of Latham & Watkins LLP, and \$2,000,000

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of additional funding for outside counsel. The motion was made by Council President Scott Peters and the second by Councilmember Atkins. The motion passed 8 to 0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not Applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Latham & Watkins, LLP

Bellows, Christina
Originating Department

Jones, Andrew
Deputy Chief/Chief Operating Officer

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 CASE OF *MARCUS R. ABBE, ET AL. V. CITY OF SAN DIEGO*, USDC CASE NO. 05CV1629 DMS [SDPOA#2]

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 was consolidated by the United States District Court with a related case, *Brett H. Burkett, et al. v. City of San Diego*, USDC Case No. 06cv538 DMS. There are approximately 1500 Plaintiffs; and

WHEREAS, on November 18, 2008, the City Council voted in Closed Session in the matter of *Marcus Abbe, et al. v. City of San Diego*, U.S. District Court Case No. 05cv1629 and 06cv538 DMS (RBB) [SDPOA #2] (Item CS-3) to approve the case strategy and to authorize continued retention of Latham & Watkins, LLP. The motion was made by Council President Scott Peters and seconded by Councilmember Toni Atkins. The motion passed 8 to 0 with all Councilmembers present; and

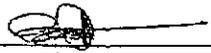
WHEREAS, the total amount requested for this case is an additional \$2,000,000 for Latham & Watkins and related litigation expenses, including expert fees; NOW

THEREFORE,

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 \$2,000,000, to provide legal services in *Marcus Abbe, et al v. City of San Diego*, USDC Case Nos. 05cv1629 and 06cv538 DMS (RBB) and to pay for related litigation expenses.

BE IT FURTHER RESOLVED that the City Comptroller is authorized to expend an amount not to exceed \$2,000,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services and litigation expenses.

APPROVED: JANI I. GOLDSMITH, City Attorney

By: 
George F. Schaefer
Deputy City Attorney

GFS:ca
03/19/2009
Aud. Cert.: 2900664
Or. Dept: City Attorney
R-2009-833

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