

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) AC 2900665			
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): City Attorney		DATE: 03/09/2009			
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	\$175,000.00	0.00	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	0.00
COST SUMMARY (IF APPLICABLE): Previously authorized: \$3,500,000 This request: \$175,000 Total Contract Value: \$3,675,000							
ROUTING AND APPROVALS							
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY		APPROVAL SIGNATURE		DATE SIGNED	
Liaison Office		ORIG DEPT.		Jones, Andrew		3/11/2009	
Financial Management		CFO		Lewis, Mary		3/18/2009	
Risk Management		DEPUTY CHIEF		Jones, Andrew		3/19/2009	
Comptroller		COO					
		CITY ATTORNEY		Schaefer, George		3/19/2009	
		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 and expenses 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 \$175,000 from the Public Liability Fund 81140 to							

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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 \$175,000.	
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) EXECUTED COPY TO JANICE ELLIS M.S. 51B

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

DATE: 03/09/2009

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 and expenses 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 \$175,000.

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. Additional funds are necessary because the Court has requested briefing on how the jury's verdict affects the other Plaintiffs' cases; furthermore, Plaintiffs have filed post-trial motions challenging the jury's verdict.

FISCAL CONSIDERATIONS:

Authorize an additional \$175,000 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:

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On February 24, 2009, the City Council voted in Closed Session on Item CS-9, 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 \$175,000 of additional funding for outside counsel and litigation expenses. The motion was made by Councilmember Kevin Faulconer and seconded by Councilmember Marti Emerald. The motion passed 8 to 0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not Applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Latham & Watkins, LLP.

Jones, Andrew
Originating Department

Jones, Andrew
Deputy Chief/Chief Operating Officer

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The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2900665
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: _____

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: \$175,000.00

Vendor: Latham & Watkins, LLP

Purpose: Authorize continued retention, payment of invoices and future reserve funding for Latham & Watkins, LLP for legal services in Marcus R. Abbe et al. v. City of San Diego. Authorize the City Comptroller to fund this obligation from the Public Liability Fund (81140) for \$175,000 for a total contract value of \$3,675,000.

Date: March 17, 2009 By: *Pam Walbert* 3/17/09

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					175,000.00
TOTAL											\$175,000.00

FUND OVERRIDE

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 February 24, 2009, 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-9) to approve the case strategy and to authorize continued retention of Latham & Watkins, LLP. The motion was made by Councilmember Kevin Faulconer and seconded by Councilmember Marti Emerald. The motion passed 8 to 0 with all Councilmembers present; and

WHEREAS, the total amount requested for this case is an additional \$175,000 for Latham & Watkins and related litigation expenses; 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 \$175,000, 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 \$175,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services and litigation expenses.

APPROVED: JAN I. GOLDSMITH, City Attorney

By: 
George F. Schaefer
Deputy City Attorney

GFS:ca
03/19/2009
Aud. Cert.: 2900665
Or. Dept: City Attorney
R-2009-979

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