



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 21, 2006 REPORT NO.: 06-080

ATTENTION: Council President and Council Members
Docket of June 27, 2006

SUBJECT: Four Actions Related to SEC/USAO Investigations

REFERENCE: None

REQUESTED ACTION: Approve the Resolution and Authorize Payments Requested

STAFF RECOMMENDATION: Approve the Resolution

SUMMARY:

Requested action relates to four (4) funding requests for items related to the ongoing SEC/US Attorney/District Attorney investigations. The request is for approval of all four items as part of one action.

1. Action Related to the SEC Document Repository

As part of an organizational restructuring the San Diego Data Processing Corporation (SDDPC) vacated 5,113 rentable square feet of office space on the fourth floor of Civic Center Plaza and subleased the space to IT&C for subpoena management through June 30, 2006. The City requires the space in order to continue work on the subpoena coordination and under the provisions of the attached Sublease Agreement would sublease the space through December 31, 2006. The agreement includes one option to extend for a period of six months with the same provisions including the rental rate.

The office space is needed to support the Citywide organization and management effort to effectively respond to a number of subpoenas from law enforcement authorities. The office space provides a centralized location for subpoena-related records intake, review and storage functions.

The terms of the Sublease Agreement are as follows:

Initial term: Six months commencing July 1, 2006 and expiring December 31, 2006.

Option term: One six month option term commencing January 1, 2007 and expiring June 30, 2007.

Rent: \$8,180.80 per month (\$1.60/sf).

Common Area Expenses: \$664.69 per month (\$.13/sf).

Other Charges: None

2. Compliance, Inc. – Temporary Legal Staffing

In February of 2004 when the City received the first SEC subpoena, the City Attorney's Office began utilizing the services of Compliance Inc., a temporary legal staffing and document management company to help coordinate the document production. This was necessary due to the large volume of documents that needed to be collected, organized, indexed, processed, and produced to the government agencies. These staff members worked directly with Vinson & Elkins, and, at times, worked independently of City Attorney staff with the various document productions and in helping to staff the City's document repository. The number and size of temporary staff has fluctuated since 2004 depending upon the requests from the SEC, USAO, District Attorney, and Kroll. In FY 2004, Compliance Inc. billed the City in the amount of \$25,571.25 for temporary staff/document management services (March 17, 2004-June 30, 2004). In FY 2005, Compliance Inc. billed the City in the amount of \$55,095 for temporary staff/document management services.

On February 14, 2005, Kroll Inc. was hired by the City and on June 10, 2005, an extensive request was sent to all City employees to produce all relevant documents. The City Attorney's Office, along with temporary legal staff, were working cooperatively with Kroll, Inc. and following their direction in collecting, organizing, indexing, and reviewing for privilege, the documents that were subject to the June request. Because of the large request, massive amounts of documents were produced, thus requiring the assistance of increased temporary staff. As of July 1, 2005 to May 13, 2006, Compliance Inc. has billed the City in the amount of \$279,725.76 for temporary staff/document management services.

The City Attorney's Office currently has two temporary paralegals staffing the CCP 4th floor repository under the supervision of a City Attorney staff member. One of the temporary paralegals has been involved in the project since its inception in February of 2004. She is the only person who has the entire picture and historical perspective of this massive project. She plans to leave the San Diego area as of July 1. It is crucial that

we continue her services and allow for a smooth transition. The cost for the temporary legal staff is approximately \$2880 per week for the two people currently working to staff and help manage the repository. Compliance, Inc. has approximately \$55,189.50 in outstanding invoices through May 13, 2006. The projected cost to keep two temporary legal staff members from May 13, 2006 through the end of calendar year 2006 is \$104,160.00. These costs may be reduced if their services are no longer needed or if only one person is needed. The City Attorney requests a total of not to exceed \$160,000 for services of Compliance, Inc.

3. ALC – Copy/Scanning Services

Requests of the agencies involved in the investigation into City finances have involved a large volume of document production and duplication. In order to efficiently handle these requests, the firm of ALC Legal Technologies has been utilized regularly for outside copying and scanning services. Requested is \$40,000 to cover anticipated additional costs related to the SEC/USAO/DA investigations.

4. Outside Counsel Fees for Individual Current and Former City Staff

In February of 2004, the SEC and USAO informed the City that they were undertaking investigations into certain financial disclosure practices by the City. Additionally, the District Attorney's Office has initiated its own investigation into the propriety of acts relating to the granting of pension benefits.

These investigations remain ongoing, with each agency requesting and/or issuing subpoenas requiring City employees appear for interview and/or testimony. In order to facilitate the conduct of necessary interviews and testimony, and yet provide necessary advice to affected City employees, 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. The total cost allotted for the representation thus far was \$1,975,000, apportioned among a number of represented individuals, and appropriated as a result of seven requests: \$250,000 (AC 2401177) on June 17, 2004; \$75,000 (AC 2500664) on November 14, 2004; \$150,000 (AC 2500688) on January 25, 2005; \$200,000 (AC 2500802) on March 7, 2005; \$350,000 (AC 2501122) on June 28, 2005; \$500,000 (AC 2600236) on October 11, 2005; and \$450,000 (AC 2600542) on March 28, 2006.

Over 30 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 former Mayor, Council, and their staff.

Several firms have submitted significant invoices on behalf of their clients. As of early June 2006, the following firms had incurred the largest expenses:

- **Shartsis Friese** – More than \$700,000 for clients including former City Manager Lamont Ewell and former Assistant City Attorney Les Girard
- **Wertz McDade Wallace Moot & Brower** – More than \$175,000 for client Ed Ryan
- **DLA Piper Rudnick** – More than \$215,000 on behalf of three clients, including two Deputy City Attorneys.
- **McKenna Long & Aldridge** – More than \$205,000 on behalf of clients including former City Manager Michael Uberuaga.

It is recommended that the City Attorney continue to execute and monitor the contracts on behalf of the City for the representation of individual current and former City employees. It is also recommended that each employee be permitted to retain only one law firm for representation. To pay anticipated invoices for the remainder of FY 2006, and in preparation for invoices in early FY 2007, it is requested that an additional \$250,000 be appropriated.

It is requested that the Auditor and Comptroller be authorized to transfer funds from Unappropriated/Unallocated Reserve to the Public Liability Fund to meet the general fund portion of the outside counsel obligations.

FISCAL CONSIDERATIONS:

In all, the actions would encumber \$503,072.94 in funds. In order to meet the general fund portion of these obligations, the Auditor and Comptroller would be authorized to transfer funds to the Public Liability Fund from the Unappropriated/Unallocated Reserve.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Numerous Council Actions approving outside counsel fees for counsel retained related to the ongoing SEC/USAO/DA investigations into City finances.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N.A.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Compliance, Inc., San Diego Data Processing Corporation, ALC Legal Technologies, various law firms including the firms of Shartsis Friese; Wertz McDade Wallace Moot & Brower; DLA Piper Rudnick and McKenna Long & Aldridge.

Originating Department

Deputy Chief/Chief Operating Officer