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Office of  
The City Attorney  
City of San Diego

MEMORANDUM

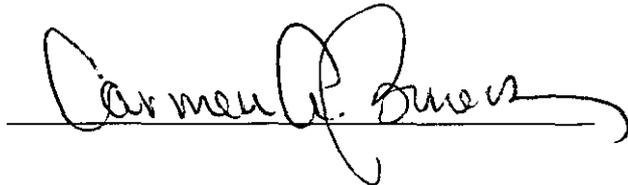
**DATE:** March 27, 2008  
**TO:** Michelle Strauss, Director of Legislative Affairs  
**FROM:** Carmen Brock, Deputy City Attorney  
**SUBJECT:** *Orlando Foote, et. al. v. City of San Diego.*  
San Diego Superior Court No. GIC 865903

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Attached please find a resolution R-2008-827 setting forth the approval of the City Council in Closed Session on January 29, 2008. The Auditor's Certificate was not requested prior to Council action in Closed Session. The vote taken in Open Session shall be the official vote.

Pursuant to the requirements, it is appropriate for this resolution to be placed on the next available Council docket for Council adoption confirming the Council's action in Closed Session.

It is, therefore, requested that it be calendared for the next available docket.



Carmen P. Brock

Attachment

001019

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

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

2800660

TO:  
CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):  
RISK MANAGEMENT

February 4, 2008

4. SUBJECT:  
**SETTLEMENT OF PROPERTY DAMAGE CLAIM OF ORLANDO B. FOOTE & OLLIE LINDA FOOTE  
RISK MANAGEMENT FILE #: LP06-0534-0904**

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)  
Mike Gomez (619) 236-7096 MS #59

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)  
Carmen Brock (619) 533-5800

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140		
DEPT.	81140		
ORGANIZATION	3302		
OBJECT ACCOUNT	4824		
JOB ORDER	081141		
C.I.P. NUMBER			
AMOUNT	\$135,000.00		

9. ADDITIONAL INFORMATION / ESTIMATED COST:  
**\$135,000.00 - Total Settlement**

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Carmen Brock</i>	2/8/08	8	DEPUTY CHIEF		
2	GENERAL SERVICES	<i>[Signature]</i>	3/3/08	9	CFO	<i>Mary Hewitt</i>	3/2/08
3	AUDITOR	<i>Christopher Russell</i>	3/2/08	10	CITY ATTORNEY	<i>[Signature]</i>	4/8/08
4	FINANCIAL MGMT	<i>[Signature]</i>	3/18/08	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	2/8/08
5	LIAISON OFFICE	<i>[Signature]</i>	3-7-08	DOCKET COORD: _____ COUNCIL LIAISON: <i>[Signature]</i>			
6	RISK MANAGEMENT	<i>[Signature]</i>	2-27-08	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> <i>Che</i> <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 4/15/08			
7							

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

1. Authorizing the Mayor to pay the sum of \$135,000.00 in settlement of each and every claim against the City, its agents and employees, resulting from the Property Damage Claim of ORLANDO & OLLIE FOOTE.
2. Authorizing the City Auditor and Comptroller to issue one check in the amount of \$135,000.00 made payable to ORLANDO B FOOTE & OLLIE LINDA FOOTE, as joint tenants .

11A. STAFF RECOMMENDATIONS:

Approve the resolution

12. SPECIAL CONDITIONS:

**COUNCIL DISTRICT(S):** 2

**COMMUNITY AREA(S):** NONE

**ENVIRONMENTAL IMPACT:** NONE

**HOUSING IMPACT:** This activity is not a project and therefore exempt from CEQA pursuant to the State Guidelines Section 15060(c) (3).

**OTHER ISSUES:** NONE

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: February 4, 2008 REPORT NO:  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Risk Management  
SUBJECT: Settlement of Property Damage Claim of Orlando B. Foote  
and Ollie Linda Foote  
City File #: LP06-0534-0904  
COUNCIL DISTRICT(S): 2  
CONTACT/PHONE NUMBER: Carmen Brock (619) 533-5800

REQUESTED ACTION: Authorizing the Mayor and City Council to pay the total sum of \$135,000.00 in settlement of each and every claim against the City, its agents and employees, resulting from property damage claim of Orlando B. Foote and Ollie Linda Foote.

STAFF RECOMMENDATION: Approve the resolution

EXECUTIVE SUMMARY: The proposed settlement would resolve all claims brought by Orlando B. Foote & Ollie Linda Foote.

FISCAL CONSIDERATIONS: Settlement will be paid from the Public Liability Fund

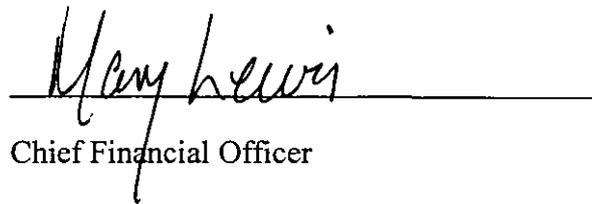
PREVIOUS COUNCIL and/or COMMITTEE ACTION: This item was heard in closed session on January 29, 2008 the City Council approved the settlement amount of \$135,000.00. City Council voted 7 to 0 to approve with Councilmember Kevin Faulconer absent. The motion was made by Council President Pro Tem Jim Madaffer and seconded by Council President Scott Peters.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A



Originating Department



Chief Financial Officer



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

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

**A RESOLUTION AUTHORIZING SETTLEMENT OF  
PROPERTY DAMAGE CLAIM OF ORLANDO B. FOOTE  
AND OLLIE LINDA FOOTE**

WHEREAS, in Closed Session on January 29, 2008, by motion of Council President Pro Tem Jim Madaffer and seconded by Council President Scott Peters, by the following Vote: Yeas, 7; Nays, None; Not Present, Councilmember Faulconer, approved the following motion:

WHEREAS in May 11, 2006, Plaintiffs Orlando B. Foote and Ollie Linda Foote [Plaintiffs], filed a government tort claim [Claim] with the City of San Diego [City] seeking payment for damage to real property owned by Plaintiffs; and

WHEREAS thereafter Plaintiffs timely filed a lawsuit against the City, entitled *Orlando B. Foote and Ollie Linda Foote v. City of San Diego*, San Diego Superior Court Case No. GIC865390 [the Litigation] alleging causes of action for Nuisance, Trespass, Preliminary and Permanent Injunction and Inverse Condemnation arising from the alleged damage sustained to Plaintiffs' real property; and

WHEREAS the City in closed session on January 29, 2008 authorized settlement of the Litigation in an amount consistent with the amount set forth below;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of San Diego that the Council authorizes:

1. The sum of one hundred thirty five thousand dollars (\$135,000) to be paid from the Public Liability Fund in settlement of all of Plaintiffs' claims against the City, its agents and employees, arising from the Litigation.
2. That the Public Liability Fund is authorized to issue a check in the amount of \$135,000 payable to Orlando B. Foote and Ollie Linda Foote, as joint tenants.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Carmen A. Brock  
Carmen Brock, Deputy City Attorney

CB:mc  
March 25, 2008  
Or Dept: Risk Management  
R-2008-828

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_, 2008.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor