

001329

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 116
2900306 11/18

TO: CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: September 30, 2008

4. SUBJECT: CONTINUED RETENTION OF SULLIVAN HILL LEWIN REZ & ENGEL, A PROFESSIONAL LAW CORPORATION FOR LEGAL SERVICES FOR CASE JANET M. WOOD V. CITY OF SAN DIEGO, U.S. DISTRICT COURT CASE NO. 03CV1910

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
Don McGrath (619) 533-5860 MS 59

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
Lawrence Tomanek, (619) 533-5878, MS 59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	21140			
DEPT.	81140			
ORGANIZATION	3501			
OBJECT ACCOUNT	4141			
JOB ORDER	081141			
AMOUNT	\$100,000			

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Estimated costs for engagement not to exceed \$100,000.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	CITY ATTORNEY	10/1/08	8			
2	RISK MGMT.		10-1-08	9	COO, IF REQUIRED	JAY GOLDSTONE	10/5/08
3	LIAISON OFFICE	ED PLANK	10/9/08	10			
4	FIN. MGMT.		10/14/08	11	CITY ATTORNEY	LAWRENCE TOMANEK	10/16/08
5	COMPTROLLER		10/15/08		DOCKET COORD:	COUNCIL LIAISON	11/4/08
6					COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7					REFER TO:	COUNCIL DATE: 11/18/08	

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

1. Authorizing \$100,000 for the continued retention of outside counsel in the defense of the City in the case of Janet M. Wood v. City of San Diego, U. S. District Court Case No. 03CV1910.
2. Authorizing the City Comptroller to expend up to \$100,000 from the Public Liability Fund for the coverage of Sullivan Hill Lewin Rez & Engel legal fees and costs related to this matter.

11A. STAFF RECOMMENDATIONS:
ADOPT THE RESOLUTION

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

COUNCIL DISTRICT(S): ALL

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 30, 2008 **REPORT NO.:**
ATTENTION: COUNCIL PRESIDENT AND COUNCILMEMBERS
ORIGINATING DEPARTMENT: City Attorney

SUBJECT:

Continued contract with Sullivan Hill Lewin Rez & Engel, A Professional Law Corporation for services in the matter entitled *Janet M. Wood v. City of San Diego*, U.S. District Court No.03CV1910.

COUNCIL DISTRICT(S): ALL

CONTACT/PHONE NUMBER:

Don McGrath, Chief Deputy City Attorney/533-5860
Lawrence Tomanek, Chief Deputy City Attorney/236-6220

REQUESTED ACTION:

Authorize the City Attorney to continue the Agreement on behalf of the City of San Diego with Sullivan Hill Lewin Rez & Engel as Outside Counsel for the sole purpose of representing the City in *Janet M. Wood v. City of San Diego*, U.S. District Court No. 03CV1910.

Approve the Resolution to authorize the City Comptroller to expend an amount not to exceed \$100,000 on Sullivan Hill Lewin Rez & Engel from the Public Liability Fund.

STAFF RECOMMENDATION:

Approve the Resolution.

EXECUTIVE SUMMARY:

On 9-13-02, Attorney Michael Conger filed the *Conny Jamison v City* case (02 CV 1825; Risk No. LX03-0880-0701) alleging unequal retirement benefits for non-spouse partners. This case was dismissed on 02-06-04.

On 9-25-03, Attorney Michael Conger filed a companion case, *Janet Wood v City* (03 CV 1910; Risk No. LX04-0880-0683) alleging lower retirement benefits based upon sex discrimination and marital discrimination. The City prevailed by way of Summary Judgment Motion in 2004. Plaintiff appealed (9th Cir Ct of Appeals Case # 05-551960) and the Court reversed and remanded (filed 4-6-07) the case to the trial court with the State discrimination claim reinstated. Therefore, the case is now back in District Court for trial.

001332

The firm of Sullivan Hill Lewin Rez & Engel is outside counsel on this matter. The City, in December 2002, hired David Hopkins of Hillyer & Irwin to defend the *Jamison* case, which transformed into the *Wood* case. Hillyer went out of business and Mr. Hopkins moved to Sullivan Hill Lewin Rez & Engel. The original agreement with Hillyer was for \$250,000 and was brought forward on a 1544, Manager Action (Document No. C-12129, filed in the Office of the City Clerk on August 11, 2003).

FISCAL CONSIDERATIONS:

The City shall compensate Sullivan Hill Lewin Rez & Engel based on its hourly rates for legal services. This Request is for an additional not-to-exceed amount of \$100,000 and will be borne by the Public Liability Fund, thus cumulative funding in this matter will be \$350,000.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On September 16, 2008, the City Council voted in Closed Session on item CS-3, *Janet Wood v City*, Federal District Court Case No. 03 CV 1910, approving the litigation strategy and to authorize 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 8 to 0.

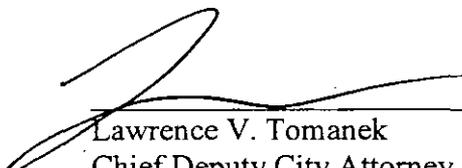
City Council was briefed in Closed Session by outside counsel on February 18, 2003 on a prior case which presented identical claims (*Jamison*), which was dismissed when the current case was filed.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Sullivan Hill Lewin Rez & Engel LLP.


Lawrence V. Tomanek
Chief Deputy City Attorney

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

001333

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2900306
 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: \$100,000.00

Vendor: Sullivan Hill Lewin Rez & Engel, A Professional Law Corporation

Purpose: Authorize the continued retention of outside counsel in the defense of the City in the case of Janet M. Wood v. City of San Diego, US District Court Case No. 03CV1910. Authorize the City Comptroller to expend \$100,000 from the Public Liability Fund (81140) for legal fees and costs related to this matter.

Date: October 15, 2008 By: *Ram Halbit* 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					\$100,000.00
TOTAL AMOUNT											\$100,000.00

FUND OVERRIDE

AC 2900306

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO CONTINUE AN AGREEMENT WITH SULLIVAN HILL LEWIN REZ & ENGEL, A PROFESSIONAL LAW CORPORATION FOR SERVICES IN THE MATTER ENTITLED *JANET M. WOOD V. CITY OF SAN DIEGO*, U.S. DISTRICT COURT NO. 03CV1910, AND AUTHORIZING THE COMPTROLLER TO EXPEND RELATED FUNDS.

WHEREAS, in September 2003 Janet M. Wood sued the City of San Diego as a representative class, Plaintiff claiming women and unmarried retirees receive less pension benefit than others. City prevailed in District Court by summary judgment motion.

WHEREAS, Plaintiff appealed and the Ninth Circuit Court of Appeals reversed and remanded back to the District Court in September 2007.

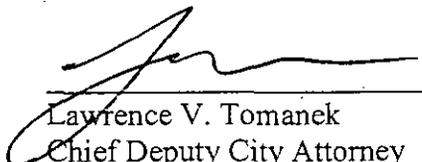
WHEREAS, On September 16, 2008, the City Council voted in Closed Session on Item CS-3, *Janet Wood v City*, Federal District Court Case No. 03 CV 1910, approving the litigation strategy and to authorize the continued retention of outside counsel. The motion was made by Council President Peters and the second by Council President Pro Tem Madaffer. The motion passed 8 to 0.

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue the retention of Sullivan Hill Lewin Rez & Engel, A Professional Law Corporation for outside counsel services for an additional amount not to exceed \$100,000 to

defend any and all claims in *Janet M. Wood v City of San Diego*.

BE IT FURTHER RESOLVED, that City Comptroller is authorized to expend up to \$100,000 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 #2900306
Or.Dept:ATTY
R-2009-483

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