

001345

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 118
290036 11/18

TO: CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY

3. DATE: September 30, 2008

4. SUBJECT: RETENTION WOOD, SMITH, HENNING & BERMAN, LLP FOR LEGAL SERVICES FOR THE CASE BUN BUN TRAN V. THE CITY OF SAN DIEGO, ET AL. 37-2007-00065432-CU-PA-CTL

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Andrew Jones (619) 533-5800, 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	81140		
DEPT.	81140		
ORGANIZATION	3501		
OBJECT ACCOUNT	4141		
JOB ORDER	081141		
AMOUNT	\$500,000		

9. ADDITIONAL INFORMATION / ESTIMATED COST: Estimated costs for engagement not to exceed \$500,000.

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.	[Signature]	10-1-08	9	COO, IF REQUIRED	JAY GOLDSTONE	10/15/08
3	LIAISON OFFICE	EB PLANK	10/2/08	10			
4	FIN. MGMT.	[Signature]	10/11/08	11	CITY ATTORNEY	LAWRENCE TOMANEK	10/16/08
5	COMPTROLLER	[Signature]	10/15/08		DOCKET COORD:	COUNCIL LIAISON	SC 11/4/08
6					<input checked="" type="checkbox"/> COUNCIL PRESIDENT	<input type="checkbox"/> SPOB	<input checked="" type="checkbox"/> CONSENT
7					<input type="checkbox"/> REFER TO:		COUNCIL DATE: 11/19/08

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

- Authorize retention agreement of Wood, Smith, Henning & Berman LLP as outside counsel in the defense of the City in the case of *Bun Bun Tran v. City of San Diego*, California Superior Court No. B37-2007-00065432-CU-PA-CTL.
- Authorizing the City Comptroller to expend up to \$500,000 from the Public Liability Fund for the coverage of Wood, Smith, Henning & Berman, LLP 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

ATTENTION: COUNCIL PRESIDENT AND COUNCILMEMBERS

ORIGINATING DEPARTMENT: City Attorney

SUBJECT:

Contract with Wood, Smith, Henning & Berman LLP, for legal services in the matter entitled *Bun Bun Tran v City of San Diego et al*, Case No.: 37-2007-000065432-CU-PA-CTL.

COUNCIL DISTRICT(S):

ALL

CONTACT/PHONE NUMBER:

Andrew Jones, Deputy City Attorney/533-5800
Lawrence Tomanek, Chief Deputy City Attorney/236-6220

REQUESTED ACTION:

Authorize the City Attorney to retain on behalf of the City of San Diego, the firm of Wood, Smith, Henning & Berman LLP as Outside Counsel as co-counsel in this lawsuit.

Approve the Resolution to authorize the City Comptroller to expend up to \$500,000 for the City of San Diego and Wood, Smith, Henning & Berman LLP for the sole purpose of representing the City.

STAFF RECOMMENDATION:

Approve the Resolution.

EXECUTIVE SUMMARY:

Plaintiff claims intersection was a dangerous condition of public property and suffered injuries in automobile collision. The incident occurred on November 19, 2006 and the lawsuit was filed on May 8, 2007. The City's insurance carrier requested that Co-counsel be hired to try the case.

FISCAL CONSIDERATIONS:

The City shall compensate Wood, Smith, Henning & Berman LLP based on its hourly rates for legal services. This Request has a not-to-exceed amount of \$500,000 and will be borne by the Public Liability Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This is the initial request to Council for approval of services for the above listed matter.

In the Closed Session Meeting of September 9, 2008 on Item CS-1, the City Council approved the case strategy and authorized retention of outside council. The motion was made by Council President Peters and the second by Council President Pro Tem Madaffer. The motion passed unanimously 8 to 0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Wood, Smith, Henning & Berman LLP.



Lawrence V. Tomanek
Chief Deputy City Attorney

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

001549

CERTIFICATE OF UNALLOTTED BALANCE
ORIGINATING

AC 2900309
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: \$500,000.00

Vendor: Wood, Smith, Henning & Berman, LLP

Purpose: Authorize a retention agreement with above stated vendor for outside counsel services in the defense of the City in the case of Bun Bun Tran vs. City of San Diego. Authorize the City Comptroller to expend up to \$500,000 from the Public Liability Fund (81140) for legal fees and costs related to this matter.

Date: October 15, 2008 By: *Pam Wallcut 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				\$500,000.00
TOTAL AMOUNT										\$500,000.00

FUND OVERRIDE

AC 2900309

001351

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A CONTRACT WITH WOOD, SMITH, HENNING & BERMAN, LLP FOR CO-COUNSEL SERVICES TO PROVIDE LEGAL SERVICES FOR THE DEFENSE SERVICES IN THE MATTER ENTITLED *BUN BUN TRAN, ET AL. V. CITY OF SAN DIEGO, ET AL* AND AUTHORIZES THE CITY COMPTROLLER TO EXPEND RELATED FUNDS.

WHEREAS, Plaintiff alleges he sustained injuries as a result of a traffic accident at an intersection, wherein existed a dangerous condition; and

WHEREAS, the City's insurance carrier requested that the City add co-counsel to try the case; and

WHEREAS, the firm of Wood, Smith, Henning and Berman, LLP has the necessary skills and experience to assist the City in defense of this matter; and

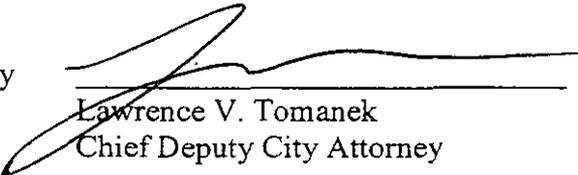
WHEREAS, in the Closed Session Meeting of September 9, 2008 on Item CS-1, the City Council approved the case strategy and authorized retention of outside council. The motion was made by Council President Peters and the second by Council President Pro Tem Madaffer. The motion passed unanimously 8 to 0; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized retain Wood, Smith, Henning & Berman, LLP for the provision of legal services in *Bun Bun Tran, et al v. City of San Diego, et al*, San Diego Superior Court Case No. 37-2007-00065432-CU-PA-CTL.

001352

BE IT FURTHER RESOLVED, that the Comptroller is authorized to expend up to \$500,000 from the Public Liability Fund on this matter.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Lawrence V. Tomanek
Chief Deputy City Attorney

LVT:ca
10/16/08
Aud. Cert.: AC #2900309
Or.Dept:City Attorney
R-2009-485

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