S=5.5 (R-2006-976) S[8]0

RESOLUTION NUMBER R- 301438

DATE OF FINAL PASSAGE MAY 2 4 2006

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE PAYMENT OF ADDITIONAL FUNDS FOR THE CITY OF SAN DIEGO'S AUDIT COMMITTEE AND RELATED ENTITIES

WHEREAS, on February 14, 2005, the City Council authorized and directed that the former Mayor, the former City Manager, and the City Attorney execute an agreement with Kroll Associates, Inc. [Kroll] in connection with matters involving the San Diego City Employees' Retirement System [SDCERS], which letter was duly signed and acknowledged, in an amount not to exceed \$250,000; and

WHEREAS, on March 8, 2005, the City Council established an Audit Committee of the City of San Diego [Audit Committee] as contemplated by the Sarbanes-Oxley Act of 2002; and

WHEREAS, on April 19, 2005, the Audit Committee engaged Willkie Farr & Gallagher LLP [WF&G] to serve as its counsel, and on May 10, 2005, the City Council approved the Audit Committee's engagement of WF&G, and increased the amounts payable to Kroll and WF&G to \$1,750,000 and \$500,000, respectively; and

WHEREAS, the City Council authorized additional payments to be made to Kroll and WF&G from time to time for the continued provision of investigative and legal services; and

WHEREAS, the firm of NTI Breakwater has also been retained by the Audit Committee for the compilation of electronic data; and

WHEREAS, the firm of KMPG has been authorized to receive \$3.1 million for services to the Audit Committee and for the auditing of the City's FY 2003 financial statements; and

WHEREAS, the firm of Macias & Gini has been retained to audit the City's FY 2004 and FY 2005 financial statements and \$1,560,456 has previously been authorized for said purpose; and

WHEREAS, on January 17, 2006, the City Council authorized an additional expenditure of funds to Kroll and WF&G for professional services, in an amount not to exceed \$10 million to be paid for any outstanding amounts due and owing to Kroll and WF&G, and to pay for work, exclusive of out-of-pocket expenses, necessary for the Audit Committee to complete the investigation as it sees fit in an exercise of its sound and independent judgment; and

WHEREAS, the Council authorization of January 17, 2006 was for the \$10 million to be paid solely from Fund No. 81140, Dept. No. 82240, Object Account No. 4151, Job Order 062240 and not from the Enterprise Funds; and

WHEREAS, it remains the legal opinion of the City Attorney that the City has failed to show that there has been established a proper nexus between the services of the Audit Committee allocated as either a direct cost or an indirect cost – to justify the use of Enterprise Funds to pay for a portion of those services; and

WHEREAS, the City Council nonetheless with this action will reallocate the funding of these services across the City based upon Full Time Employees; and

WHEREAS, the current authorization of funds by the City Council is not sufficient for the Audit Committee to complete its investigation, for invoices for NTI Breakwater to be paid and for KPMG and Macias & Gini to complete their audits; and

(R-2006-976)

WHEREAS, the Audit Committee has requested an additional \$3.3 million for

professional expenses and up to \$800,000 in out of pocket expenses to complete the investigation

and issue a report sometime in June 2006; NOW THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego as follows:

1. That the City Council hereby authorizes an increase in funding totaling

\$5,625,948 for the Audit Committee, NTI Breakwater, KPMG, and Macias & Gini.

2. That the Council authorizes the reallocation of \$11,427,312.80 in previously

approved expenditures charged to the Public Liability Fund across all funds using an allocation

based on Full Time Employees.

3. That the City Auditor/Controller be authorized to transfer \$733,367.47 from the

General Fund Unappropriated Reserves, Fund 100, to the Public Liability Fund 81140 for the net

General Fund portion of these expenditures.

4. That the Mayor is delegated the authority to administer the contract with Kroll

and Willkie Farr.

5. That it shall be included, as a condition of this additional funding, that the Audit

Committee shall produce all work product and investigation related materials at the conclusion

of their engagement.

PREPARED AND APPROVED AS TO FORM, BUT NOT IN AGREEMENT:

MICHAEL J. AGUIRRE, City Attorney

[submitted unsigned – see accompanying memorandum]

By

Alex W. Sachs

Deputy City Attorney

R-301438

-PAGE 3 OF 4-

AWS:aws 05/11/2006 ACs 2600793, 2600794, 2600795, 2600796 Or.Dept:Mayor R-2006-976

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at its meeting of ____MAY Q 8 2006 ___.

Approved: S-24.01

(date)

By Deputy City Clerk

JERRY SANDERS, Mayor

JERRY SANDERS, Mayor

ELIZABETH S. MALAND

City Clerk

Office of The City Attorney City of San Diego

MEMORANDUM MS 59 RECEIVED LITY CLERK'S OFFICER 06 MAY 23 PM 2:53 SAN DIEGO, CALIF.

 $\partial \phi$

(619) 236-6220

DATE:

March 23, 2006

TO:

Elizabeth Maland, City Clerk

FROM:

City Attorney

SUBJECT:

Resolution R-2006-976 Authorizing Payment of Additional Funds for the City of

San Diego's Audit Committee and Related Entities

The attached R-2006-976 (City Attorney's numbering) is provided by the City Attorney in accordance with San Diego Charter section 40 that requires that resolutions be prepared in writing and to facilitate the processing and publishing of the resolution by the City Clerk.

However, the fact that we are providing the resolution should not be construed as a judgment of the legality of these actions. As you know, the City Attorney continues to be concerned regarding the allocation of funds for this action across the Departments City-wide.

The resolution, which is unsigned, reflects the actions of the City Council on May 8, 2006 on item S403 as noted in the Clerk's minutes. If you have any questions regarding this matter, please feel free to contact us.

MICHAEL J. AGUIRRE, City Attorney

Ву

Alex W. Sachs

Deputy City Attorney

AWS:aws Attachment

2 - 301438

				CI	ERTIFICATE	OF UNALLOT	TED BALA	NCE	AC	2600793
								ORIGINATING	DEPT. NO.:	010
						allotment of fu asury, and is o			forth in th	e foregoing resolution is
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Purpose) :									
Date:						By:				
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LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
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Not to Ex	ceed			\$4	,100,000.00					
Vendor:		Kroll, Inc. /	Willkie Farr	& Gallaghe	er .					
Purpose	:	To authoriz	e the additio	nal funding	of \$4,100,000	0.00 for Audit	Committee	services relate	ed to the FY	′ 2003 audit.
Date:			May s	5, 2006		Ву:	Less	and of	alfu	ente 'S DEPARTMENT
			·		AC	COUNTING DATA				
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
<u></u>									ALERA GALLANDA	
			see	attached	distribution					
							·····			

R- 301438

AC-361 (REV 2-92)

MAY 0 8 2006

TOTAL AMOUNT

AC_

FUND OVERRIDE

2600793

AC2600793: Kroll / Willkie Farr & Gallagher Distribution of Expenses Pensionable Salaries

Total Amount:

\$ 4,100,000.00

Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
001	0	100			9544		2,923,710.00	71.31%
002	0	41400	730	100	4151	002150	34,850.00	0.85%
003	0	41200	750	1001	4151	001002	7,790.00	0.19%
004	0	41200	751	1002	4151	001500	16,810.00	0.41%
005	0	41200	752	1000	4151	000110	33,620.00	0.82%
006	0	41200	753	010	4151	002000	10,660.00	0.26%
007	0	41200	754	020	4151	004229	2,870.00	0.07%
008	0	41210	755	1002	4151	001500	8,200.00	0.20%
009	0	41210	757	020	4151	004229	39,360.00	0.96%
010	0	41210	758	010	4151	001001	2,460.00	0.06%
011	0	41210	759	010	4151	002010	6,970.00	0.17%
012	0	41500	760	163	4151	000163	336,610.00	8.21%
013	0	41506	776	455	4151	776260	399,340.00	9.74%
014	0	41100	720	2000	4151	001101	6,970.00	0.17%
015	0	50050	850	2000	4151	085010	52,890.00	1.29%
016	0	50050	5431	100	4151	543100	24,190.00	0.59%
017	0	41300	1311	1100	4151	001110	2,050.00	0.05%
018	0	41300	1312	1250	4151	000100	14,350.00	0.35%
019	0	41300	1313	1310	4151	001310	60,270.00	1.47%
020	0	41300	1314	1410	4151	001110	34,850.00	0.85%
021	0	41300	1316	1610	4151	001110	50,840.00	1.24%
022	0	41300	1317	1720	4151	001110	30,340.00	0.74%

Total:

4,100,000.00

100.00%

Purpose: By: AUDITOR AND COMPTROLLER'S DEPARTMENT					C	ERTIFICATE	OF UNALLO	TTED BALA	ANCE	AC	2600794
AMOUNT Purpose: By: AUDITOR AND COMPTROLLER'S DEPARTMENT ACCOUNTING DATA ACCOUNTING DA									ORIGINATING	DEPT. NO.:	010
Purpose: By: AUDITOR AND COMPTROLLER'S DEPARTMENT										et forth in the	foregoing resolution is
Purpose: By: AUDITOR AND COMPTROLLER'S DEPARTMENT	Amount:	:						Fund:			
Date: By: AUDITOR AND COMPTROLLER'S DEPARTMENT ACCTOR LINE CY PY FUND DEPT ORG ACCOUNT JOB ORDER OF SATION ACCOUNT 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 hattached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do he further certify, in conformact, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money actually in the Treasury, together with the moneys anticipated to come into the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are other unencumbered. Not to Exceed: \$1,300,000.00 Vendor: KPMG Purpose: May 5, 2006 By: ACCOUNT JOB ORDER CERTIFICATION OF UNENCUMBERED BALANCE AUDITOR AND COMPTROLLER'S DEPARTMENT ACCTOR ACCOUNTING DATA CONTRACTOR ACCOUNTING DATA CONTRACTOR AUDITOR AND COMPTROLLER'S DEPARTMENT ACCTOR AUDITOR AND COMPTROLLER'S DEPARTMENT ACCTOR AUDITOR AND COMPTROLLER'S DEPARTMENT ACCTOR ACCOUNTING DATA CONTRACTOR AUDITOR AND CONTRACTOR AMOUNT AMOUNT AMOUNT AMOUNT AMOUNT AMOUNT AMOUNT	Purpose	: .									
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Purpose: To authorize the additional funding of \$1,300,000.00 for audit services related to the City's FY 2003 financial statements Date: May 5, 2006 By: Line CY PY FUND DEPT ORG. ACCOUNT JOB ORDER OPERATION ACCOUNT BENF/ EQUIP FACILITY AMOUNT AMOUNT AMOUNT	further co for the p anticipate actually i unencum	ertify, ourposed to define the in the observed	in conformi se of said o come into th Treasury, to d.	ty with the loontract, the ne Treasury	requirements at sufficient , to the cred n the money	s of the Chart moneys to m it of the appro s anticipated t	er of the City neet the oblig priation from	of San Dieq ations of s which the sa	go, that suffic aid contract ame are to be	sient moneys are actually e drawn, and	have been appropriated in the Treasury, or are that the said money now
Purpose: To authorize the additional funding of \$1,300,000.00 for audit services related to the City's FY 2003 financial statements Date: May 5, 2006 By: Line CY PY FUND DEPT ORG. ACCOUNT JOB ORDER OPERATION ACCOUNT BENF/ EQUIP FACILITY AMOUNT AMOUNT AMOUNT	/endor		KPMG						•		
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see attached distribution											
			••••	see	attached	distribution					

TOTAL AMOUNT		······································		1					TOTAL	AMOUNT	
C-361 (REV 2-92) FUND OVERRIDE	AC-361 (REV	/ 2-92)								. =	FUND OVERRIDE

R-301438

AC2600794: KPMG Distribution of Expenses Pensionable Salaries

Total Amount:

\$ 1,300,000.00

Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
001	0	100			9544	·	927,030.00	71.31%
002	0	41400	730	100	4151	002150	11,050.00	0.85%
003	0	41200	750	1001	4151	001002	2,470.00	0.19%
004	0	41200	751	1002	4151	001500	5,330.00	0.41%
005	0	41200	752	1000	4151	000110	10,660.00	0.82%
006	0	41200	753	010	4151	002000	3,380.00	0.26%
007	0	41200	754	020	4151	004229	910.00	0.07%
800	0	41210	755	1002	4151	001500	2,600.00	0.20%
009	0	41210	757	020	4151	004229	12,480.00	0.96%
010	0	41210	758	010	4151	001001	780.00	0.06%
011	0	41210	759	010	4151	002010	2,210.00	0.17%
012	0	41500	760	163	4151	000163	106,730.00	8.21%
013	0	41506	776	455	4151	776260	126,620.00	9.74%
014	0	41100	720	2000	4151	001101	2,210.00	0.17%
015	0	50050	850	2000	4151_	085010	16,770.00	1.29%
016	0	50050	5431	100	4151	543100	7,670.00	0.59%
017	0	41300	1311	1100	4151	001110	650.00	0.05%
018	0	41300	1312	1250	4151	000100	4,550.00	0.35%
019	0	41300	1313	1310	4151	001310	19,110.00	1.47%
020	0	41300	1314	1410	4151	001110	11,050.00	0.85%
021	0	41300	1316	1610	4151	001110	16,120.00	1.24%
022	0	41300	1317	1720	4151	001110	9,620.00	0.74%

Total:

1,300,000.00

100.00%

		CERTIFICATE OF UNALLOTTED BALANCE						AC	2600	2600795		
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					uired for the a e into the Trea				e set	forth in th	he foregoing	resolution is
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Purpose	∋ : _											
Date:	,					D						
Date.	•					ру.		AUDITOR	R AND C	OMPTROLLE	R'S DEPARTMENT	
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/endor:		Macias, Gir	ni, & Compa					**				
Ourpose	: .	To authoriz statements	·····	onal funding	of \$150,000.0	00 for audit se	rvices relate	ed to the	City's	FY 2004	and FY 2005	financial
Date:			Мау	5, 2006		Ву:	Lean	rend	A CAID C	ALL OMPTROLER	luente R'S DEPARTMENT	ī
					ACC	COUNTING DATA		-				
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			see	attached	distribution							
								Т	OTAL	AMOUNT		
.C-361 (RE\	/ 2-92)											OVERRIDE
										AC	2600)795

R-301438

AC2600795: Macias & Gini Distribution of Expenses Pensionable Salaries

Total Amount:

\$ 150,000.00

Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
001	0	100			9544		106,965.00	71.31%
002	0	41400	730	100	4151	002150	1,275.00	0.85%
003	0	41200	750	1001	4151	001002	285.00	0.19%
004	0	41200	751	1002	4151	001500	615.00	0.41%
005	0	41200	752	1000	4151	000110	1,230.00	0.82%
006	0	41200	753	010	4151	002000	390.00	0.26%
007	0	41200	754	020	4151	004229	105.00	0.07%
800	0	41210	755	1002	4151	001500	300.00	0.20%
009	0	41210	757	020	4151	004229	1,440.00	0.96%
010	0	41210	758	010	4151	001001	90.00	0.06%
011	0	41210	759	010	4151	002010	255.00	0.17%
012	0	41500	760	163	4151	000163	12,315.00	8.21%
013	0	41506	776	455	4151	776260	14,610.00	9.74%
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015	0	50050	850	2000	4151	085010	1,935.00	1.29%
016	0	50050	5431	100	4151	543100	885.00	0.59%
017	0	41300	1311	1100	4151	001110	75.00	0.05%
018	0	41300	1312	1250	4151	000100	525.00	0.35%
019	0	41300	1313	1310	4151	001310	2,205.00	1.47%
020	0	41300	1314	1410	4151	001110	1,275.00	0.85%
021	0	41300	1316	1610	4151	001110	1,860.00	1.24%
022	0	41300	1317	1720	4151	001110	1,110.00	0.74%

Total:

150,000.00

100.00%

				C	EKTIFICATE	OF UNALLO	LIED BALA	ANCE		AC	, 2000	1190
								ORIGINAT	ING	DEPT. NO.	.:0	10
					uired for the a e into the Trea					forth in	the foregoing	resolution is
Amount	:						Fund:					
Purpose	e: ₋											
Date:						Ву:		AUDITO	R AND C	OMPTROLLI	ER'S DEPARTMEN'	r
					AC	COUNTING DATA						
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMG	DUNT
								7	TOTAL	AMOUNT	ELINE	OVERRIDE
further co for the participat	ertify, purpos ted to o in the nbered	in conforming of said of said of said of said of the come into the come in the com	ity with the i contract, tha he Treasury	requirements at sufficient , to the cred n the money	s of the Charte moneys to m it of the appro	er of the City neet the oblig priation from	of San Dieg ations of s which the sa	go, that s aid cont ame are	sufficie tract a to be	ent mone ire actua drawn, ar	San Diego; an eys have been illy in the Tre nd that the sai appropriation,	appropriated asury, or are d money now
Vendor:		<u></u>			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			-				
Purpose	: :		e the additi	onal funding al statement) for the comp	letion of ele	ectronic o	data c	ompilatio	n related to th	e City's audit
Date:	,		May	5, 2006		Ву:	Lea	nava(R AND		Suant ER DEPARTMENT	
					AC	COUNTING DATA		~				
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	АМС	TNUC
			see	attached	distribution							
			366	attached	GIOLIDUUUII							
······································	11							1	OT AL	AMOUNT		
AC-361 (REV	V 2-92)								OTAL	AIVIOUN I	FUND	OVERRIDE
·												

R- 301438

AC2600796: NTI Breakwater Distribution of Expenses Pensionable Salaries

Total Amount:

\$ 75,948.00

Γ	Line	CY/PY	Fund	Dept	Org	Account	Job Order	Amount	Percentage
	001	0	100			9544		54,158.500	71.31%
	002	0	41400	730	100	4151	002150	645.560	0.85%
\ 	003	0	41200	750	1001	4151	001002	144.300	0.19%
	004	0	41200	751	1002	4151	001500	311.390	0.41%
	005	0	41200	752	1000	4151	000110	622.770	0.82%
	006	0	41200	753	010	4151	002000	197.470	0.26%
	007	0	41200	754	020	4151	004229	53.160	0.07%
	800	0	41210	755	1002	4151	001500	151.900	0.20%
L	009	0	41210	757	020	4151	004229	729.100	0.96%
L	010	0	41210	758	010	4151	001001	45.570	0.06%
L	011	0	41210	759	010	4151	002010	129.110	0.17%
L	012	0	41500	760	163	4151	000163	6,235.330	8.21%
L	013	0	41506	776	455	4151	776260	7,397.340	9.74%
	014	0	41100	720	2000	4151	001101	129.110	0.17%
	015	0	50050	850	2000	4151	085010	979.730	1.29%
	016	0	50050	5431	100	4151	543100	448.090	0.59%
	017	0	41300	1311	1100	4151	001110	37.970	0.05%
	018	0	41300	1312	1250	4151	000100	265.820	0.35%
L	019	0	41300	1313	1310	4151	001310	1,116.440	1.47%
L	020	0	41300	1314	1410	4151	001110	645.560	0.85%
	021	0	41300	1316	1610	4151	001110	941.760	1.24%
	022	0	41300	1317	1720	4151	001110	562.020	0.74%

Total:

75,948.000

100.00%

Passed by the Council of The City of	San Diego on _	MAY 0	8 2006 , by	, by the following vote:				
Council Members	Yeas	Nays	Not Present	Ineligible				
Scott Peters				V				
Kevin Faulconer	y							
Toni Atkins	I							
Anthony Young								
Brian Maienschein								
Donna Frye								
Jim Madaffer								
Ben Hueso								
Date of final passage MAY 2,4.20	08.							
•								
AUTHENTICATED BY:) f	JERRY SAN of The City of San					
ACTIENTED D1.		Mayor	ELIZABETH S.					
(Seal)		City Cler	k of The City of Sa	n Diego, Califor	nia.			
	Ву	ma	uj-Cej	elds	, Deputy			
					,			
					*			
		Office of	the City Clerk, Sa	n Diego, Califo	rnia			
		-1.40 - N	R-	301438				

Resolution Number