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8/2/11

ORDINANCE NUMBER O- 20079 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 04 2011

AN ORDINANCE AUTHORIZING ADDITIONAL FUNDING FOR THE RETENTION OF K&L GATES, LLP TO PROVIDE LEGAL TAX ADVICE AND LEGAL REPRESENTATION.

WHEREAS, in early 2006, the City of San Diego authorized the retention of the law firm of K&L Gates, LLP (formerly known at the time as Preston Gates & Ellis, LLP) (K&L Gates) to provide an expert tax advisory opinion on the tax consequences, if any, of the rescission of purchase of non-creditable service credit agreements by San Diego City Employees' Retirement System (SDCERS) members; and

WHEREAS, the City Attorney recommended the retention of K&L Gates, who has the necessary skills and experience to assist the City of San Diego in this matter; and

WHEREAS, since their initial retention in 2006, K&L Gates has provided tax advice on various employee benefit-related issues, including: (1) preparing amendments needed to keep the City's Supplemental Pension Savings Plan (SPSP), SPSP-H, and 401(k) plans in compliance with federal tax law, (2) filing for and obtaining favorable determination letters from the IRS on the SPSP, SPSP-H and 401(k) plans, and (3) drafting the City's qualified defined contribution plan for General Member employees hired on or after July 1, 2009; and

WHEREAS, on March 1, 2011, the San Diego City Council (Council) approved a Second Agreement for the continued retention of K&L Gates in an amount not to exceed \$150,000 by San Diego Ordinance O-20027 (Mar. 11, 2011); and

WHEREAS, most of this amount was exhausted due to a balance that was owed to K&L Gates for work performed before the Council approved the additional funding on March 1, 2011; and

WHEREAS, K&L Gates has notified the City that it has or will soon expend the full \$150,000 approved in the Second Agreement and is in need of additional funding; and

WHEREAS, on May 10, 2011, the Council adopted San Diego Resolution R-306805, which approved retroactive and prospective amendments to the Supplemental Pension Savings Plan - Amended and Restated Effective January 1, 2010 (SPSP), to allow an eligible Participant to waive the Employer Matching Contribution to the Mandatory Employee Contributions on a fiscal year basis for Fiscal Years 2010, 2011, and 2012; and

WHEREAS, R-306805 also authorized the Mayor to file a Voluntary Correction Program (VCP) application with the IRS seeking approval of the retroactive amendments and to work with the IRS to correct past SPSP operational failures; and

WHEREAS, as stated in the Executive Summary for R-306805, it is anticipated that the VCP process will require approximately \$20,000 in outside tax counsel fees, which will be provided by K&L Gates; and

WHEREAS, on May 13, 2011, the Council approved by Resolution R-306806 the Tentative Agreement Regarding Retiree Health Benefits, between the City and the San Diego Municipal Employees' Association; San Diego City Firefighters, International Association of Fire Fighters Local 145; Local 127, American Federation of State, County and Municipal Employees, AFL-CIO; the International Brotherhood of Teamsters, Local 911, and the Deputy City Attorneys Association; and

WHEREAS, on June 28, 2011, the Council approved by Resolution R-306885 the Tentative Agreement Regarding Retiree Health Benefits, between the City and the San Diego Police Officers Association; and

WHEREAS, the Tentative Agreements require, among other things, that the City establish a defined contribution-style health reimbursement plan and trust, which must be operational before April 1, 2012; and

WHEREAS, the City's Management Team is currently engaged in negotiations with the recognized labor organizations over the trust vehicle and plan design for the defined contribution-style plan and trust; and

WHEREAS, K&L Gates has the necessary skills and experience to assist the City of San Diego in this matter; and

WHEREAS, because the original contract amount of \$150,000 approved in the Second Agreement has been spent, the City is seeking additional funding for K&L Gates in the amount of \$75,000, which would bring the total contract amount to \$225,000; NOW, THEREFORE,

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

Section 1. That the City Attorney is authorized to amend the agreement with K&L Gates, LLP for the provision of expert tax representation in connection with the filing of a Voluntary Correction Program (VCP) application with the IRS, to advise the City with respect to the plan design and establishment of a defined contribution-style health reimbursement plan and trust, and to provide expert tax advice on an as needed basis.


Section 2. That the Chief Financial Officer is authorized to expend additional amounts not to exceed \$75,000 for this contract from the Citywide Expenditures Program Budget in Fund 100000, General Fund, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Roxanne Story Parks
Deputy City Attorney

RSP:ccm
7/15/2011
Or.Dept:City Attorney
Doc No.: 214494

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 02 2011.

ELIZABETH S. MALAND
City Clerk

By Carmina J. Trayano
Deputy City Clerk

Approved: 8.4.11
(date)

J.S.
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor