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RESOLUTION NUMBER R- 307177

DATE OF FINAL PASSAGE DEC 15 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY ATTORNEY'S OFFICE TO APPOINT KANE, BALLMER & BERKMAN FOR SPECIAL LEGAL SERVICES, UP TO THE AGGREGATE AMOUNT OF \$600,000, IN SUPPORT OF (1) PROJECTS TO BE ADMINISTERED BY THE CITY OF SAN DIEGO (CITY) PURSUANT TO THE COOPERATION AGREEMENT FOR PAYMENT OF COSTS ASSOCIATED WITH CERTAIN REDEVELOPMENT AGENCY FUNDED PROJECTS BETWEEN THE CITY AND THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO DATED FEBRUARY 28, 2011, AS AMENDED; AND (2) THE CITY'S IMPLEMENTATION OF THE REDEVELOPMENT PLANS FOR REDEVELOPMENT PROJECT AREAS PURSUANT TO THE TRANSFER FROM THE AGENCY TO THE CITY OF CERTAIN REAL PROPERTY ASSETS AND RELATED ASSETS IN MID-MARCH 2011.

WHEREAS, since 1997, and for several years before that, the law firm of Kane, Ballmer & Berkman (KBB) has been Special Counsel to the Redevelopment Agency of the City of San Diego (Agency) pursuant to an Agreement for Legal Services; and

WHEREAS, on August 2, 2011, the Agency Board approved the Fourth Amendment to the Agreement for Legal Services between the Agency and KBB (Proposed Fourth Amendment) to add \$800,000 to the amount of compensation pursuant to the Agreement for Legal Services; however, the Proposed Fourth Amendment is not in effect; and

WHEREAS, on August 11, 2011, before the Fourth Amendment could be signed by the Mayor as Executive Director of the Agency and before the Agency's authorizing resolution for the Fourth Amendment became effective, the California Supreme Court (Supreme Court) issued an order that, among other things, granted a partial stay against the implementation of Assembly Bill x1 26 (AB 26) and Assembly Bill x1 27 (AB 27) – two redevelopment-related bills which are being challenged in the pending litigation; and

WHEREAS, on August 17, 2011, the Supreme Court issued an amended version of the earlier order (Amended Order); and

WHEREAS, the Amended Order imposes restrictions on, among other things, the authority of redevelopment agencies to transact new business, including but not limited to incurring any new or expanding any existing monetary or legal obligation, unless it is an existing enforceable obligation; and

WHEREAS, the Agency cannot execute the Proposed Fourth Amendment at this time because, by doing so, the Agency may risk violating the Amended Order; and

WHEREAS, approximately \$289.4 million was transferred by the Agency to the City on or about March 11, 2011, for the City's use in implementing the Projects identified in the Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects between the City and the Agency dated February 28, 2011, as amended by the First Amendment thereto dated March 11, 2011, the Second Amendment thereto dated March 15, 2011, and the Third Amendment thereto dated August 8, 2011 (collectively, Cooperation Agreement); and

WHEREAS, staff is continuing to work on Projects identified in the Cooperation Agreement and on the real property assets and the related assets transferred from the Agency to the City. Although the City Attorney's Office has the expertise to handle these matters, there is inadequate attorney staff to respond to legal questions associated with the ongoing stay and the existing project workload; and

WHEREAS, the proposed Agreement For Legal Services between the City and KBB in connection with Cooperation Agreement Projects (Agreement) will involve the City's

expenditure of an amount not to exceed \$600,000, including fees and expenses, toward KBB's provision of legal services on an "as-needed" basis; and

WHEREAS, the expiration date of the Agreement is June 30, 2012, which is expected to allow sufficient time for the Agency and the City to await the final outcome of the pending litigation in the Supreme Court and to complete a competitive selection process for the retention of outside legal counsel concerning redevelopment matters on a long-term basis; and

WHEREAS, the City intends to fulfill its financial obligations under the Agreement with the funds prepaid by the Agency to the City for the City's use in implementing Projects identified in the Cooperation Agreement and not through the City's general fund. Accordingly, the Agreement contains a provision stating that the City is not required to expend or to promise to expend monies from its general fund to satisfy all or any portion of the obligations set forth in the Agreement; NOW, THEREFORE,

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

1. That the City Attorney is authorized to retain KBB to provide legal services with respect to the City's administration of Projects under the Cooperation Agreement and the City's implementation of redevelopment plans for the fourteen redevelopment project areas located within the City.

2. That the Mayor, or designee, is authorized, on behalf of the City, to execute the Agreement For Legal Services between the City and KBB in connection with Cooperation Agreement Projects, on an as-needed basis, for an amount not to exceed \$600,000 (Agreement), including all attachments and exhibits thereto requiring the City's signature; a copy of the Agreement, when fully executed, shall be placed on file with the City Clerk as Document No.

RR- 307177 .

3. That the City's Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$600,000 for the Agreement, on an as-needed basis, for the purpose of executing this Agreement and meeting minimum contract requirements, contingent upon the Comptroller certifying the availability of Cooperation Agreement funds sufficient to pay for the legal services to be provided by KBB on each Project or task.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Charles E. Jagolinzer  
Charles E. Jagolinzer  
Deputy City Attorney

CEJ:nja  
11/18/2011  
Or.Dept:City.Redevlopment  
R-2012-170  
PL#2011-07632

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 6 2011

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 12.15.11  
(date)

[Signature]  
JERRY SANDERS, Mayor

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

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JERRY SANDERS, Mayor