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ORDINANCE NUMBER O- 20162 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 07 2012

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO 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 (City) 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 on the rescission of purchase of service credit agreements by San Diego City Employees' Retirement System (SDCERS) members; and

WHEREAS, the City Attorney recommended the retention of K&L Gates, because they had the necessary skills and experience to assist the City in that matter; and

WHEREAS, since their initial retention in 2006, K&L Gates has provided tax advice on various tax and 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 Internal Revenue Service (IRS) on the SPSP, SPSP-H, and 401(k) plans; (3) drafting the City's qualified defined contribution plan for General Member employees hired on or after July 1, 2009; (4) advising the City on correcting operational failures involving a potentially unqualified cash or deferred arrangement (CODA) involving the SPSP Plan, including preparing needed amendments to that plan; and (5) advising the City on the establishment of the new post-retirement health benefits; and

WHEREAS, on March 1, 2011, the San Diego City Council (City 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, most of which was used to pay an outstanding balance that was owed to K&L Gates before that date; and

WHEREAS, on August 2, 2011, the City Council approved the First Amendment to the Second Agreement in an amount not to exceed \$75,000 for the continued retention of K&L Gates by Ordinance O-20027; and

WHEREAS, this additional amount was sought to provide advice related to correcting the SPSP Plan operational failures, and establishing the new post-retirement health benefits, including the new defined contribution-style plan or plans associated with Option C of the new post-retirement health benefits; and

WHEREAS, on November 15, 2011, the City Council adopted San Diego Resolution R-307153, which approved a contract with Burke, Williams & Sorensen, LLP (Burke) to provide legal services related to finalizing labor negotiations for Fiscal Year 2012, and for labor negotiations for Fiscal Year 2013 (Burke Contract), and to complete all legal documents related to implementation of the City's new post-employment health benefits; and

WHEREAS, the City and Burke acknowledged in the Burke Contract's Scope of Work that Burke does not have the internal expertise in federal or state tax law, and that Burke may consult with an outside tax attorney on tax-related matters, after receiving the City's approval; and

WHEREAS, in November, 2011, the Law Firm received approval from the City to consult with K&L Gates regarding the establishment of the new post-retirement health benefits for eligible employees who retire after March 31, 2012; and

WHEREAS, K&L Gates has been providing ongoing tax advice to the Law Firm and the City related to the establishment of the new post-retirement health benefits, including on the establishment of the defined contribution-style plans and trusts associated with Option C; and

WHEREAS, K&L Gates has notified the City that it has expended the full \$75,000 approved in the First Amendment to the Second Agreement and is in need of additional funding; and

WHEREAS, K&L Gates' ongoing advice is needed to establish the new post-retirement health benefits and related defined contribution-style plans and trusts; and

WHEREAS, K&L Gates' ongoing assistance is also needed to establish an alternative trust vehicle to receive the pre-tax employee contributions required under Options A and B of the City's new post-retirement health benefits, due to the unforeseen refusal by the CalPERS IRC section 115(1) Trust to accept these contributions; and

WHEREAS, although the City's correction of the SPSP CODA is nearly complete, K&L Gates' ongoing assistance is needed with respect to the Voluntary Correction Program (VCP) application seeking IRS approval of the retroactive amendments to correct past SPSP operational failures, which will include ongoing work with the IRS; and

WHEREAS, because the contract amount of \$75,000 approved in the First Amendment to the Second Agreement has been spent, the City is seeking additional funding for K&L Gates in the amount of \$125,000, which would bring the total contract amount for the Second Agreement to \$350,000; 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 Second Agreement with K&L Gates, LLP to provide expert tax advice and representation in connection with the City's

Voluntary Correction Program (VCP) application with the IRS, and to advise the City on the new post-employment health benefits, including the plan design and establishment of defined contribution-style health reimbursement plans and trusts, 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 \$125,000 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
01/09/2012
Or.Dept:City Attorney
Doc No.: 300740

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~APR 24 2012~~

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5-7-12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor