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MICHAEL N. FEUER
City Attorney

REPORT NO. R16-0202
JUN 21 2016

REPORT RE:

**AMENDMENT TO CONTRACT WITH OUTSIDE COUNSEL
STEPTOE & JOHNSON
FOR TAX, REGULATORY AND FIDUCIARY ADVICE**

The Honorable City Council
of the City of Los Angeles
City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

This report requests your approval of an amendment to contract number 123044 with Steptoe & Johnson (Steptoe) to provide advice on tax, regulatory and fiduciary matters to the Board of Deferred Compensation Administration (BDCA) and staff of the Office of Personnel Administration (Personnel) to extend the term for two additional years (2016-2018) and increase the funding for that period in the amount of \$10,000. This funding would raise the total budget for the five-year contract with Steptoe to \$30,000. Payment for the firm's services will be made by the BDCA from funds collected from participants in the City's Deferred Compensation Plan (Plan).

Background

In February 2013, the Office of the City Attorney approved the retention of Steptoe for the provision of advice on tax, regulatory and fiduciary matters to the BDCA and Personnel. The City Attorney also approved, upon the request of the BDCA, funding for the first year of the three-year contract in the amount of \$10,000. Funding for the second and third years of the contract was to be requested by the BDCA.

In March 2013, the BDCA approved the retention of Steptoe and recommended that the City Council approve the retention and authorize the City Attorney to enter into a

professional services agreement with the firm. The City Council, in August 2013, approved the retention of Steptoe with funding in the amount of \$10,000 and waived certain conflicts of interest between Steptoe and the City.

The Agreement for Professional Legal Services ("Agreement") between the City and Steptoe was entered in October 2013. The Agreement provides for a term of three years (August 2013 to August 2016) and compensation in the amount \$10,000. During the first year of the Agreement, Steptoe provided advice on various Plan matters, including the loan program, auto enrollment and beneficiary issues. Don Wellington, the Steptoe lead attorney, also conducted fiduciary training for the BDCA at a regular meeting of the Board. The amount billed by Steptoe for the first year totaled \$7,785.

At its July 2014 meeting, the BDCA approved additional funding for the second year of the Agreement in the amount of \$10,000 and directed that the unused funds from the first year of the contract (\$2,215) be carried over and made available for use in the second year. The BDCA also requested that the City Attorney take the necessary actions to amend the Agreement to allow for the increased funding for the second year of the contract. The City Council, at its meeting of December 15, 2015, approved the additional funding for Agreement, which was amended to increase total funding to \$20,000.

During the second year of the Agreement, 2014-15, Steptoe worked on (i) a review of the proposed revision of the Plan Document to include automatic enrollment for City employees, (ii) an overview of the Internal Revenue Service's private letter ruling process for deferred compensation plans, (iii) a summary of IRS regulations regarding hardship determinations, and (iv) an opinion regarding the distribution of a Plan participant's account funds upon re-employment by the City. For the second year of the agreement, Steptoe billed the City a total of \$1,935; the total amount billed through September 30, 2015 was \$9,720.

During the third year of the Agreement, 2015-16, Steptoe worked on (i) a proposed revision of the Plan Document to include group trusts for certain types of investments, (ii) review of rules and regulations related to distribution of account funds upon severance of employment, and (iii) member beneficiary designation and distribution issues. Through February 2016, Steptoe had billed the City a total of \$12,870, leaving \$7,130 available for legal services.

DISCUSSION

The BDCA, at its meeting of May 5, 2016, recommended that the City Attorney approve the two-year extension to the term of the Agreement for a total of five years and approved additional funding of \$10,000 for the fourth and fifth years for a total contract amount of \$30,000. While there are funds of \$7,130 for the remainder of the third year of the contract, BDCA staff has indicated that additional funds will be needed if the term of the Agreement is extended for two years. Although it is difficult to predict the universe of matters for which outside tax counsel services may be needed, BDCA anticipates that Steptoe will be requested to work on further reviews of the Plan Document and possible

revisions thereto related to group trusts and other issues, continued guidance on member beneficiary issues and as needed tax and regulatory advice and guidance on matters coming before the BDCA. Funding for the \$10,000 will be from funds collected from Plan participants.

It should be noted that the Steptoe attorneys, Don Wellington, Ed Gregory and Ellen Kohn, among others, have provided a better than satisfactory level of services on matters assigned. BDCA staff concurs with this assessment of the legal services provided by the firm.

RECOMMENDATIONS

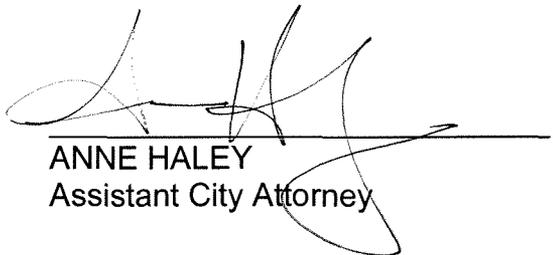
- 1) Authorize the City Attorney to amend contract 123044 with Steptoe & Johnson for the purposes of extending the contract by two years (to August 26, 2018) and to add \$10,000, for a new total contract amount of \$30,000;
- 2) Authorize the City Attorney or designee to prepare Controller instructions for any necessary technical adjustments, subject to the approval of the CAO, and authorize the Controller to implement the instructions.

If you have any questions regarding this matter, please contact Assistant City Attorney Curtis Kidder at (213) 978-7736. He, or another member of this Office, will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By


ANNE HALEY
Assistant City Attorney