

City of Brisbane

Agenda Report

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Amendment to Contract for Legal Services with Holland & Knight

DATE: For Council Meeting on June 15, 2009

City Council Goals:

To develop management and fiscal systems to maximize effectiveness of city services and accountability to Brisbane taxpayers and citizens.

Purpose:

The purpose of the resolutions is to enable the City's legal counsel to gain access to confidential records that are required for the effective prosecution of the lawsuit commenced by the City against the State Board of Equalization.

Recommendation:

Adopt Resolution No. 2009-30 approving an amendment to the contract for legal services.

Adopt Resolution No. 2009-31 authorizing access to the City's sales tax records maintained by the State Board of Equalization.

Background:

The City retained the services of Holland & Knight (H&K) as special counsel for the purpose of conducting a lawsuit against the State Board of Equalization (SBOE) for reallocation of certain sale tax revenues that the City believes should be paid to Brisbane. In order to conduct this lawsuit, H&K needs access to the City's sales tax records maintained by the SBOE. These records are confidential and may not be disclosed except under the circumstances prescribed by the California Revenue and Taxation Code. Section 7056(b) of the R&T Code authorizes disclosure of sales tax records when requested by resolution of the legislative body of the City. The resolution must specify the person entitled to receive such records and must certify that such person has an existing contract with the city that contains various restrictions on use of the tax information by the recipient.

Discussion:

Resolution No. 2009-30 will approve an amendment to the existing contract with H&K to include the restrictions on use of sale tax information, as set forth in R&T Code Section 7056(b).

Resolution No. 2009-31 requests the SBOE to provide H&K access to the City's sales tax records, subject to the restrictions as contained in its amended contract with the City.

Fiscal Impact:

No immediate impact. If successful, the litigation will result in increased sales tax revenues for the City.

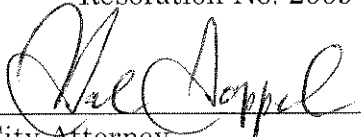
Measure of Success:

Access to sales tax records being provided to H&K by the SBOE.

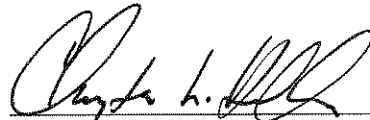
Attachments:

Resolution No. 2009-30.

Resolution No. 2009-31



City Attorney



City Manager

RESOLUTION NO. 2009-31

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE FOR ACCESS TO TAX RECORDS AND DOCUMENTS PURSUANT TO CALIFORNIA REVENUE & TAXATION CODE SECTION 7056(b)

WHEREAS, the City has retained the law firm of Holland & Knight LLP to represent it in a dispute with the California State Board of Equalization ("SBOE") regarding the allocation and payment of certain sales tax revenues owing to the City pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax Code §§ 7200, *et seq.*)(the "Act"); and

WHEREAS, pursuant to that representation, litigation has been commenced by the City against the SBOE for violation of the Act and is presently pending in the Superior Court of California for the City and County of San Francisco as Case No. CPF-09-509234 ("the Lawsuit"); and

WHEREAS, section 7056(b) of the Revenue and Taxation Code ("RTC") provides, in pertinent part, that: "When requested by resolution of the legislative body of any . . . city, . . . the board [SBOE] shall permit any duly authorized . . . person designated by that resolution, to examine all of the sales or transactions and use tax records of the board pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the . . . city . . ."; and

WHEREAS, in order for Holland & Knight LLP and its consultants (including Albin C. Koch, Esq.) to assist and represent the City in the Lawsuit, the City has agreed to authorize certain lawyers, staff and consultants working with Holland & Knight LLP to have access to, and examine and use all sales or transactions and use tax records whether held by the SBOE or the City pertaining to the ascertainment of the sales and use taxes at issue in the Lawsuit that are properly due the City; and

WHEREAS, City wishes to provide access to all such tax records otherwise confidential under RTC section 7056 of the Act to certain lawyers, staff and consultants at Holland & Knight LLP,

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
Brisbane as follows:**

1. Pursuant to RTC Section 7056(b) , the City hereby provides, and requests the SBOE to provide, access to the lawyers, staff and consultants working with Holland & Knight LLP on the Lawsuit to examine and use, all confidential records and data of the SBOE pertaining to the ascertainment of the sales and use taxes collected or to be collected by the SBOE that are the subject of the Lawsuit.

2. In order to identify each person to whom access to records is to be provided pursuant to RTC section 7056(b), the City Attorney shall maintain a list of all lawyers, staff

members and consultants of Holland & Knight LLP who will be given such access pursuant to this Resolution.

3. Pursuant to RTC section 7056(b)(1), the City hereby certifies that:

(A) The City has an existing contract with Holland & Knight LLP to examine the aforementioned sales and use tax records in order to effectively advise and represent the City in the Lawsuit.

(B) The City's contract with Holland & Knight LLP requires that Holland & Knight LLP shall disclose confidential taxpayer information contained in, or derived from, the aforementioned sales or transaction and use tax records only to: (i) officers, employees or other duly authorized representatives of the City; or (ii) parties in the Lawsuit and the Court in the Lawsuit, but only to the extent reasonably necessary in order to pursue the Lawsuit on behalf of the City and only to the extent authorized by the Court in the Lawsuit.

(C) Under the City's contract with Holland & Knight LLP, all lawyers, staff members and consultants of Holland & Knight LLP working on the Lawsuit are prohibited from providing California state sales and use tax consulting services to any retailer during the term of the City's contract with Holland & Knight LLP, to the extent that such agreement is not prohibited by Rule 1-500 of the California Rules of Professional Conduct.

(D) Under the City's contract with Holland & Knight LLP, Holland & Knight LLP is prohibited from retaining the confidential taxpayer information contained in or derived from the aforementioned sales and use tax records after that contract has terminated.

4. The records and information to be provided to Holland & Knight LLP shall be used solely for the purpose of pursuing the City's claims against the SBOE that are the subject of the Lawsuit and for no other purpose, and shall be returned to the City after the contract has terminated.

Mayor

I hereby certify that the foregoing Resolution No. 2009-31 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 15, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sheri Marie Spediacci, City Clerk

RESOLUTION NO. 2009-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING AN AMENDMENT TO CONTRACT FOR LEGAL SERVICES WITH HOLLAND & KNIGHT

WHEREAS, the City has retained the law firm of Holland & Knight LLP ("H&K") to represent it in a dispute with the California State Board of Equalization ("SBOE") regarding the allocation and payment of certain sales tax revenues owing to the City pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax Code §§ 7200, *et seq.*)(the "Act"); and

WHEREAS, pursuant to that representation, litigation has been commenced by the City against the SBOE for violation of the Act and is presently pending in the Superior Court of California for the City and County of San Francisco as Case No. CPF-09-509234 ("the Lawsuit"); and

WHEREAS, section 7056(b) of the California Revenue and Taxation Code ("RTC") provides that access to certain tax records and documents for purposes of pursuing the City's claims in the Lawsuit may be had provided that the City's legislative body pass a resolution requesting and authorizing such access; and

WHEREAS, RTC section 7056(b)(1) further provides that the City shall, in connection with such a resolution, certify that it has an *existing contract*, binding on the persons to whom access to the tax records is to be provided, that contains certain undertakings described in section 7056(b)(1)(A) through 7056(b)(1)(D); and

WHEREAS, the City wishes to amend its existing contract with H&K to comply with the requirements of RTC section 7056(b) so that it can then entertain and adopt a resolution meeting the requirements of RTC section 7056(b) to facilitate access to tax records and documents for the purposes of pursuing the Lawsuit and any related proceedings; and

WHEREAS, a proposed amendment to the contract with H&K has been presented to the City Council, a copy of which is attached hereto as Exhibit "A" and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of **Brisbane** that the amendment to the H&K contract for legal services attached hereto as Exhibit "A" is hereby approved and the Mayor is authorized to execute such amendment for and on behalf of the City of Brisbane.

Mayor

I hereby certify that the foregoing Resolution No. 2009-30 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 15, 2009, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sheri Marie Spediacci, City Clerk

EXHIBIT "A"

AMENDMENT TO CONTRACT FOR LEGAL SERVICES

Pursuant to Council authorization, the City of Brisbane ("City") has retained the law firm of Holland & Knight, LLP ("H&K") to provide it with advice and representation in connection with the City's claims against the California State Board of Equalization ("SBOE"), which are presently pending before the Superior Court of the State of California for the City and County of San Francisco in its Case No. CPF-09-509234 (the "Lawsuit").

In order to provide effective advice and representation to the City in the Lawsuit, it is necessary for H&K, acting through certain of H&K's lawyers, staff and consultants, to have access to all confidential information and data gathered by the City's sales tax consultant, MuniServices, on the City's behalf, as well as all information in the possession, custody or control of the SBOE or others pertaining to the ascertainment of the sales and use taxes that are the subject of the Lawsuit. These data relate to the City's claims in the Lawsuit, which derive from retail sales transactions conducted by various retailers in the City.

Section 7056(b) of the California Revenue and Taxation Code ("RTC") provides that access to such confidential data by any person other than an employee or officer of a city is conditioned upon there being an existing Resolution by the city designating the person to examine the records, data and other information and certifying that the individual meets the conditions specified in RTC Section 7056(b)(1), including the requirement of RTC Section 7056(b)(1)(A) that there be an existing contract with the city to examine the sales and use tax records that meets all requirements of RTC Section 7056(b)(1), subdivisions (A) through (D).

The City and H&K wish to amend their existing Contract for legal services to comply with the legal requirements described in RTC section 7056.

Therefore, H&K and the City do hereby further agree as follows:

1. In connection with its representation of the City, the law firm of Holland & Knight LLP ("H&K") (acting through certain of its partners, associates, employees and consultants whose identities shall be set out in a list maintained by the City Attorney) is hereby authorized to examine all confidential records and data of the State Board of Equalization, including but not limited to records and data available through Muni Services, pertaining to the ascertainment of the sales taxes and use taxes collected or to be collected by the State Board of Equalization that relate to the claims that are the subject of the Lawsuit.

2. H&K and its partners, associates, employees and consultants will disclose any information contained in, or derived from, those sales and use tax records only to: (i) officers, employees or other duly authorized representatives of the City; or (ii) parties in the Lawsuit and the Court in the Lawsuit, but only to the extent reasonably necessary in order to pursue the Lawsuit on behalf of the City and only to the extent authorized by the Court in the Lawsuit.

3. H&K will ensure that each of its partners, associates, employees and consultants who will have access to confidential sales and use tax records has done each of the following prior to, and as a condition of, access to such records: (a) Read this Contract; (b) Signed the list of H&K personnel who will be provided with access to confidential sales and use tax records and information pursuant to this contract; (c) Acknowledged through such signature on the City Attorney's list that he or she is bound by this Contract and by the legal requirements of RTC section 7056 with respect to the confidentiality of sales and use tax records; and (d) Agreed through such signature, to the extent that such agreement is not prohibited by Rule 1-500 of the California Rules of Professional Conduct, not to provide California state sales and use tax consulting services to any retailer during the term of this Contract.

4. H&K will return or (at the City's request) ensure the destruction of all sales and use tax documents disclosed pursuant to this Contract, as well as all other documents containing information derived from those sales and use tax documents, prior to the termination of this Contract.

5. This Contract shall terminate ninety (90) days after H&K ceases to advise or represent the City in connection with the Lawsuit or any subsequent appellate or administrative proceedings concerning the City's claims that are the subject of the Lawsuit, unless the parties otherwise agree in writing. H&K and its personnel who have been provided with confidential sales and use tax records and information pursuant to this contract shall not retain in their files or in any other document the confidential state sales and use tax information to which they have received access after this contract has terminated.

6. This contract may be amended only in writing signed by the parties hereto.

In witness whereof, Holland & Knight LLP and the City have executed this Agreement effective as of June 15, 2009.

CITY OF BRISBANE

HOLLAND & KNIGHT LLP

By _____
A. Sepi Richardson, Mayor

By _____
Charles L. Coleman III, Partner