



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
Date: June 16, 2009

Honorable Mayor and
Members of the City Council

Title: Memorandum of Understanding (MOU): Provision of Legal Services to the Sacramento Public Library Authority

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** 1) authorizing the City Attorney's Office to execute a Memorandum of Understanding with the Sacramento Public Library Authority for legal services in FY2009/10; and 2) authorizing the City Manager or the City Manager's designee to establish revenue and expenditure budgets in the amount of \$50,400 within the City Attorney's FY2009/10 General Fund operating budget.

Contact: Eileen Teichert, City Attorney

Matthew Ruyak, Supervising Deputy City Attorney, 808-3546

Presenters: N/A

Department: City Attorney's Office

Division: N/A

Department ID: 03000

Description/Analysis

Issue: In late 2008, the Sacramento Public Library Authority ("Authority") issued a Request for Proposals for Library Authority Counsel Services, due to the announced retirement of its current counsel, Diane Balter. On May 28, 2009, after a formal selection process, the Authority Board approved the use of the Sacramento City Attorney's Office as Authority Counsel. This report seeks approval of the City Council for the City Attorney's Office to provide counsel services to the Authority.

Policy Considerations: Provision of professional services to the Authority helps achieve the City's goal of making Sacramento the most livable city in America.

Environmental Considerations: None

California Environmental Quality Act (CEQA): This action does not constitute a "project" as defined in section 15378 of the CEQA Guidelines.

Sustainability: Not applicable.

Commission/Committee Action: Not Applicable.

Rationale for Recommendation: The Sacramento Public Library Authority, of which the City is a member agency, is in need of legal services. The Sacramento City Attorney's Office provided those services for many years. The use of the City Attorney's Office will afford the Authority the highest caliber public agency legal services, thus meeting the needs of a vital community asset – public libraries.

Financial Considerations: The Authority will pay the City \$4200 per month (or \$50,400 for FY2009/10) for up to 30 hours, with additional services charged at \$165 per hour. Optional litigation services will be provided at various hourly rates (from \$135 to \$200) based upon nature of the litigated matter. Revenue and expenditure budgets will be established within the City Attorney's FY2009/10 operating budget in the amount of \$50,400 for the amounts paid under the MOU. In subsequent fiscal years, the appropriation of this budget will be contingent on the renewal of the MOU.

Emerging Small Business Development (ESBD): Not Applicable.

Respectfully Submitted by:


Matthew D. Ruyak,
Supervising Deputy City Attorney

Approved by:


Eileen M. Reichert, City Attorney

Recommendation Approved:

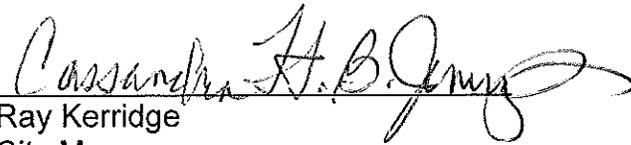

for Ray Kerridge
City Manager

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Attachment 1

Background

The Sacramento Public Library Authority ("Authority") is a joint powers authority created in 1993. The original agreement was amended in 2007 to add new parties and to modify various terms; the County of Sacramento and the cities of Sacramento, Citrus Heights, Elk Grove, Galt, Isleton, and Rancho Cordova are the current parties to the Joint Exercise of Powers Agreement (City Agreement No. 2007-0290).

Legal counsel services for the Authority were provided initially by the Sacramento City Attorney's Office under City Manager Agreement 94-339. In 2004, Diane Balter, the Deputy City Attorney assigned to the Authority, retired from the City Attorney's Office. The City Attorney's Office ceased providing the Authority counsel services; Ms. Balter instead continued providing her professional services to the Authority as a part-time employee.

In 2008, Ms. Balter announced her retirement. Therefore, in late 2008 the Authority issued a Request for Proposals for Library Authority Counsel Services. The City Attorney submitted a written proposal in January 2009, offering the services of the City Attorney's Office, subject to Sacramento City Council approval. In May 2009, an Authority ad hoc committee conducted interviews. At its May 28, 2009, meeting the Authority Board approved the use of the Sacramento City Attorney's Office as Authority Counsel. The proposed MOU is attached to this Report.

The City Attorney's Office's would provide services under the Memorandum of Understanding ("MOU"), as follows:

The City would provide a Deputy City Attorney as necessary from time to time to attend Authority Governing Board meetings and to provide day-to-day legal advice to the Library Director or the Library Director's designee(s).

Authority would pay the City four thousand two hundred dollars (\$4200) per month, for up to 30 hours of legal service. Legal services in excess of 30 hours per month shall be billed and paid at \$165 per hour. The Library Director could request the City to provide litigation services. If the City Attorney agreed to provide litigation services, the hourly rates would range from \$135/hour to \$200/hour, depending upon the nature of the action.

Supervising Deputy City Attorney Matthew D. Ruyak would be be designated Authority Counsel, and Senior Deputy City Attorney Janeth San Pedro would be designated primary assistant. However, other attorneys in the City Attorney's Office may provide services, as needed, expedient or requested.

The MOU would be effective July 1, 2009, with an initial term of one (1) year.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH THE SACRAMENTO PUBLIC LIBRARY FOR PROVISION OF LEGAL SERVICES

BACKGROUND

- A. The City Attorney's Office provided legal counsel services to the Sacramento Public Library Authority ("Authority") for approximately 10 years. The Authority's current counsel, the former Deputy City Attorney assigned to the Authority, is retiring.

- B. The City Attorney's Office has offered, subject to City Council approval, its services to the Authority, as follows: Authority would pay the City four thousand two hundred dollars (\$4200) per month, for up to 30 hours of legal service, with legal services in excess of 30 hours per month shall be billed and paid at \$165 per hour. The Library Director could request the City to provide litigation services. If the City Attorney agreed to provide litigation services, the hourly rates would range from \$135/hour to \$200/hour, depending upon the nature of the action. The initial term would be for one year, commencing July 1, 2009.

- C. On May 28, 2009, after a competitive selection process, the Authority approved execution of an agreement with the City for use of the City Attorney's Office.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Attorney, or a designated representative, is authorized to execute a Memorandum of Understanding with the Sacramento Public Library Authority for the provision of legal services in FY2009/10 consistent with the terms in the Background.

- Section 2. The City Manager or the City Manager's designee is authorized to establish revenue and expenditure budgets in the amount of \$50,400 within the City Attorney's FY2009/10 General Fund operating budget.

Attachment 3

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 28th day of May, 2009, by and between the CITY OF SACRAMENTO ("CITY"), and the SACRAMENTO PUBLIC LIBRARY AUTHORITY ("AUTHORITY"). The CITY and AUTHORITY may be referred to collectively as "Agencies" or in the singular as "Agency," as the context requires.

WHEREAS, pursuant to Section 6500 et seq., of the Government Code, AUTHORITY is authorized to contract with any other public entity to implement its programs; and

WHEREAS, CITY is willing to provide the services of its City Attorney's Office to AUTHORITY to provide day-to-day legal advice for AUTHORITY's operation, on the terms and conditions contained herein;

NOW, THEREFORE, it is agreed:

1. SERVICES. The CITY shall provide a Deputy City Attorney as necessary from time to time to attend AUTHORITY Governing Board meetings and to provide day-to-day legal advice to the Library Director or the Library Director's designee(s). Services shall not include representation in litigated matters, except as provided in Paragraph 6.
2. FEES. AUTHORITY shall pay CITY four thousand two hundred dollars (\$4200) per month, for up to 30 hours of legal service. Legal services in excess of 30 hours per month shall be billed and paid at \$165 per hour. Fees for litigated matters, if representation is requested by the Library Director, shall be as set forth in Paragraph 6. CITY shall bill AUTHORITY on a monthly basis. AUTHORITY shall pay CITY within 30 days of receipt of the bill.
3. ASSIGNED ATTORNEYS. Supervising Deputy City Attorney Matthew D. Ruyak shall be designated Authority Counsel, and Senior Deputy City Attorney Janeth San Pedro shall be the designated primary assistant. However, other attorneys in the City Attorney's Office may provide services, as needed, expedient or requested.
4. TERM OF MOU; TERMINATION. This MOU shall be effective July 1, 2009, and shall have a term of one (1) year. Either Agency may terminate this MOU for its convenience, upon giving thirty (30) days notice to the other Agency in the manner specified in Paragraph 5.
5. NOTICE. Any communication required during the term of this MOU, including, without limitation, notice of termination, shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

Notice to AUTHORITY: Library Director
828 I Street
Sacramento, CA 95814

Notice to CITY: City Attorney
915 I Street, Fourth Floor
Sacramento, CA 95814

Any Agency who desires to change its address for notice may do so by giving notice as described above.

6. **ADDITIONAL SERVICES.** The Library Director may request the CITY to provide litigation services. The CITY shall not be obligated to provide those services. If the CITY agrees to provide litigation services, the following rates shall apply:

Labor matters (discipline, grievances, PERB hearings):	\$135/hour
Tort, contract, personal injury matters:	\$175/hour
Civil Rights, Employment/FEHA, ADA matters:	\$200/hour

The Authority shall bear necessary litigation costs.

7. **INDEPENDENT CONTRACTORS.** In the performance of any of the services under this MOU, each of the Agencies' employees shall act as independent contractors in relation to the other Agency and its employees.

8. **ENTIRE AGREEMENT; MODIFICATION.** This MOU contains all of the terms and conditions as agreed upon by the Agencies, and supersedes any and all oral or written communications by and between the Agencies. No waiver, alteration, or modification of this MOU shall be valid unless made in writing and signed by both Agencies. In the event of a conflict between this MOU and any other agreement or understanding executed by the Agencies subsequent to the commencement of this MOU, the terms of this MOU shall prevail and be controlling unless such other agreement expressly provides to the contrary.

9. **INDEMNITY.** Each Agency shall defend, indemnify and hold harmless the other Agency, its officers, directors, agents, employees, subcontractors, and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs arising out of or resulting from the performance of the MOU, caused in whole or in part by the negligent or intentional acts or omissions of that Agency's officers, directors, agents, employees, volunteers, or subcontractors.

The Agencies shall establish procedures to notify the other Agency where appropriate of claims, administrative actions or legal actions with respect to any of the matters described in this indemnity provision. The Agencies shall cooperate in the defense of such actions brought by others with respect to the

matters covered in this indemnity provision. Nothing set forth in this MOU shall establish a standard of care for, or create any legal rights in, any person not a party to this MOU.

It is the intent of the parties hereto that, where fault is determined to have been contributory, the principles of comparative fault will be followed and each party shall bear the proportionate contributions of any loss, damage, expense and liability attributable to a finding of that party's negligence.

The indemnity provisions of this MOU shall survive the termination of this MOU.

10. **WAIVER OF CONFLICTS.** The City Attorney serves as legal counsel to the CITY government and all officers, departments, boards, commissions and agencies thereof and has such other powers and duties as may be prescribed by state law and by ordinance or resolution of the city council. From time to time, the CITY may have dealings, negotiations, and sometimes disputes (including litigation) with other public entities, including the AUTHORITY and the signatories to the Joint Powers Agreement creating the AUTHORITY. In consideration of acceptance of the City Attorney's services, AUTHORITY agrees that the City Attorney's Office, and the individuals thereof, may represent CITY in matters involving or related to the AUTHORITY. In so agreeing, AUTHORITY understands that the City Attorney's Office may, in the future, represent the CITY in claims adverse to the AUTHORITY, litigation adverse to the AUTHORITY, and other matters directly or indirectly adverse to the interests of the AUTHORITY, so long as those matters are not substantially related to the representation under this MOU.
11. **INSURANCE.** The AUTHORITY understands that CITY is a self-insured public entity, and does not carry separate professional liability (commonly known as "malpractice" or "errors and omissions") insurance. For public liability and professional liability coverages, the CITY is self-insured pursuant to Government Code section 990; after the self-insured retention, the CITY has two excess policies for those types of losses.
12. **GOVERNING LAW.** The interpretation and enforcement of this MOU shall be governed by the law of the State of California, the state in which this MOU was signed.
13. **ASSIGNMENT PROHIBITED.** No Agency may assign any right or obligation pursuant to this MOU. Any attempt or purported assignment of any right or obligation pursuant to this MOU shall be void and of no effect.
14. **SEVERABILITY.** If any term, covenant, or condition of this MOU is held to by a court of competent jurisdiction to be invalid, the remainder of this MOU shall remain in full force and effect.

15. COUNTERPARTS. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
16. CAPTIONS. The headings or captions contained in this MOU are for identification purposes only and shall have no effect upon the construction or interpretation of this MOU.
17. AMBIGUITIES. The Agencies have each carefully reviewed this MOU and have agreed to each term of this MOU. No ambiguity shall be presumed to be construed against either Agency.
18. SIGNING AUTHORITY. The persons executing this MOU have the capacity and are authorized to execute this MOU as the representatives of their respective Agency, and to bind their respective Agency to the terms of this MOU.

CITY OF SACRAMENTO

SACRAMENTO PUBLIC LIBRARY
AUTHORITY

By: _____
City Attorney

By: Phil Batchelor
Phil Batchelor, Library Director

Attest:

Attest:

By: _____
City Clerk

By: Brenda Haggard
Brenda Haggard, Clerk of the Board

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: Diane Balter
Diane Balter, Authority Counsel