



No. 2

## REPORT TO COUNCIL City of Sacramento

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

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Consent

Date: June 15, 2010

Honorable Mayor and  
Members of the City Council

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

**Location/Council District:** Citywide

**Recommendation:** Adopt a **Resolution** 1) authorizing the City Attorney to execute an Amendment to Memorandum of Understanding with the Sacramento Public Library Authority for legal services in FY2010/11; and 2) authorizing the City Manager or the City Manager's designee to establish a revenue budget in the amount of \$50,400 within the City Attorney's FY2010/11 General Fund operating budget.

**Contact:** Eileen Teichert, City Attorney

Matthew Ruyak, Supervising Deputy City Attorney, 808-3546

**Presenters:** Matthew Ruyak

**Department:** City Attorney's Office

**Division:** N/A

**Department ID:** 03000

### **Description/Analysis**

**Issue:** On May 28, 2009, after a formal selection process, the Sacramento Public Library Authority Board approved the use of the Sacramento City Attorney's Office as Authority Counsel. The City and the Authority then entered into a Memorandum of Understanding ("MOU"), which had an initial term of one year. The Authority Board has approved extending the MOU for another year. This report seeks City Council authority to extend the MOU by another year.

**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.

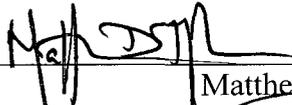
**Sustainability:** Not applicable.

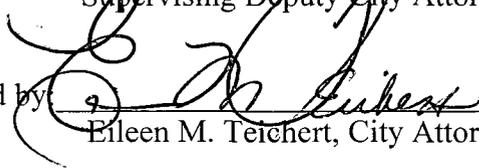
**Commission/Committee Action:** Not Applicable.

**Rationale for Recommendation:** The Sacramento Public Library Authority, of which the City is a member agency, is in need of legal services. During the last year, the Sacramento City Attorney’s Office has been providing those services. The continued 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 \$4,200 per month (or \$50,400 for FY2010/11) for up to 30 hours per month, with additional services charged at \$165 per hour. Optional litigation services will be provided at various hourly rates (from \$135 to \$200) based upon the nature of the litigated matter. A revenue budget will be established within the City Attorney’s FY2010/11 operating budget in the amount of \$50,400 for the amounts paid under the MOU.

**Emerging Small Business Development (ESBD):** Not Applicable.

Respectfully Submitted by:   
Matthew D. Ruyak,  
Supervising Deputy City Attorney

Approved by:   
Eileen M. Teichert, City Attorney

Recommendation Approved:

  
Gus Vina  
Interim City Manager

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**Background**

In 2009 the City Council approved a Memorandum of Understanding (MOU) with the Sacramento Public Library Authority (“Authority”) for the City Attorney’s provision of legal services to the Authority. (Resolution 2009-381; City Agreement 2009-0629.) Under the MOU, a member of the City Attorney’s Office serves as Authority Counsel, providing day-to-day legal advice and attending Authority Board meetings. The Authority pays the City four thousand two hundred dollars (\$4,200) per month, for up to 30 hours of legal services. Legal services in excess of 30 hours per month are billed and paid at \$165 per hour, with litigation services charged at varying rates, depending upon the nature of the action.

The MOU, effective July 1, 2009, has an initial term of one (1) year. Thus, it expires on June 30, 2010. At its April 29 meeting the Authority Board approved a one year extension of the MOU, for the period July 1, 2010, to June 30, 2011.



THIS IS A TRUE COPY  
OF AN ORIGINAL DOCUMENT  
ON FILE WITH THE  
CITY CLERK

COPY

*Shirley Concolino*  
SHIRLEY CONCOLINO, CITY CLERK  
07-06-09

MEMORANDUM OF UNDERSTANDING

DATE CERTIFIED: ~~THIS~~ MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 28<sup>th</sup> 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:



**2009-0629**  
With: Sacramento Public Library  
Authority  
Title: Sacramento Public Library Authority  
MOU  
Authorization: Ordinance 99-024

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.

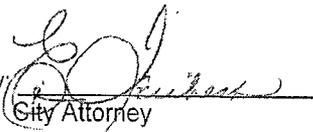
The indemnity provisions of this MOU shall survive the termination of this MOU.

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

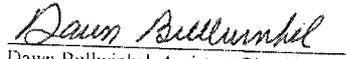
SACRAMENTO PUBLIC LIBRARY  
AUTHORITY

By:   
City Attorney

By: Phil Batchelor  
Phil Batchelor, Library Director

Attest on: 6-26-09 (date)

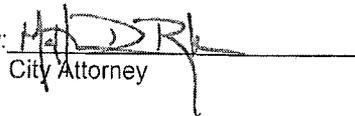
Attest:

  
Dawn Bullwinkel, Assistant 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

**Attachment 3**

**RESOLUTION NO.**

Adopted by the Sacramento City Council

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

**BACKGROUND**

- A. Pursuant to a Memorandum of Understanding (“MOU,” City Agreement 2009-0629), the City Attorney’s Office has been providing legal counsel services the Sacramento Public Library Authority (“Authority”) since July 1, 2009.
- B. On April 29, 2010, the Authority Board approved a one year extension of the MOU.

**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 the Amendment to Memorandum of Understanding with the Sacramento Public Library Authority, attached to this Resolution as Exhibit A, for the provision of legal services in FY2010/11.
- 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 FY2010/11 General Fund operating budget.

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Exhibit A – Amendment to Memorandum of Understanding

**Exhibit A**

**AMENDMENT TO MEMORANDUM OF UNDERSTANDING**

**THIS AMENDMENT** to the Memorandum of Understanding made and entered into on May 28, 2009 (City Agreement No. 2009-0629), between the City of Sacramento (“City”) and Sacramento Public Library Authority (“Authority”), is made and entered into on the date last signed below.

**RECITALS**

**WHEREAS**, City and Authority entered into a Memorandum of Understanding (“MOU”) for the provision of legal services to the Authority; and,

**WHEREAS**, the parties desire to amend the MOU to extend the term by one year.

**WITNESS**

**NOW, THEREFORE, CITY AND AUTHORITY DO MUTUALLY AGREE AS FOLLOWS:**

1. The MOU (City Agreement No. 2009-0629) shall be extended for a one year period, from July 1, 2010, through June 30, 2011.
2. All other terms and conditions of the MOU shall remain the same.

**IN WITNESS WHEREOF**, the parties have entered into this Amendment to Memorandum of Understanding on the date last signed below.

CITY OF SACRAMENTO

SACRAMENTO PUBLIC LIBRARY  
AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

City Attorney

Library Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

City Clerk

Clerk of the Authority

Approved as to form:

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_

City Attorney

Authority Counsel