

RESOLUTION NO. 2011-071

Adopted by the Sacramento City Council

February 15, 2011

AUTHORIZING THE MAYOR OR HIS DESIGNEE TO APPROVE THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF SACRAMENTO AND THE CITY OF SAN FRANCISCO REGARDING THE SHARING, MODIFICATION AND USE OF "BANK ON SAN FRANCISCO" MARKETING MATERIALS FOR THE BANK ON SACRAMENTO PROGRAM.

BACKGROUND

- A. Bank on Sacramento is a collaborative and voluntary initiative to assist unbanked Sacramento residents in opening starter bank accounts. This allows City residents to gain access to basic banking services. Residents with bank accounts begin saving, build credit history, and access lower-cost sources of credit. There are over 30,000 unbanked households in Sacramento. Bank on Sacramento also provides City residents with free financial education provided by financial institutions and community based organizations that are partnered with the Bank on Sacramento program. To date, the coalition has held seven financial education classes that brought in 124 participants. We plan to coordinate even more classes, with more community partners in 2011.
- B. Bank on Sacramento is the latest Bank on California city-based initiative following similar programs in other cities. The overall Bank on California program is a voluntary collaboration of the Federal Deposit Insurance Commission ("FDIC"), city mayors, local financial institutions, state and federal regulatory agencies, and community based organizations. Having a good marketing program is a necessary component of a successful Bank on Sacramento program.
- C. The MOU with the City of San Francisco allows for the sharing, modification and use of Bank on San Francisco marketing materials developed by the City of San Francisco program, for purposes of marketing the Bank on Sacramento program. These marketing materials will be modified as necessary for use in the Bank on Sacramento program.

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

Section 1. The Mayor or his designee is hereby authorized to execute the Memorandum of Understanding (MOU) between the City of Sacramento and the City of San Francisco regarding the sharing, modification and use of "Bank on San Francisco" marketing materials for the Bank on Sacramento Program, attached hereto as Exhibit A.

Section 2. Exhibit A is part of this resolution.

Table of Contents:

Exhibit A - Memorandum of Understanding

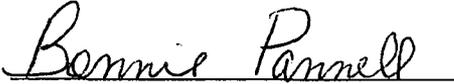
Adopted by the City of Sacramento City Council on February 15, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy.

Noes: None.

Abstain: None.

Absent: Mayor Johnson.


Bonnie Pannell, Vice-Mayor

Attest:


Shirley Concolino, City Clerk

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE TREASURER AND TAX COLLECTOR

MEMORANDUM OF UNDERSTANDING

for the

**SHARING, MODIFICATION AND USE OF “BANK ON SAN FRANCISCO”
MARKETING MATERIALS**

between

City and County of San Francisco
and
City of Sacramento

This is a Memorandum of Understanding (“MOU”), effective January 1, 2011, between the City and County of San Francisco, a municipal corporation, acting by and through the Office of the Treasurer and Tax Collector (hereinafter referred to as “City”), and City of Sacramento, a municipal corporation, acting by and through the Office of the City Treasurer (hereinafter referred to as “City of Sacramento”).

RECITALS

WHEREAS, the San Francisco Office of the Treasurer & Tax Collector (“Treasurer”) administers the Bank on San Francisco Program (“Bank on San Francisco”), which is a voluntary partnership between the City, the Federal Reserve Bank of San Francisco, the nonprofit EARN, and 15 San Francisco banks and credit unions;

WHEREAS, the purpose of Bank on San Francisco is to promote starter bank accounts designed for previously unbanked individuals and lessen their dependence on high-priced check cashing and payday lending businesses; and

WHEREAS, all financial institutions participating in Bank on San Francisco offer accounts for individuals who do not have accounts at banks and other mainstream financial institutions (the "unbanked") with the following features: acceptance of the Mexican Matricula and Guatemalan consular identification cards as primary identification, low or no monthly fees, forgiveness of at least once annually a non-sufficient funds/overdraft fee, promotion of financial management classes, and the ability to open accounts and receive financial management training for individuals who have previously overdrawn an account; and

WHEREAS, a key component to the success of Bank on San Francisco is the creation, distribution and posting of marketing materials, including posters, brochures, advertisements, window cling, referral cards, and the Bank on San Francisco logo (collectively, the "Marketing Materials"), which have all been designed by McCann Worldgroup, an international advertising company, on a pro bono basis for the City; and

WHEREAS, the City desires to have other United States cities and jurisdictions implement programs similar to Bank on San Francisco that offer beneficial products for the unbanked market, and the City desires to share and allow the modification of the Marketing Materials with such cities and jurisdictions to accomplish this goal; and

WHEREAS, the City also wishes to ensure that such Marketing Materials are used to promote only programs beneficial to the unbanked market, and ensure that the Marketing Materials are not used to profit any party.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Term

The term of this MOU shall be from January 1, 2011 through December 31, 2011.

2. Scope of Work

The City will provide to City of Sacramento modifiable electronic copies of all marketing materials produced for Bank on San Francisco, including but not limited to the following

(collectively, the “Marketing Materials”):

- a. Posters
- b. Brochures
- c. Advertisements
- d. Window cling
- e. Referral cards
- f. Bank on San Francisco logo

3. Release of Marketing Materials

Prior to the release of the Marketing Materials, City of Sacramento agrees to provide the City with a written summary of the program it intends to launch to benefit the unbanked population, and its intended modifications to the Marketing Materials. The City, in its sole and absolute discretion, shall decide whether the program and proposed modifications are consistent with the goals of Bank on San Francisco, and shall release the Marketing Materials only upon such determination.

4. Use of Marketing Materials

If the City makes such determination to release the Marketing Materials, the City shall release the Marketing Materials to: Kimberlie Gladden via electronic mail delivery, at the following email address: kgladden@cityofsacramento.org.

The Marketing Materials may be modified to promote the particular products offered in City of Sacramento (the “Modified Materials”).

The Modified Materials shall be distributed by City of Sacramento to third-parties for free or at cost, but in no case shall City of Sacramento charge a profit for the use of its Modified Materials by a third party. City of Sacramento shall not send modifiable electronic versions of the Marketing Materials or Modified Materials to any party without the prior written consent of the City.

City of Sacramento shall retain control over the printing and distribution of Modified Materials.

5. Promotion and Media

City of Sacramento is prohibited from entering the Marketing Materials or Modified Materials in any media or advertising-related contest or competition. City of Sacramento covenants that any program or entity that uses Modified Materials shall provide the City with notice of any contest, competition, award, recognition it enters or receives where the entry is based in whole or in part on the Modified Materials. In such cases, City of Sacramento covenants that the following statement, or a statement substantially similar to the following statement, shall be included any documents related to or promoting such contest, competition, award or recognition: “The marketing materials used in this program [and other programmatic aspects as necessary] are based on models from Bank on San Francisco, and originally designed by McCann Worldgroup.”

City of Sacramento covenants that any press release or materials submitted to the media in support of any program that is advertised using Modified Materials shall contain the following statement, or a statement substantially similar to the following statement: “The marketing materials used in this program [and other programmatic aspects as necessary] are based on models from Bank on San Francisco, and originally designed by McCann Worldgroup.”

6. Modified Materials Provided to City

City of Sacramento shall provide the City with electronic files of all Modified Materials. Such files shall be sent within 30 days of creation or use by electronic mail to Leigh Phillips, Program Manager of Bank on San Francisco, at the following email address: leigh.phillips@sfgov.org.

7. Material Modification of Unbanked Program and/or Marketing Materials

If City of Sacramento modifies the Marketing Materials or the underlying program advertised by the Modified Materials in any way materially different from the written summary provided to the City under Section 3, City of Sacramento shall notify the City within 30 days of such material differences. The City, in its sole and absolute discretion, shall decide whether the modifications are consistent with the goals of Bank on San Francisco, and retains the right to immediately terminate City of Sacramento’s use of the Marketing Materials and Modified Materials upon such determination.

8. Ownership of the Marketing Materials and Modified Materials

The City of Sacramento recognizes and agrees that City is the owner of the Marketing Materials and Modified Materials. Nothing in this agreement shall be construed as transferring ownership of the Marketing Materials or Modified Materials to the City of Sacramento, or as preventing City from providing the Marketing Materials or Modified Materials to other persons or entities at any time for any purpose.

9. Remedies

If the City of Sacramento breaches any of its obligations hereunder, the City shall be entitled to seek equitable relief to protect its interests, including, but not limited to injunctive relief, in addition to any and all other rights and remedies available at law or equity.

10. Termination

(a) If the City of Sacramento fails to perform or observe any term, covenant, or condition of Sections 3 through 8 of this MOU, City may immediately terminate this MOU by written notice.

(b) The City's termination of this MOU for breach shall not limit City's rights to any other remedies available to City at law or in equity.

(c) All rights granted to the City of Sacramento under this MOU to use such materials shall cease upon the termination of this MOU.

11. Indemnification

Each of the Parties hereto shall indemnify and hold the other Party, its officers, board members, employees and agents, harmless from any losses imposed for injury arising in connection with the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out this Memorandum of Understanding. No Party shall be responsible for any losses occurring by reason of the negligent acts or omissions or willful misconduct of the other Party in connection with or arising out of this agreement. Losses shall mean any and all claims, demands, losses,

liabilities, damages, liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses.

12. Notices

Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail, e-mail, or by fax, and shall be addressed as follows:

To City: Mr. David Augustine
Policy and Legislative Manager
Treasurer’s Office
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689
Tel: (415) 554-7601
Fax: (415) 554-4672
e-mail: david.augustine@sfgov.org

To the City of Sacramento: Ms. Kimberlie Gladden
Sr. Debt Analyst
Office of the City Treasurer
915 I Street, HCH 3rd Floor
Sacramento, CA 95814
Tel: (916) 808-5168
Fax: (916) 808-5171
e-mail: kgladden@cityofsacramento.org

13. Entire Agreement

This MOU contains the entire agreement relative to the use of the Marketing Materials and Modified Materials and supersedes all prior or contemporaneous oral or written understandings or agreements regarding this issue. This MOU shall not be modified or amended, except in a written instrument executed by and in the same manner as this MOU.

14. Governing Law

This MOU shall be governed and construed in accordance with the laws of the State of California. Venue for any litigation relative to the formation, interpretation and performance of this MOU shall be in San Francisco.

15. Non-Assignment

This MOU may not be assigned or otherwise transferred by either party in whole or in part without the express prior written consent of the other party, which consent shall not unreasonably be withheld. This MOU shall benefit and be binding upon the successors and assigns of the parties hereto.

16. Subcontracting

The City of Sacramento shall not subcontract any portion of the services to be performed in producing the Modified Materials unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this MOU, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

17. Captions

All section captions are for reference only and shall not be considered in construing this MOU.

18. Severability

Should the application of any provision of this MOU to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then: (a) the validity of other provisions of this MOU shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

19. Counterparts

This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. Authority

The City of Sacramento does hereby covenant and warrant that the signer hereunder is authorized to do so. Upon City’s request, the City of Sacramento shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

21. Conflict of Interest

The City of Sacramento does hereby certify that no conflict of interest exists between any member of the City of Sacramento and the City regarding the subject matter of this agreement.

IN WITNESS WHEREOF, The parties have executed this MOU on the dates stated below.

CITY OF SACRAMENTO
by and through its TREASURER

CITY AND COUNTY OF SAN FRANCISCO,
by and through its TREASURER

By: _____
City Treasurer

By: _____
Treasurer’s Office

Date: _____

Date: _____