



City of Sacramento City Council

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

Meeting Date: 10/23/2012

Report Type: Staff/Discussion

Title: City Attorney Appointment

Report ID: 2012-00894

Location: Citywide

Recommendation: Pass a Resolution 1) appointing the City Attorney, 2) setting the City Attorney's compensation, and 3) approving the City Attorney contract

Contact: Geri Hamby, Director of Human Resources, Department of Human Resources, (916) 808-7173

Presenter: John Shirey, City Manager

Department: Human Resources

Division: HR Administration

Dept ID: 08001011

Attachments:

- 1-Description/Analysis
 - 2-Background - Attachment 1
 - 3-Resolution
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City Attorney Review

Approved as to Form
Matthew Ruyak
10/18/2012 11:19:27 AM

Approvals/Acknowledgements

Department Director or Designee: Geri Hamby - 10/17/2012 4:20:16 PM



Description/Analysis

Issue: Effective May 19, 2012, the City Council appointed Sandra Talbott as the Interim City Attorney. Ms. Talbott was to serve as Interim City Attorney until a national recruitment for a permanent City Attorney was completed.

The executive search process is complete and the City Council has made a selection.

Policy Considerations: The City Council alone is vested with the authority to appoint a City Attorney and establish the salary associated with the position.

Economic Impacts: None

Environmental Considerations: Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability Considerations: Not applicable

Commission/Committee Action: None

Rationale for Recommendation: The existing City Attorney position was vacated on May 19, 2012. Since that time, the position has been filled by the Interim City Attorney. After an extensive nationwide recruitment and interview process, the City Council has selected James Sanchez as the preferred candidate for City Attorney for the City of Sacramento.

Financial Considerations: The City Attorney position is an existing budgeted full-time equivalent position and funding is available in the current budget for the City Attorney's Office. Mr. Sanchez's annual salary will be \$224,000, which is within the City's current salary schedule pay range of \$157,704-\$236,568.

Mr. Sanchez's benefit package is the same as for other charter officers and management employees, with one exception. The City will not be making a 4% contribution (approximately \$10,000) to a 401a plan and instead will contribute \$15,000 to a deferred compensation plan.

Emerging Small Business Development (ESBD): Not applicable.



Attachment 1

Background Information

In June 2012, through a competitive process, CPS Human Resource Services was selected by the City Council to conduct the nationwide executive recruitment for City Attorney for an amount not to exceed \$27,650.

The recruitment process for the City Attorney was aggressive and comprehensive and included advertising in government and management publications and websites. A brochure prepared in collaboration with the City was distributed to referral sources and potential candidates via email and mailings. Personal contacts were made with strong potential candidates.

The response to the recruitment process was good and included candidates with a variety of relevant backgrounds. The City Council ultimately interviewed six candidates and asked two to return for further discussions.

The consultant conducted reference checks on the preferred candidate (Mr. Sanchez) where they spoke directly with his supervisors, subordinates, colleagues/peers to assess his skills and abilities from those he had worked closely with. Contacts were made with references from both his current position (City Attorney, City of Fresno) and from his past positions (City of Salinas and prior), and included supervisors (elected officials, board members, etc.) and those who have reported directly to Mr. Sanchez, both past and present. Impressions received from this broad array of references were shared with the Mayor and Council.

Additionally, a background records check conducted by a licensed firm included the candidate's credit history, criminal and civil court searches, driving record, verification of education, and a Lexis-Nexis newspaper article search.

According to the consultant, the recruitment process used is a typical process employed by cities in California in conducting executive recruitments for City Attorneys, particularly in large urban cities.

On October 16, 2012, the City Council selected James Sanchez as City Attorney of the City of Sacramento and made recommendations for negotiation of his appointment. The City Council agreed to memorialize his employment terms with a contract.

Background: Contract

The City of Sacramento has not previously entered into employment agreements with its City Attorney; however, it is common practice among cities, counties, and special districts. The term of the contract is four years and includes a severance clause that provides for payment of six months' salary and medical benefits (COBRA) in the event it is exercised.



RESOLUTION NO.

Adopted by the Sacramento City Council

October 23, 2012

City Attorney Appointment

BACKGROUND

- A. On October 23, 2012, the City Council appointed James Sanchez as City Attorney; and
- B. The City Council is charged with setting the level of compensation for Charter Officers, including the City Attorney.

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

- Section 1. Effective December 1, 2012, James Sanchez is appointed as the City Attorney of the City of Sacramento.
- Section 2. Effective December 1, 2012, the salary of the City Attorney of the City of Sacramento is \$224,000 per year. Section 2 of Resolution 2007-550 is hereby repealed.
- Section 3. The Employment Agreement (City Attorney) between James Sanchez and the City of Sacramento, attached as Exhibit A, is approved. The Mayor is authorized to sign the agreement on behalf of the City.

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Exhibit A: Employment Agreement (City Attorney)



EMPLOYMENT AGREEMENT

(CITY ATTORNEY)

THIS AGREEMENT is made and entered into this ____ day of ___, 2012, by and between the City of Sacramento, a California charter city and municipal corporation (“City”), and James Sanchez (“Employee”).

A. On _____, 2012, the governing body of the City of Sacramento (hereinafter referred to as “the City Council”), appointed Employee as City Attorney effective **December 1, 2012** (“Start Date”); and

B. City Council and Employee desire to memorialize in this Agreement certain benefits, terms and conditions of employment of Employee.

In consideration of the mutual covenants contained herein and the foregoing recitals that are incorporated into this Agreement, the parties agree as follows:

1. Employment. City agrees to employ Employee as City Attorney of the City of Sacramento commencing on the Start Date, to serve at the pleasure of the City Council subject to the terms and conditions set forth in this Agreement.

2. Term.

a. This Agreement shall be in effect on the date first written above until **November 30, 2016** (“End Date”) unless the Agreement is earlier terminated in accordance with its terms.

b. No earlier than 60 calendar days and no later than 45 calendar days prior to the End Date, Employee may send City and City may send Employee written notice of a request to renegotiate the terms of this Agreement. Upon receipt of such notice both parties will make a good faith effort to renegotiate the terms of the Agreement prior to the End Date.

c. If neither party sends the written notice provided for in Section 2 (b) or if the parties fail to reach agreement on renegotiated terms prior to the End Date, then the End Date shall automatically extend by one ninety (90) calendar day period. The Agreement shall terminate at the end of the ninety calendar day period if a renegotiated Agreement has not been approved by both parties.

3. Duties. Commencing on the Start Date, Employee shall perform the functions and duties of the City Attorney as specified in Section 72 of the City Charter and such other legally permissible

and proper duties and functions consistent with the office of the City Attorney, as City Council assigns.

4. Performance Evaluation. The City Council shall conduct not less than one performance evaluation of Employee per year.

5. Salary. City agrees to pay the Employee for services rendered a starting salary in the sum of Two Hundred Twenty-Four Thousand dollars (\$224,000.00) per year commencing on the Start Date, payable in installments at the same time and in the same manner as other career City employees. City agrees to increase the salary base and other benefits of Employee, by the same percentage and amounts, and at the same time and same manner, as cost of living adjustments granted to other Charter Officers. Additionally, in recognition of Employee's accomplishments and outstanding performance, City Council may grant merit increases and equity adjustments to Employee from time-to-time.

6. Benefits/Retirement. The sums payable to Employee under this Agreement are in addition to all other fringe benefits, retirement plans and contributions, expense and subsistence allowance, leaves, reimbursements and allowances, and other perquisites provided to Charter Officers ("Charter Officer Benefits") under City Council Resolution No. 2012-255--The Personnel Resolution Covering Unrepresented Officers and Employees ("Personnel Resolution") (or any superseding resolution) in effect from time-to-time, except where inconsistent with the terms of this Agreement. Any increases to Charter Officer Benefits that City approves from time-to-time shall apply to Employee. Any decreases in Charter Officer Benefits that City approves from time-to-time shall not apply to Employee, except as otherwise specified in this agreement.

7. Supplemental Benefits/Terms.

a. PERS/401(a)/Technology. Notwithstanding the terms of the Personnel Resolution, Employee agrees: (1) to pay the seven percent (7%) member contribution for the applicable PERS retirement plan, and further agrees to pay any increase in member contribution mandated by state law, or any increase in member contribution paid by all other Charter Officers; (2) that Employee shall not receive a four percent (4%) or any match by City to a 401(a) account; and (3) that Employee shall receive the technology allowance for Charter Officers pursuant to section 8.8 of the Personnel Resolution.

b. Leave. In addition to the leave provided in the Personnel Resolution, on Employee's Start Date City shall credit Employee with: fifteen (15) days Management Leave and ten (10) days Sick Leave.

c. Auto Allowance. City shall pay Employee a monthly auto allowance of five hundred dollars (\$500).

d. Deferred Compensation. City shall contribute fifteen thousand dollars (\$15,000) annually to Employee's 457(b) Deferred Compensation account deposited during two pay periods per month in 24 equal installments.

e. Professional Associations: The City shall pay dues and/or membership fees for Employee for professional associations that are related to the position and duties held by the Employee, subject to budget appropriations.

8. Termination.

a. Mutual Consent. This Agreement may be terminated at any time upon the mutual, written agreement of both City and Employee.

b. By Employee. Employee may terminate this Agreement at any time by giving City not less than thirty days (30) prior written notice.

c. By City without Cause.

(1) City may terminate Employee without cause, as specified in Section 75 of the City Charter.

(2) City shall pay Employee the Severance Payment upon termination of Employee without cause.

d. By City for Cause. City may terminate Employee for cause, without obligation to make the Severance Payment to Employee, subject to all of the following:

(1) Prior to terminating Employee under this subsection (d), City shall give Employee at least ten (10) working days prior written notice of the charges constituting the cause for termination.

(2) Within the ten-day period, but not earlier than five working days after the notice has been given, City Council shall meet with Employee in closed session lawfully agendized under the Brown Act and give Employee an opportunity to address City Council regarding the charges consistent

with the Brown Act. After hearing Employee's response to the charges, City Council shall make a decision as to whether to terminate Employee and shall inform Employee in writing of its decision.

(3) "For cause" means Employee's material breach of this Agreement, conviction of a misdemeanor involving moral turpitude or felony under California law (City may place Employee on leave pending resolution of criminal charges brought against Employee), or a final judicial or administrative decision finding that Employee personally committed unlawful acts of sexual harassment or discrimination against a City official or employee.

e. Severance Payment. The Severance Payment is equal to the sum of:

(1) Six (6) months of Employee's then current salary, and (2) six (6) months of COBRA health insurance payments for Employee and covered dependents.

9. Relocation Expenses. The City agrees to reimburse Employee for moving expenses associated with relocation in connection with City employment. Relocation expenses means the actual cost of relocating Employee, his family and their belongings from Fresno, California to Sacramento, California, as well as incidental expenses associated with the relocation such as storage and insurance. The relocation expenses shall include only those expenses associated with relocation that are approved in writing by the City Manager. Employee agrees to provide original receipts for all reimbursement claims.

10. Repayment of Relocation Expenses. In consideration for the City of Sacramento reimbursing the costs of moving, the Employee agrees to remain employed by City for a period of thirty-six months. If Employee is terminated by City, employee is not obligated to repay relocation expenses. If Employee leaves employment prior to completion of that period, Employee will be liable to City for all moving expenses which City has paid in connection with such expenses on a pro rata basis as follows:

- a. $\text{Moving expenses}/36 = \text{monthly moving expense ("MME")}$
- b. $\text{MME} \times (36 - \text{number of months worked}) = \text{reimbursement.}$

11. Nondiscrimination. Employee agrees not to unlawfully discriminate in the performance of Employee's functions and duties on the grounds of or because of race, color, religion, sex, national origin, age, marital status, physical disability, sexual orientation or any other characteristic protected under applicable law.

12. General Provisions.

a. Entire Agreement. This written Agreement contains the entire understanding between the parties as to the subject matter hereof and supersedes all prior and contemporaneous oral and written understandings or agreements of the parties and as such, is fully integrated. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by any party.

b. Severability. If any portion of this Agreement or the application thereof is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect to the greatest extent permitted by law.

c. Amendments. This Agreement may be amended only in writing and duly authorized and executed by both parties.

d. Governing Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the County of Sacramento.

13. Notices. Notices pursuant to this Agreement shall be given by depositing such notice in the custody of the United States postal service, postage prepaid, addressed as follows:

City Clerk	James Sanchez
City of Sacramento	2673 W. Sample
915 I Street	Fresno, CA 93711
Sacramento, CA 95814	

Alternatively, any notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice at the date such notice is given. Notice shall be deemed given as of the date of personal service or on the third day after deposit of such written notice with the United States postal service.

The parties have executed this Agreement the day and year first written above.

EMPLOYEE

James Sanchez

CITY OF SACRAMENTO

By: _____
Kevin Johnson, Mayor

Approved as to Form:

Attest:

Sandra G. Talbott
Interim City Attorney

Shirley Concolino
City Clerk

