

Meeting Date: 6/24/2014

Report Type: Consent

Report ID: 2014-00492

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

Location: Citywide

Recommendation: Pass a Resolution 1) authorizing the City Attorney's Office to execute a Memorandum of Understanding (MOU) with the Sacramento Public Library Authority (SPLA) for legal services in Fiscal Year (FY) 2014/15; and 2) authorizing the City Manager or his designee to increase the expenditure budget in the City Attorney's Automation CIP (A03000100) at the end of FY2014/15 for the amount of any revenues received from this MOU in excess of the City Attorney's \$52,000 revenue budget.

Contact: Jerry Hicks, Supervising Deputy City Attorney (916) 808-5346, Office of the City Attorney

Presenter: None

Department: City Attorney

Division:

Dept ID:

Attachments:

1-Description/Analysis

2-Resolution

3-Exhibit A

City Attorney Review

Approved as to Form

Gerald Hicks

6/17/2014 2:54:58 PM

Approvals/Acknowledgements

Department Director or Designee: Sandra Talbott - 6/16/2014 8:26:33 AM

Description/Analysis

Issue Detail: On May 28, 2009, after a formal selection process, the Sacramento Public Library Authority (“Authority”) Board approved the use of the Sacramento City Attorney’s Office as Authority Counsel. The City and the Authority entered into a MOU effective July 1, 2009, for an initial term of one year (Resolution 2009-381; City Agreement 2009-0629). The MOU was extended for successive one year terms in 2010, 2011, 2012, and 2013. The 2013 extension expires on June 30, 2014. This item seeks City Council approval to enter into an MOU with the Sacramento Public Library Authority for legal services in FY 2014/15.

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

Economic Impacts: None.

Environmental Considerations: None.

Sustainability: Not applicable.

Commission/Committee Action: At its May 22, 2014 meeting, the Authority Board approved a one-year MOU with the City, for the period of July 1, 2014 to June 30, 2015.

Rationale for Recommendation: The Sacramento Public Library Authority, of which the City is a member agency, is in need of legal services. For the past five fiscal years, the Sacramento City Attorney’s Office has provided those services. 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 continued use of the City Attorney’s Office will afford the Authority with 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 (\$50,400 for FY 2014/15) for up to 30 hours of legal services, with additional services in excess of the 30 hours per month billed at a rate of \$165 per hour. Optional litigation services will be provided at various hourly rates (from \$135 to \$200) based on the nature of the litigated matter. During a prior year extension, the fees generated under this MOU were returned to the general fund on an ongoing basis as part of City Attorney operating budget reductions. The City Attorney is requesting that amounts received in excess of the City Attorney’s FY2014/15 revenue budget (\$52,000) be recognized and moved to the CAO’s Automation CIP (A03000100) at the end of the FY14/15 fiscal year.

Local Business Enterprise (LBE): Not applicable.

RESOLUTION NO. 2014-

Adopted by the Sacramento City Council
June _____, 2014

APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH THE SACRAMENTO PUBLIC LIBRARY AUTHORITY 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 services to the Sacramento Public Library Authority ("Authority") since July 1, 2009.

B. The MOU was extended for successive one year terms in 2010, 2011, 2012 and 2013. The 2013 extension expires on June 30, 2014.

C. On May 22, 2014, the Authority Board approved a one-year MOU, for the period of July 1, 2014 to June 30, 2015.

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, attached to this Resolution as Exhibit A, for the provision of legal services in FY2014/15.

Section 2: The City Manager or the City Manager's designee is authorized to recognize and move all revenue generated under this Memorandum of Understanding in excess of \$52,000 to the City Attorney's Automation CIP (A03000100) at the end of FY2014/15.

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Exhibit A –Memorandum of Understanding

Adopted by the City of Sacramento City Council on June _____, 2014 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Mayor Kevin Johnson

Attest:

Shirley Concolino, City Clerk

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into on this 1st day of July, 2014, 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 (\$4,200) 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. Senior Deputy City Attorney Sheri M. Chapman shall be designated Authority Counsel, and Deputy City Attorney Michael Voss shall be designated primary assistant. However, other attorneys in the City Attorney’s Office may provide service, as needed, expedient or requested.
4. TERM OF MOU; TERMINATION. This MOU shall be effective July 1, 2014, and shall cover 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, 4th Floor
Sacramento, CA 95814

Notice to CITY: City Attorney
915 I Street, 4th 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 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 MOUJ 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 offices, 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, the 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 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 captions or headings 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

SACRAMENT PUBLIC LIBRARY
AUTHORITY

By: _____
City Attorney

By: Rivkah K. Sass
Rivkah Sass, Library Director

ATTEST:

ATTEST:

By: _____
City Clerk

By: _____
Clerk of the Board

Approved as to form:

Approved as to form:

By: _____
Supv. Deputy City Attorney

By: Shirley M. Oney
Authority Council