

**Meeting Date:** 12/1/2015

**Report Type:** Consent

**Report ID:** 2015-01056

**Title:** Contract Amendment for City Attorney Compensation Adjustment

**Location:** Citywide

**Recommendation:** Pass a Motion: 1) amending the City's contract with the City Attorney to reflect a 2% salary increase for a total annual salary of \$240,087.69, and 2) amending section 7 of the City's contract to achieve consistency with the Personnel Resolution for Unrepresented Employees.

**Contact:** Barbara A. Dillon, Interim Director, (916) 808-7173, Human Resources Department

**Presenter:** None

**Department:** Human Resources

**Division:** HR Administration

**Dept ID:**

**Attachments:**

1-Description/Analysis

2-Exhibit A Fourth Amendment to City Attorney Employment Agreement

3-Attachment 1 City Attorney Employment Agreement

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**City Attorney Review**

Approved as to Form

Brett Witter

11/20/2015 9:48:30 AM

**Approvals/Acknowledgements**

Department Director or Designee: Barbara A. Dillon - 11/10/2015 2:09:34 PM

## **Description/Analysis**

**Issue Detail:** On October 30, 2012, the City Council approved the City Attorney Employment Agreement (agreement number 2012-0924, Attachment 1). The agreement was amended on January 7, 2014, to reflect a salary increase, on April 7, 2014, to reflect a change in benefits, and again on November 29, 2014 to reflect a salary increase. In addition, as a term of the 2015 Personnel Resolution for Unrepresented Employees, the City Attorney, as well as the other Charter Officers and most management level employees, received a 1% salary increase to offset a 1% increase to their PERS contributions for a total 8% member contribution effective June 27, 2015.

The City Council evaluated the performance of the City Attorney on October 27, 2015. Based on a positive evaluation, the City Council desires to amend the agreement and adjust the compensation of the City Attorney to reflect a 2% salary increase effective November 28, 2015.

The Fourth Amendment to the City Attorney Agreement is attached as Exhibit A. The amendment harmonizes the Personnel Resolution with the Agreement as it pertains to PERS contributions, and also reflects the 2% merit increase. In all other respects, the Agreement remains unchanged.

**Policy Considerations:** The City Council may adjust the salary of the appointive officers upon evaluation of performance.

**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:** Not applicable.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** From time to time the City Council may review the performance of its appointive officers and recommend a compensation adjustment for outstanding performance.

**Financial Considerations:** The City Attorney position is an existing budgeted full-time equivalent position. In the current year, the department will cover the costs associated with this change. The City Attorney's budget will be adjusted to reflect the adjusted compensation in FY 2016/17 Proposed Budget.

**Local Business Enterprise (LBE):** Not applicable.

FOURTH AMENDMENT TO  
EMPLOYMENT AGREEMENT  
(CITY ATTORNEY)

The City of Sacramento ("City") and James Sanchez ("Employee"), as parties to that certain Employment Agreement designated as Agreement Numbers 2012-0924; 2012-0924-1; 2012-0924-2; and 2012-0924-3 (collectively "Agreement") hereby supplement and modify the Agreement as follows:

Paragraph 5 of the Agreement is amended to reflect a 2% merit increase for an annual salary of Two Hundred Forty Thousand Eighty Seven and 69/100ths Dollars (\$240,087.69) per year commencing on November 28, 2015.

Paragraph 7.a.1. of the Agreement is amended as follows:

(1) that effective June 27, 2015, Employee received a 1% salary increase as an offset against a one percent (1%) increase in the Employee's PERS contribution for a total of an eight percent (8%) member contribution to the applicable PERS retirement plan;

Except as amended above, all other terms and conditions of the Agreement, as amended, remain unchanged and in full force and effect.

EMPLOYEE

\_\_\_\_\_  
James Sanchez

CITY OF SACRAMENTO

By: \_\_\_\_\_  
Kevin Johnson, Mayor

Approved as to Form:

Attest:

\_\_\_\_\_  
Brett M. Witter  
Supervising Deputy City Attorney

\_\_\_\_\_  
Shirley Concolino  
City Clerk



# City of Sacramento

Tax ID # if applicable:

Requires Council Approval:  No  YES Meeting:

Real Estate  Other Party Signature Needed  Recording Requested

## General Information

Type: Outside Agency	PO Type: Select PO Type	Attachment: Original No.:
\$ Not to Exceed: \$ 224,000.00		Original Doc Number:
Other Party: James Sanchez		Certified Copies of Document::
Project Name: City Attorney Services		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:

## Department Information

Department: City Attorney Division: \_\_\_\_\_  
 Project Mgr: \_\_\_\_\_ Supervisor: \_\_\_\_\_  
 Contract Services: \_\_\_\_\_ Date: \_\_\_\_\_ Division Mgr: \_\_\_\_\_  
 Phone Number: 808-5346 Org Number: 03001011  
 Comment: \_\_\_\_\_

## Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	_____	_____
Accounting:	_____	_____
Contract Services:	_____	_____
Supervisor:	_____	_____
Division Manager:	_____	_____

**City Attorney** Signature or Initial Date  
 City Attorney: \_\_\_\_\_

Send Interoffice Mail  Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director	_____	_____
Department Director:	_____	_____
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>	_____	_____

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

**For City Clerk Processing**

**Finalized:**  
 Initial: *ORB*  
 Date: *1/5-12*  
**Imaged:**  
 Initial: *VE*  
 Date: *1/15/12*

Title: City Attorney Services  
 Other Party: James Sanchez

2012-0924

**Received:**  
(City Clerk Stamp Here)

**EMPLOYMENT AGREEMENT****(CITY ATTORNEY)**

THIS AGREEMENT is made and entered into this 30<sup>th</sup> day of October, 2012, by and between the City of Sacramento, a California charter city and municipal corporation ("City"), and James Sanchez ("Employee").

A. On **October 23, 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:

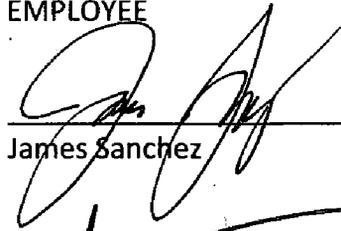
City Clerk  
City of Sacramento  
915 I Street  
Sacramento, CA 95814

James Sanchez  
[REDACTED]  
[REDACTED]

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.

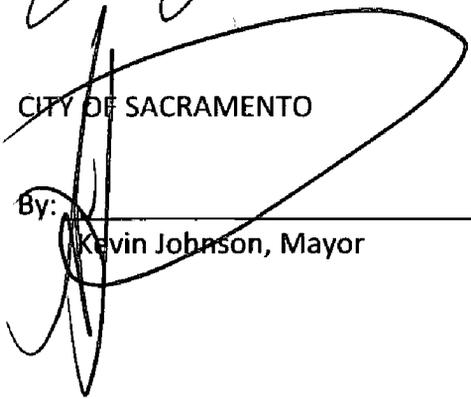
The parties have executed this Agreement the day and year first written above.

EMPLOYEE

  
\_\_\_\_\_

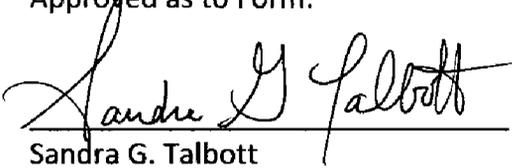
James Sanchez

CITY OF SACRAMENTO

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

Kevin Johnson, Mayor

Approved as to Form:

  
\_\_\_\_\_

Sandra G. Talbott  
Interim City Attorney

Attest:

  
\_\_\_\_\_

Shirley Concolino  
City Clerk

11-5-12