



May 22, 2014

# Sacramento Public Library Authority

Agenda Item 13.0: Memorandum of Understanding  
Approval: Legal Services, City of Sacramento, City Attorney

**TO:** Sacramento Public Library Authority Board

**FROM:** Rivkah K. Sass, Library Director

**RE:** Memorandum of Understanding Approval: Legal Services, City of Sacramento

## **RECOMMENDED ACTION(S):**

**Adopt** Resolution 14-19, approving an MOU with the City of Sacramento City Attorney's Office for Authority Counsel Services for a new period of July 1, 2014, through June 30, 2015, at the current annual fee of \$42,000.

## **REASON FOR RECOMMENDATION**

Under the terms of the Joint Powers Agreement, Section 9.d, Legal Counsel to the Authority shall be appointed by the Governing Board and shall serve at the pleasure of the Governing Board.

In 2009, the Library issued a Request for Proposal for legal services. Based upon the recommendation of an ad hoc committee comprised of Library staff and Authority Board members, the Sacramento Public Library entered into a one-year agreement with the City of Sacramento for legal services on May 28, 2009. One-year extensions of the agreement were approved by the Authority Board in 2010, 2011, 2012 and 2013. Counsel from the City Attorney's office is responsive, accessible and able to provide a broad range of services that meet and exceed needs and expectations.

The Library's Procurement Policy allows for a sole-source justification if the nature of a service is such that one party is uniquely qualified to perform the service. Library staff believes that continuing the relationship with the City Attorney's office is in the best interests of the Authority because the City Attorney's office has agreed to renew the existing contract for a period of one year for the current annual fee of \$42,000.

In 2015, Library staff will engage in a competitive procurement process.

Staff is requesting that the Authority Board approve a new legal services contract with the City of Sacramento City Attorney's Office for a period of one year for an annual fee of \$42,000 and authorize the Library Director to sign the contract.

## **ATTACHMENT(S):**

Resolution 14-19, approving an MOU with the City of Sacramento City Attorney's Office for Authority Counsel Services for a new period of July 1, 2014, through June 30, 2015, and authorizing the Library Director to sign the document shown in Exhibit A.



# Sacramento Public Library Authority

## RESOLUTION NO. 14-19

Adopted by the Governing Board of the Sacramento Public Library Authority on the date of:

**May 22, 2014**

### **APPROVE THE MEMORANDUM OF UNDERSTANDING WITH THE CITY OF SACRAMENTO FOR LEGAL SERVICES FOR FISCAL YEAR 2014-15**

BE IT HEREBY RESOLVED BY THE GOVERNING BOARD OF THE SACRAMENTO PUBLIC LIBRARY AUTHORITY AS FOLLOWS:

1. Approve a one-year agreement with the City of Sacramento for legal services, for Fiscal Year 2014-15 at a base rate of \$42,000, as set forth in Exhibit A.
2. The Library Director is authorized to sign all documents related to this contract within the approved terms and consistent with the requirements of the Authority's Contracts and Procurement Policy.

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Angelique Ashby, Chair  
 Jeff Slowey, Vice Chair

ATTEST:  
Rivkah K. Sass, Secretary

By: \_\_\_\_\_  
Linda J. Beymer, Assistant Secretary

**ATTACHMENT(S):**

Exhibit A: Memorandum of Understanding between the Sacramento Public Library Authority and the City of Sacramento for Legal Services for Fiscal Year 2014-15

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 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 yours 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. CIYT 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 Senior Deputy City Attorney Michael Voss shall be designed 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: Rivkah Sass, Library Director  
828 I Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Notice to CITY: James Sanchez, City Attorney  
915 I Street, 4<sup>th</sup> 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

SACRAMENTO PUBLIC LIBRARY  
AUTHORITY

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
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: \_\_\_\_\_  
Authority Counsel