

# *City of Brisbane*

## *Agenda Report*

To: City Council via City Manager

From: Stuart Schillinger, Administrative Services Director/Deputy City Manager

Subject: Consider approval of Renne, Sloan, Holtzman, Sakai for the provision of labor relation services for the City of Brisbane

Date: June 4, 2015

### **Purpose:**

Ensure the City has access to a labor relations professional to assist staff with contract negotiations with its employees.

### **Recommendation:**

Direct staff to use Renne, Sloan, Holtzman, Sakai for the provision of labor negotiations as provided for in the June 17, 2013 agreement for City Attorney Services.

### **Background:**

The City has been using IEDA for labor relations and negotiations for at least 15 years. When the City signed its agreement for a new City Attorney with Renne, Sloan, Holtzman, and Sakai in 2013 and updated it in 2014 the Council contemplated transferring labor relations and negotiations to the firm if an opportunity arose.

All of the City's labor contracts will have expired by the end of December 2015. The City is will begin a compensation study (another item on this agenda) this summer in preparation for negotiations. Therefore, a switch of labor relations firms would be timely.

### **Discussion:**

One major difference between the current with IEDA and with our current law firm is IEDA charges on a monthly basis whether we use the firm services or not. The agreement with Renne, Sloan, Holtzman, Sakai is on a time and materials basis. In other words we would only pay for an attorney when he/she was working on a Brisbane matter. In the realm of labor negotiations there are many times where there is no direct time being spent on the negotiation. In the case of IEDA we would continue to pay their monthly fee while with the law firm we would have no charges. For example in 2002 the City negotiated a 5 year agreement with our bargaining groups. During that time period we used IEDA very little as there were minimal labor relation issues we had to work through. During times like this there would be a savings by switching to a time and material basis.

On the other hand when we are in the midst of negotiations we do not pay IEDA extra regardless of the number of meetings we hold with our employee groups or the length of time the meetings take. Therefore, staff believes while we are in active negotiations the cost of using the law firm could be

higher than using IEDA but during non-negotiating periods it would be less. This would provide the City a small fiscal incentive to negotiate longer term deals with its employees. If we could negotiate a 3 year deal with our employees this year we could have two years of very limited costs and therefore have long-term savings.

The amendment to the agreement calls for Jon Holtzman to be our lead contact and labor negotiator and to use other people in the firm only if required. The cost for Mr. Holtzman would be \$285 an hour. It is anticipated we would not need more than 100 hours of his time to settle all of our contracts. Therefore, we have set an initial cap of \$28,500 annually in the contract. If we were to exceed this amount we would need to get additional City Council approval. One way to limit the number of hours of time would be to have City staff to work on some negotiations while using Mr. Holtzman on a limited basis. However, for those bargaining groups that are professionally represented we would use Mr. Holtzman more extensively.

One additional advantage of having a time and material basis contract is to focus people's energy in getting to agreement quickly. When a firm is on a monthly retainer there is no savings based on how quickly a negotiation could be concluded.

**Fiscal Impact:**

The current contract with IEDA is about \$19,000 a year or \$57,000 over three years. If we were to spend about \$28,000 this year with Mr. Holtzman's firm and this would leave an additional \$29,000 for the remaining two years to break even.

**Measure of Success**

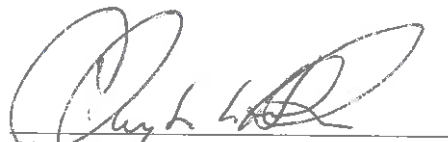
The City is able to successfully negotiate all open contracts by the end of the calendar year without exceeding the \$28,500 cap.

**Attachments:**

2013 agreement with Renne, Sloan, Holtzman, and Sakai  
Retention letter for Renne, Sloan, Holtzman, and Sakai to provide labor relation services.



Stuart Schillinger  
Administrative Services Director



Clay Holstine  
City Manager



Renne Sloan Holtzman Sakai

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Jon Holtzman  
415-678-3807  
jholtzman@publiclawgroup.com

May 20, 2015

**Via E-mail**

**schillinger@ci.brisbane.ca.us**

Stuart Schillinger  
Deputy City Manager/Administrative Services Director  
City of Brisbane  
50 Park Lane  
Brisbane, CA 94005

Re: Retention of Services for Labor Relations Advice - Amended

Dear Stuart:

This letter sets forth proposed terms for retention of Renne Sloan Holtzman Sakai, Public Law Group, to provide legal advice to the City of Brisbane on matters related to labor relations.

Given our prior engagement with you to provide City Attorney services, the Firm will bill the City of Brisbane for labor relations advice and related legal services at a blended hourly rate, based on our 2014 public sector rates. For 2014, our partner rates were \$285 to \$400.<sup>1</sup> Our associate rates depend on the associate's years of labor and employment experience out of law school and the rates were \$210 to \$285. Non-attorney Human Resources and Labor Relations Consultants rates ranged from \$160 to \$225. Paralegals were billed at \$105 to \$135 per hour. Billing is done in 1/10s of an hour increments.

We propose a blended attorney rate of \$285/hour with an initial cap of \$28,500 annually. During the course of the year, if it appears that our bills may exceed this amount, we will alert you, and discuss the appropriate course of action. We currently expect the following attorneys may work on matters for the City of Brisbane:

1. Jon Holtzman
2. Burke Dunphy

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<sup>1</sup> These rates are reviewed and may be modified every year, generally in January.

Stuart Schillinger  
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In addition, we propose using the following consultants from our Public Management Group:

1. Geoff Rothman (\$225/hour)
2. Howard Jordan (\$200/hour)

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are accounted for within the normal hourly rate and are not billed separately. However, the Firm charges for certain costs incurred in the representation, as well as for any disbursements to third parties made on a client's behalf. Such costs and disbursements include, for example, the following: travel (at the IRS rate in effect at the time the travel occurs), computer-assisted research, transcription, overnight delivery and messenger services. For major disbursements to third parties, invoices may be sent directly to you for payment. The Firm also bills for time spent traveling on a client's behalf at our normal hourly rates.

We will bill you on a monthly basis for services performed and costs incurred. Payment is due within 30 days of the date an invoice is rendered. Past due amounts will be shown on the invoice.

You may terminate our services at any time, subject to any applicable requirements for withdrawal of counsel imposed by a court or agency of competent jurisdiction, law or State Bar rule. The Firm reserves the right to withdraw from the representation for failure of the client to make timely payment of fees, costs, and disbursements in accordance with the fee arrangement described in this letter, or for any other reason permitted by the applicable Rules of Professional Conduct.

Please let me know if you have any questions or comments regarding this letter or any other matter. If the terms are agreeable, please sign below and return the original of this letter to me.

Sincerely,



Jon Holtzman

**AGREEMENT FOR  
CITY ATTORNEY SERVICES**

THIS AGREEMENT, dated 6 month, 17 date, 2013 year, is made and entered into by and between the City of Brisbane, a municipal corporation ("City"), and Renne Sloan Holtzman Sakai, LLP ("RSHS").

**RECITALS**

WHEREAS, the City desires to hire RSHS to provide contract City Attorney services; and

WHEREAS, the attorneys of RSHS are duly licensed under the laws of the State of California and have the necessary qualifications by reason of experience, preparation, and organization, and are fully qualified to discharge the duties of the office of City Attorney and to provide the services contemplated by this Agreement; and

WHEREAS, it is the desire of the parties to enter into this Agreement to establish the terms and conditions for providing City Attorney and special counsel services to the City.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**1. Legal Services**

RSHS's duties shall be that of City Attorney, as described generally in California Government Code §§ 41801-41805, and RSHS shall perform any and all basic City Attorney duties and functions entrusted to it by the City including, without limitation, attendance at meetings of the City Council and other City bodies as requested; providing legal advice on City matters to City staff; preparation of ordinances, resolutions, contracts, and other legal documents pertaining to City affairs; preparation of opinions regarding City matters as requested by appropriate City officials; and general municipal legal advice to all departments of the City. RSHS may, subject to mutual agreement, also provide special counsel services such as labor negotiations and representation of the City in litigation involving the City unless upon consultation with RSHS the City Council or City staff approved by the City Manager authorizes retention of separate counsel.

David Kahn shall be designated the City Attorney and shall be the primary attorney providing services under this Agreement. RSHS and City acknowledge and agree that availability and continuity of representation is an important factor in this Agreement, and that David Kahn shall strive to provide services similar to those of in-house counsel by making the City top priority. David Kahn will attend Council meetings, Commission and committee meetings as requested, and staff meetings as requested, and be available for Council and staff calls and emails unless on vacation or otherwise unavailable for good cause. The City will be provided reasonable notice of vacations. David Kahn will designate a Deputy City Attorney acceptable to the City to provide coverage if he is unavailable. David Kahn will be the coordinator of services provided to the

City with other attorneys of the firm or other outside counsel, as necessary. Teresa Stricker shall be designated the Deputy City Attorney.

Legal services will not include matters in which RSHS has a conflict of interest that precludes RSHS from representing City, members of the City Council, officers or employees of City. If RSHS has a conflict of interest or lacks expertise to handle a particular assignment, RSHS shall, following consultation with the City Manager, provide the City with a recommendation to hire outside counsel.

## **2. Compensation For Legal Services**

In consideration for the provision of legal services, beginning June 17, , 2013, City shall compensate RSHS as follows: For Basic City Attorney services which shall include attendance at Council and other City meetings, regular office hours, provision of legal advice including email and phone calls, preparation of ordinances, resolutions, contracts and other standard legal documents, preparation of formal written opinions, , City shall pay to RSHS on an hourly basis \$250 per hour. RSHS will not bill for time spent in routine travel from RSHS offices to City offices. RSHS will bill for travel time only when attending court appearances or meetings at destinations other than City offices.

For specialized services provided in connection with legal advice provided on non-routine labor negotiation matters and prosecution and defense of litigation and/or adjudicative or investigative proceedings, the City and RSHS may negotiate and agree to a separate rate. . For litigated cost recovery matters for which the City receives recovery of attorney fees from a 3<sup>rd</sup> party, for purposes of cost recovery the City shall use the standard hourly rates established by and as changed from time to time by RSHS.

## **3. Monthly Billings; Expense Reimbursements**

RSHS shall bill the City on a monthly basis. Each bill shall indicate the date of the work done, the nature of the work that was accomplished, the attorney that performed the work, and the fee for the work.

The following out-of-pocket expenses will be separately itemized and included in bills to the City: (1) extraordinary operating expenses, including items such as messenger services, overnight mail charges, extraordinary copying, and computer-assisted research; (2) necessary travel and subsistence expenses for matters other than Basic City Attorney Services; (3) court costs, including filing fees, witness fees, and deposition and discovery costs not paid directly by the City. RSHS will waive its normal mileage expense, except for travel to court appearances or destinations other than City offices.

The City shall review and approve RSHS's monthly statements and pay RSHS for services rendered and expenses incurred at the rates and in the amounts provided in this agreement within 30 days of receipt of the monthly statements.

#### **4. Amendment; Annual Review**

This Agreement may be amended from time to time by written agreement of the parties. City and RSHS shall review the financial provisions in this Agreement on or about March 30 of each year to insure that its terms and conditions are acceptable to both parties.

The City Council will meet with the City Attorney on an annual basis in March of each year to provide a performance review and feedback. RSHS will not bill the City for time spent in connection with the annual performance review.

#### **5. Termination**

This Agreement may be terminated by City at any time upon thirty (30) days written notice to RSHS and by RSHS upon sixty (60) days written notice to City. In the event of termination, City shall be responsible only for fees and costs incurred as of the effective date of the termination.

#### **6. Independent Contractor**

RSHS is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its agents shall have control over the conduct of RSHS or any of RSHS employees or agents, except as herein set forth. RSHS shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the City. RSHS shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent.

#### **7. Professional Liability Coverage**

During the term of this Agreement, RSHS shall at all times maintain insurance coverage for professional liability. A copy of the policy shall be provided to the City upon request.

#### **8. Indemnification**

RSHS agrees to defend, indemnify and hold the City harmless from and against claims or liabilities arising out of the negligent errors or omissions of RSHS discharging its obligations under this Agreement, excluding claims or liabilities arising out of the City's active negligence or wrongful conduct.

**9. Ownership Of Records; Retention Of Records**

Upon termination of this contract, all reports, plans, documents, records, and data or certified copies of same prepared by RSHS pursuant to this Agreement shall become the property of City, excluding RSHS's internal accounting records and other documents not reasonably necessary to City's representation, subject to RSHS's right to make copies of any files withdrawn by City. Once a matter is concluded, RSHS will close the file. Under RSHS's document retention policy, RSHS normally maintains files for seven (7) years after a matter is closed, unless other arrangements are made with City. All City-supplied materials and all attorney end product (referred to generally as "City material") are the property of City. Attorney end product includes, for example, finalized contracts, pleadings, and trust documents. Attorney work product is the property of RSHS. Attorney work product includes, for example, drafts, notes, internal memoranda and electronic files, and attorney presentation and administration materials, including attorney-City correspondence and conflicts materials.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date written above.

CITY OF BRISBANE

By: 

Raymond C. Miller, Mayor

RENNE SLOAN HOLTZMAN SAKAI

By: 

David Kahn, Esq.

Partner