



## Legislation Text

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**File #:** 18-023, **Version:** 1

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*Report Prepared by: Stephanie Dietz, Assistant City Manager*

**SUBJECT:** Consideration of the Second Amendment to the Berliner Cohen, LLP Contract for Interim City Attorney and Interim Legal Services

### REPORT IN BRIEF

Consider authorizing a Second Amendment to the Agreement with Berliner Cohen, LLP to provide Interim City Attorney Services.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving the Second Amendment to the Agreement for Interim Legal Services for Interim City Attorney Services with Berliner Cohen, LLP, and;
- B. Approving a Supplemental Appropriation from the General Fund unencumbered, unreserved Fund Balance and authorizing the Interim Finance Officer to make the necessary budget adjustments, and;
- C. Authorizing the City Manager or Assistant City Manager to execute the Second Amendment to the Agreement for Interim Legal Services with Berliner Cohen, LLP.

### ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Provide direction on specific revisions to the Agreement; or,
- 3. Request additional information; or,
- 4. Continue the matter to a certain date; or,
- 5. Decline to take action.

### AUTHORITY

Charter of the City of Merced, Sections 200 and 603

### CITY COUNCIL PRIORITIES

N/A

### DISCUSSION

Following the departure of the former City Attorney, the City was in need of appointing a City Attorney to provide the services required by Section 603 of the City Charter. Around the same time, the City's

Senior Deputy City Attorney position became vacant, which left one attorney and two support staff members to staff the City Attorney's Office. On August 15, 2016, the City Council approved an Agreement with the law firm, Berliner Cohen, LLP (hereafter Berliner Cohen) to provide Interim City Attorney and legal Services for the City. Under the terms of this Agreement, Berliner Cohen Partner Jolie Houston was appointed Interim City Attorney and two attorneys from Berliner Cohen's Merced office, Jeff Kauffman, a Berliner Cohen Partner, and Kim Flores, a Senior Associate, were retained to provide interim legal services for the vacant Senior Deputy City Attorney position

On September 16, 2016, the City commenced an in-house recruitment for a City Attorney. The recruitment, which was open for more than 30 days, closed on October 21, 2016. Thereafter, the City Council decided to hire an in-house City Attorney. The City Council directed City staff to bring back an Amendment to the Berliner Cohen Agreement so that the interim legal services could be extended.

Berliner Cohen Partner Jolie Houston has been serving as the City's Interim City Attorney since her appointment in August 2016. Ms. Houston is an experienced attorney who specializes in Land Use and representing Cities and other government agencies as the agency's attorney. Notably, Ms. Houston has served on several committees for the League of California Cities, including the Municipal Law Handbook Committee, the City Attorney's Nominating Committee and the Public Records Act Committee, in which she served as the Committee Chairperson. She is currently sitting as the City Attorney for the City Council at their regular meetings and is handling a wide variety of critical City projects and legal issues. These high-level projects include assisting with the Gateway EIR, High Speed Rail and the relocation of the Merced Police Station site. In addition, Mr. Kaufman and Ms. Flores have been successfully serving the City by fulfilling the role of the Senior Deputy City Attorney. Both hold office hours at City Hall each week and each has his/her own workload and department clients that they advise. From Staff's perspective, the combination of the professional and quality legal work being provided by the Berliner Cohen attorneys as well as the in-house Chief Deputy City Attorney and support staff members is working very well for the operation of City business.

A First Amendment to the Agreement was approved by the Council on February 21, 2017 to extend the current interim legal services provided by the law firm, Berliner Cohen through January 31, 2018 in order to continue the following services: (1) the appointment of Jolie Houston to continue to serve as Interim City Attorney; (2) the staffing of the City Attorney's Office with Mr. Kaufman and Ms. Flores from Berliner Cohen's Merced office two days a week for eight hours a day (16 hours a week); and, (3) the performance of legal services as assigned. This amendment also allows for an increase of aggregate authorized hours from 100 to up to 120 per month. This increase in hours was necessary because the Berliner Cohen attorneys working for the City are working on long-term or complicated projects which, at times, require hours to be worked in addition to their regularly scheduled or allotted time. For example, at times, additional hours are required for the attorneys to attend meetings, make court appearances or draft time-sensitive court pleadings. The retainer amount was increased from \$29,000 to \$34,800 a month to compensate for the increase in aggregate hours to be provided. The cost of the Agreement was paid from the City Attorney's Office budget through salary savings related to the vacant City Attorney and Senior Deputy City Attorney positions. Any hours worked over the 120-hour monthly limit were paid by the City at an applicable hourly rate only if Berliner Cohen

obtains advanced authorization from the City to exceed the 120-hour monthly limit. First Amendment maintains all other terms and conditions of the original contract.

On December 4, 2017, the Council gave direction to begin recruiting for a City Attorney using the outside recruiting firm Avery & Associates. Since this time, staff have negotiated a contract and the recruitment process is underway. As a result of the estimated time this process will take, along with the expected need for the transition of projects between the newly appointed City Attorney and Berliner Cohen attorneys, staff are recommending that a second amendment to the Berliner Cohen, LLC contract be approved to allow for the same level of service to be provided to the City through June 30, 2018.

### **IMPACT ON CITY RESOURCES**

The estimated cost through June 30, 2018 for the Second Amendment to the Berliner Cohen, LLP Contract is \$185,000. There is \$100,000 available from salary savings within the FY 2017-18 budget. The other \$85,000 will require a Supplemental Appropriation from the unreserved, unencumbered General Fund balance.

### **ATTACHMENTS**

1. Second Amendment to the Agreement for Interim Legal Services
2. First Amendment to the Agreement for Interim Legal Services
3. Agreement for Interim Legal Services