

Office of the City Manager

CONSENT CALENDAR

September 21, 2004

To: Honorable Mayor and  
Members of the City Council

From: Phil Kamlarz, City Manager *Phil Kamlarz*

Subject: Expenditure Authority for Contract for Legal Services: Hanson Bridgett Marcus  
Vlahos Rudy LLP

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to make payments to Hanson Bridgett Marcus Vlahos Rudy LLP (hereinafter "Hanson Bridgett") in an amount not to exceed \$40,000 for legal services pertaining to federal and state tax issues for the period of July 1, 2004 through June 30, 2005.

FISCAL IMPACTS OF RECOMMENDATION

The cost of the outside legal services is \$40,000 and will be paid from the General Fund, Budget Code 010-9701-410-3038. The City has outstanding invoices from Hanson Bridgett for \$12,419.32 that must be paid.

CURRENT SITUATION AND ITS EFFECTS

The City has sought the services of outside counsel to provide opinion and advice on several matters pertaining to the impact of federal and state tax laws on employee benefit matters. On May 31, 2001, the City entered into a contract with the law firm of Hanson Bridgett to advise the City on employee benefit and compensation matters that have federal and state income tax implications. Robert Blum, a partner with Hanson Bridgett, is the attorney in charge of the engagement.

Mr. Blum has advised the City on the tax implication of various employee benefits including, but not limited to, the employee transit subsidy program, an Internal Revenue Code 401(a) plan and trust agreement for the liquidation of leave at time of separation from employment, and a separate 401(a) plan for the Berkeley Police Association. During the negotiations with the City's labor unions in the spring of 2004, Mr. Blum advised the City on the tax implications of several cost savings strategies on reporting both employee and employer contributions to CalPERS. One of the reasons there was no negotiated agreement on CalPERS contribution cost savings was the City's reliance on advice received from Mr. Blum based on his legal research. However, the City did reach a negotiated agreement with the Berkeley Police Association to defer City contributions to the Supplementary Retirement and Income Plan in calendar year 2005. In order for this provision to be implemented, it is necessary to draft a new Supplementary Retirement and Income Plan document for the exclusive benefit of current and former sworn Police employees and to address certain tax and vested rights issues in the new plan. This requires the work of someone who is knowledgeable about tax and benefit law.

BACKGROUND

The original contract for services entered into on May 31, 2000 was for \$20,000. On May 14, 2002, the City Council adopted Resolution No. 61,543 – N.S. that authorized the City Manager to execute a contract and any amendments with Hanson Bridgett in an amount not to exceed \$75,000 for the period of July 1, 2001 through June 30, 2003. On September 9, 2003, the City Council adopted Resolution No. 62,204 – N.S. that authorized the City Manager to execute a contract and any amendments with Hanson Bridgett in an amount not to exceed \$30,000 for the period of January 1, 2003 through June 30, 2004. On March 23, 2004, the City Council adopted Resolution No. 62,411-N.S. that provided additional expenditure authority to pay several outstanding invoices and to obtain authority to complete the Police 401(a) work with the IRS and to advise the City on the tax and pension implications of having staff pay three percent (3%) of the pension contribution to CalPERS.

RATIONALE FOR RECOMMENDATION

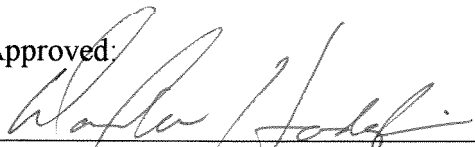
It is necessary for the City to provide employee benefits in a manner that complies with various Federal and State tax laws, rules and regulations. In order to ensure that the City is in compliance, it is appropriate for the City to contract for specialized legal services to advise the City and to act on behalf of the City when dealing with tax counsel with outside firms.

ALTERNATIVE ACTIONS CONSIDERED

An alternative would be for the work to be performed by the City Attorney's Department. However the nature of this work involves specialized knowledge of Federal and State tax laws, rules and regulations and the City Attorney believes that this specialized legal work should be performed by outside counsel.

CONTACT PERSON

David W. Hodgkins, Acting Director of Human Resources, 981-6805

Approved: 

David W. Hodgkins, Acting Director of Human Resources

RESOLUTION NO. -N.S.

**AUTHORIZING THE CITY MANAGER TO MAKE PAYMENTS TO HANSON BRIDGETT MARCUS VLAHOS RUDY LLP IN AN AMOUNT NOT TO EXCEED \$40,000 FOR LEGAL SERVICES PERTAINING TO FEDERAL AND STATE TAX ISSUES FOR THE PERIOD OF JULY 1, 2004 THROUGH JUNE 30, 2005**

WHEREAS, from time to time the City enters into agreements with employee organizations on health and welfare benefit matters that require technical opinion, advice and services on the impact of these benefits on federal and state income tax withholding; and

WHEREAS, the law firm of Hanson Bridgett Marcus Vlahos Rudy LLP (hereinafter "Hanson Bridgett") has staff with the requisite technical knowledge skills and abilities to provide such opinion, advice and services; and

WHEREAS, the City does not have staff that can provides such opinion, advice and services; and

WHEREAS, Hanson Bridgett was selected to provide these services based on the technical knowledge, skills and abilities of the attorney in charge of the engagement and the attorney previously worked for another firm which had been selected through a competitive selection process; and

WHEREAS, funds are available in the current year budget in the fringe benefit fund, budget code 010-9701-410-3038 and contract has been entered into the City contract database, and assigned CMS number RT8PZ.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Hansen Bridgett for legal services for the period of July 1, 2004 through June 30, 2005 in an amount not to exceed \$40,000 Budget Code 010-9701-410-3038. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

