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LEGAL SERVICES LIMITED REVIEW
AUD17-04
August 25, 2017

BACKGROUND
The Office of the City Attorney (Legal) represents the City as an entity and is tasked with providing legal counseling, advice and representation to the Mayor, the City Commission, City Officers in their official capacity, and City Departments. Further, Legal also serves as general counsel for the Community Redevelopment Agency. While Legal does not represent individual employees, those employees may be represented by outside counsel in matters for which they are sued personally for actions within the scope of their employment. For example, if a police officer is sued individually based on the circumstances of enforcing the law, then the City Attorney would contract with outside counsel to represent the police officer.

Legal’s mission is to assist the City in accomplishing its mission lawfully, by serving as the chief legal advisor to the City, protecting its legal interests, and assisting in promulgation and enforcement of the laws of the City. It should be noted that Legal does not make administrative decisions. As such, it is incumbent upon the City to decide how to proceed. Settlement authority is specifically outlined in section 2-268(g) (1)-(4) of the City Code.

The primary areas that Legal provides services includes: Litigation, Transactions (contracts), Labor and Employment, Administrative Law, as well as Advisory and Regulatory matters. Further, Legal prepares and reviews all legal instruments and drafts and/or assists with the passage of legislation. From April 2015 through April 2017 there were an estimated 5,204 matters. Legal has 12 attorneys, two of whom are part time, and 5 support staff handling all of these areas. Outside counsel is also utilized as deemed necessary.

This audit was approved on the FY2017 Annual Audit Plan as a limited scope review and as such, the scope of the audit included a limited review of matters from April 2015 to April 2017. This review included examinations of controls, records maintained, systems used, data analysis, survey results, and interviews.

NOTEWORTHY ACCOMPLISHMENTS
Legal drafts and/or reviews all Ordinances and Resolutions brought to the City Commission, and works with each City Department and City Administration to prepare the agenda for each City Commission meeting. Additionally, Legal handles a large volume of matters, ranging in nature from constitutional rights issues, personal injury defense, police liability, complex transactions, contracts, land use, public utility, labor and employment, to administrative and regulatory law. Finally,
Legal has worked tirelessly to protect the City’s interests including successfully protecting its sovereign immunity and saving the City millions of dollars.

**SUMMARY CONCLUSIONS**

Based on the limited review performed, we found that Legal actively resolves matters and has general controls in place. However, we found that Legal operates from a more reactive position due to its heavy workload. As such, we found that there are opportunities to improve and proactively deliver services as indicated below.

1. **Outside Counsel** – We found that many outside counsel agreements were broad and used the same or very similar language for the scope of services regardless of the firm or matter. Further, we found that in some instances the invoices submitted for payment were general and lacked specificity as to what services were actually provided. Broad language in agreements combined with invoices that lack specificity, creates challenges for Legal to determine conclusively if it has received the services agreed upon at an accurate fee. While we understand that legal strategy should be protected and not gleaned through billing statements or agreements, we believe that a separate independent review of invoices would assist in substantiating the payment requests.

Further, these agreements contain audit clauses which permit audits of invoices, books, and records, however, they are not utilized on a regular basis. We were advised that at one time, Legal contracted with another attorney to review invoices. This may be a beneficial practice to re-implement as it may identify savings or at the very least it may serve as a deterrent for erroneous invoices.

2. **Training** – Police Officers receive in-service training regarding the legal parameters that they must operate within. However, with the exception of ethics training, other Departments receive training when requested. Considering the complexity and impact of legal matters, it would be prudent to proactively provide training on matters more common to employees and management such as contract requirements or employment matters. We believe that this will be efficient as advice provided by legal counsel typically carries greater weight and may help prevent matters from arising.

3. **Communication** – We found that Legal has historically held frequent and/or standing meetings with Police, the CRA, and Planning and Zoning. In recent weeks, standing meetings have increased to include a joint meeting with IT and Procurement. However, other departments or divisions do not have regular standing meetings with Legal. While Legal advises its clients to contact them should they have any questions, it would be prudent to proactively provide their clients with periodic status updates. It should be noted that standing meetings should not be used to replace the Request for Legal Services process. Rather, these meetings should be utilized to facilitate an ongoing open dialogue with Legal that would improve communication, provide greater understanding of legal parameters, and facilitate more efficient case management.

**RECOMMENDATION 1**

The City Attorney’s Office should ensure that services provided by external counsel fully meets its needs and charges are appropriate by:
a. Requiring agreements and invoices to include more specificity as to expectations and work provided, but without divulging legal strategy.
b. Conducting more extensive reviews by invoking the audit clause in the agreements.
c. Conducting a trial program to have an attorney review Legal's invoices to determine if they are accurate. Subsequently, a dollar threshold analysis could be performed to determine if a targeted dollar level review would be more effective.

**MANAGEMENT RESPONSE 1**

a) This Office concurs with this recommendation. Future agreements for outside counsel services will be sufficiently detailed to describe the work the lawyer or firm was hired to perform to the extent that the lawyer or firm is not being hired to provide general legal advice relating to a particular subject matter or otherwise reveal legal strategy, mental impressions, or work product. Further, this office will amend future outside counsel agreements to require invoices include sufficient information to describe the work performed to the extent that such specificity does not divulge legal strategy, mental impressions, or work product.

**Target Implementation Date:** Immediately.

b) This Office has previously informally discussed with Internal Audit the possibility of auditing outside counsel bills as we do not have actual knowledge of work performed in worker's compensation and employee representation matters. Since those discussions, worker's compensation has been brought in house, leaving employee representation matters a good subject for review. This Office concurs with this recommendation and will seek the assistance of the Internal Auditor's Office in the review of outside counsel invoices for worker’s compensation and employee representation.

**Target Implementation Date:** With assistance of Internal Audit.

c) This Office concurs with this recommendation and will seek an outside lawyer to review invoices for reasonableness. We will attempt to obtain that service on a contingency fee basis – i.e. contingent on reducing fees – or at a low hourly rate. We will note, however, our concern is the same issue with billing from this reviewing lawyer as with outside counsel. Additionally, the reviewing lawyer may be over zealous in attempting to save the City money and could cause damage in the City’s relationship with outside counsel.

**Target Implementation Date:** Within 3 months.

**RECOMMENDATION 2**

The City Attorney’s Office should ensure that matters are managed as efficiently as possible by establishing training for Departments. An analysis should be performed to identify areas where departments typically request assistance, have matters sent back when insufficient, and other areas as deemed necessary by Legal and the departments. Training should be created based on need and whenever possible, training should be combined to cover as many departments as possible with similar issues. An analysis should be performed to determine if matters are decreasing as a result of the training provided combined with improved communication.
MANAGEMENT RESPONSE 2

In addition to Police Officer in-service training, the City Attorney’s Office also provides the following training: Police Officer new hire training; forfeiture; code enforcement; implementation of newly adopted ordinances; contract database training with Procurement and Risk Management; and City Smart. This office has also assisted Human Resources relating to EEO training and provides guidance for training materials relating to employment matters.

The City has been working toward improving its Contract process. Last year the Procurement Department, Risk Management and this Office held multiple training sessions on the contract database and explained how to process a contract request. This year there have been about two trainings and the next training is scheduled for October 1, 2017. Before the October training, this Office will review its part in the contract database training and update the training to include instruction in areas where we note that departments typically request assistance and have matters sent back. We are also in the process of scheduling specific contract training for CRA staff. In addition to the training, the WIN team recommended that a checklist be prepared so that a person could see all steps necessary to process a contract and made other recommendations which are aimed toward reduced employee confusion and error in processing contract requests. We are presently working with Procurement and City Administration to develop checklists on what information is required for each type of contract. In the past 12 months, this Office processed approximately 2,900 matters, a majority of which are contracts. We do not currently have a system in place to track when and why items are returned to a department (without opening and reviewing each individual matter) but will work with IT to see if they have a cost effective solution and will report our findings to Administration and Procurement in April of 2018 (six months after the first training).

Target Implementation Date: October 1, 2017 for training and checklists. April 2018 for findings regarding tracking of contract issues.

RECOMMENDATION 3

The City Attorney’s Office should ensure its continued success by establishing periodic meetings for departments to meet with an attorney to discuss matters including but not limited to status updates, challenges faced, and outstanding items from both parties. To ensure that resources are used efficiently, departments should be asked to create an agenda prior to confirming a meeting in order to allow the attorney time to prepare for or research matters.

MANAGEMENT RESPONSE 3

In addition to meetings held with Police, CRA, and Planning, this Office has weekly meetings with Risk Management, Administration, the department heads, and Human Resources. Lawyers in this Office have daily contact with all departments by either telephone or e-mail. When a matter comes into the Office, it is assigned to a primary attorney and this Office sends the requestor confirmation of receipt of the assignment with the assigned lawyer’s name and phone number. The lawyers assigned to each case are to respond to inquiries and to keep the departments up to date. Additionally, the contract database provides a status for all contract assignments.
Lawyers always need to timely and effectively communicate with their client. City staff always has the ability to call the attorneys directly, as each attorney has a direct dial number and calls are not directed to a receptionist or secretary. To induce additional lines of communication, this Office will develop an open agenda so that any department can add items to the agenda that they would like to discuss, including but not limited to status updates, challenges faced, and outstanding items needed from either party. We do not, however, want this process to cause any department to feel that in order to speak with an attorney, they have to put an item on the agenda. We will follow up with those who participate to ensure that the departments are satisfied with the process and that it enhances our communication efforts.

**Target Implementation Date:** January 2018 and satisfaction evaluation no later than July 2018.

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**STATEMENT OF AUDITING STANDARDS**

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.