



## Staff Report

**Date:** July 12, 2016

**To:** City Council/City Council Sitting as the Local Reuse Authority

**From:** Valerie J. Barone, City Manager

**Prepared by:** Guy S. Bjerke, Director - Community Reuse Planning  
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**Subject:** **Considering approval of an Agreement for Legal Professional Services with Burke, Williams & Sorensen, LLP in the amount of \$270,000 in connection with transactional legal support for the Community Reuse Project at the former Concord Naval Weapons Station (CNWS) (Funding will be provided by the Master Developer or a loan to the Local Reuse Authority (LRA) from the General Fund)**

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### Report in Brief

Staff is recommending that the Local Reuse Authority (LRA) approve an Agreement for Legal Professional Services with Burke, Williams & Sorensen, LLP to authorize the expenditure of up to \$270,000. The term of the Agreement is July 1, 2016 to June 30, 2017.

The Burke, Williams & Sorensen, LLP scope of work includes review and revision of conveyance documents, preparation of development agreements including financial participation, creation of financing districts; development of labor agreements, and negotiation of the Disposition and Development Agreement, Development Agreement, and other related agreements with the selected Master Developer for the Development Phase One Property. The City Attorney's office has determined that outside counsel continues to be needed to augment staff. Burke, Williams & Sorensen, LLP has been providing these specialized services since 2013.

Funding will be provided by the Master Developer or through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2016/2017 budget, depending on the task. The loan will be repaid, with interest, from land sales or leases within the former Concord Naval Weapons Station (CNWS). Total funding since 2013, including this Agreement, is \$665,000.

### **Recommended Action**

Staff recommends approving an Agreement for Legal Professional Services for specialized transaction legal services with Burke, Williams & Sorensen, LLP in an amount not to exceed \$270,000 and authorizing the City Attorney to execute the agreement on behalf of the City, subject to approval of the City Attorney.

### **Background**

The City Attorney and the LRA's Executive Director determined a need for specialized legal support focusing on specific areas of legal concern associated with property disposition and development as the Base moves towards transfer. In 2013, the City conducted a competitive process for selecting a firm, entailing the issuance of requests for proposals to multiple Bay Area law firms specializing this area, and panel interviews of the responding firms. After analyzing the proposals, conducting interviews with all responding law firms and receiving input from the LRA's Project Team, the selection panel concluded that Burke, Williams & Sorensen, LLP fit best with the legal objectives sought by the City Attorney, the specifics of which are discussed below.

### **Analysis**

Burke, Williams & Sorensen, LLP has been providing legal services to the LRA since 2013. The firm has been responsible for the provision of legal services in one or more of the following areas of law (including in each instance litigation and dispute resolution capabilities): 1) real estate development/Master Developer negotiations; 2) land use and zoning; 3) construction; 4) energy; 5) public utilities; 6) labor agreements; 7) public finance; 8) non-profit/tax exempt organizations involved in affordable housing; and 9) environmental remediation/risk management.

The LRA and City Attorney's office continues to require support in these areas as the Base moves towards transfer in 2017. Mr. Jerry Ramiza serves as the lead partner in charge. In addition to the firm's broad experience, Mr. Ramiza brings years of experience with Concord, having worked on a wide range of issues for the City and its Redevelopment Agency.

Specific tasks associated with Burke, Williams & Sorensen, LLP scope of work this fiscal year include:

- Lead Counsel for development of strategy, document preparation for Disposition and Development Agreement (DDA) and Development Agreements (DA).
- Support City team with advice and advocacy for negotiations with the Master Developer.
- Support City team during EDC value and transfer negotiations with the Navy.
- Support the City Attorney's office in other related legal matters.

**Financial Impact**

The City Attorney's office is requesting the City Council approve an Agreement for Legal Professional Services in an amount not to exceed \$270,000, with additional authority for the City Attorney's office to approve amendments for additional compensation, not to exceed \$20,000, during the 12 month performance period.

Funding will be provided by the Master Developer or through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2016/2017 budget, depending on the task. The loan will be repaid, with interest, from land sales or leases within the former Concord Naval Weapons Station (CNWS). Total funding since 2013, including this Agreement is \$665,000.

**Public Contact**

The City Council Agenda was posted.

**Attachments**

1. Agreement with Burke, Williams & Sorensen, LLP



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2       **3.     Consideration.**   As full consideration for the work to be performed by  
3 CONSULTANT, CITY shall pay CONSULTANT based upon the hourly rates for its attorney(s)  
4 assigned to assist CITY to be paid upon submission and approval of invoices. The hourly rates are as  
5 follows:

6                               Gerald Ramiza - \$320 per hour

7                               Associates/Senior Counsel/Junior Partners - \$250 - \$300 per hour

8       CONSULTANT will bill time monthly on a straight hourly basis. CONSULTANT charges  
9 clients for actual costs for travel and other extraordinary expenses such as courier services and express  
10 mail, but does not separately charge for long-distance telephone calls, copying, postage, etc., adding  
11 instead for these itemized charges a four percent (4%) administrative charge to the monthly billing.

12       For each matter or case for which CONSULTANT provides services during the period covered  
13 in each monthly billing, invoices shall include a separate cover letter identifying the total amount  
14 billed for each matter or case. As these cover letters will be subject to disclosure through the  
15 California Public Records Act (California Government Code §§ 6250, *et seq.*), CONSULTANT shall  
16 ensure that the case or matter descriptions used therein do not reflect CONSULTANT impressions,  
17 conclusions, opinions, or legal research or strategy.

18       The total amount paid to CONSULTANT pursuant to this Agreement shall not exceed Two  
19 Hundred Seventy Thousand Dollars \$270,000 for fiscal year 2016/2017, without CITY's express  
20 written authorization. If requested by CITY, the "not to exceed" amount described in this Paragraph 3  
21 may be increased upon execution of an amendment setting forth the new "not to exceed" amount, all  
22 in accordance with Paragraph 14 of this Agreement.

23       **4.     Records.**   CONSULTANT shall maintain accounting records and other evidence  
24 pertaining to the cost incurred and shall make the records available to authorized representatives of  
25 CITY or other governmental agency or district authorized by CITY to inspect such records. These  
26 records shall be available at all reasonable times during the Agreement period and for four (4) years  
27 from the date of final payment for work performed hereunder.

1           **5.     Key Personnel.** All of the services required hereunder shall be performed by  
2 CONSULTANT or under his/her/its supervision, and all personnel engaged in the work shall be fully  
3 qualified to perform such services. Any change in the key personnel shall be subject to the written  
4 approval of CITY. The following are the key personnel for the subject of this Agreement:

5                     Gerald J. Ramiza Esq.

6           **6.     CITY-Authorized Representative.** An authorized representative shall represent  
7 CITY in all matters pertaining to the services rendered by CONSULTANT under this Agreement. All  
8 documents and requests for information shall be submitted through this representative and CITY will  
9 cooperate with CONSULTANT in all matters relating to this Agreement in such manner as will result  
10 in the performance of such work without delay. The CITY-authorized representative is the City  
11 Attorney.

12           **7.     Termination.**

13           **A.**     Either party may terminate this Agreement at any time, without cause, upon  
14 seven (7) days notice of discontinuance and termination of said Agreement given in writing. Such  
15 notice shall be sufficient and complete when same is deposited in the United States mail, first class  
16 postage prepaid, to the address shown in the paragraph herein concerning notice.

17           **B.**     CITY may at any time, at its discretion, abandon or suspend any portion of  
18 work to be done under the terms of this Agreement.

19           **C.**     In the event of CITY's abandonment or suspension of CONSULTANT's work  
20 under this Agreement, or in the event of the termination of this Agreement, CONSULTANT shall stop  
21 work at the stage directed by CITY and shall deliver to CITY all reports, pleadings, discovery, and file  
22 materials relating to the Savage Arbitration. At the discretion of CITY, CONSULTANT shall also  
23 cancel all orders for goods or services connected with this Agreement which have not been delivered  
24 or received,

25           **8.     Equal Opportunity Assurance.** During the performance of this Agreement,  
26 CONSULTANT agrees as follows:

27           **A.**     CONSULTANT will not discriminate against any employee or applicant for  
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1 employment because of race, sex, creed, physical handicap, color, sexual orientation, or national  
2 origin. CONSULTANT will take affirmative action to ensure that employees are treated equally  
3 without regard to race, gender, creed, physical handicap(s), color, sexual orientation, or national  
4 origin. Such action shall include but not be limited to the following: employment, upgrading,  
5 demotion, or transfer; recruitment or recruitment advertising; layoffs and terminations, rates of pay or  
6 other forms of compensation; and selection for training, including apprenticeship. CONSULTANT  
7 agrees to post, in conspicuous places, available to employees and applicants for employment, notices  
8 setting forth the provisions of this nondiscrimination clause.

9           **B.** In the event of CONSULTANT's noncompliance with the nondiscrimination  
10 clause of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in  
11 part.

12           **9. Insurance.** CONSULTANT shall, at its own expense, procure and maintain in full  
13 force at all times during the term of this Agreement the following insurance:

14           **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
15 commercial general liability insurance with limits of no less than One Million Dollars (\$1,000,000)  
16 combined single limit per occurrence or Two Million Dollars (\$2,000,000) aggregate limit for bodily  
17 injury, personal injury, and property damage.

18           **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile  
19 liability insurance covering all vehicles used in the performance of this Agreement providing a One  
20 Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury,  
21 and property damage.

22           **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT  
23 shall maintain professional liability insurance with coverage for all negligent errors, acts or omissions  
24 committed by CONSULTANT, its agents and employees in the performance of this Agreement. The  
25 amount of this insurance shall be not less than One Million Dollars (\$1,000,000) on a claims made  
26 annual aggregate basis or a combined single limit per occurrence basis.

27           **D. Compliance with State Workers' Compensation Requirements.**

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1 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation  
2 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all  
3 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being  
4 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall  
5 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and  
6 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision  
7 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

8 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to  
9 contain the following provisions:

10 **(1) Additional Insured.** CITY, its officers, agents, employees, and  
11 volunteers are to be covered as an additional insured as respects: Liability arising out of activities  
12 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,  
13 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope  
14 or protection afforded to CITY, its officers, officials, employees, or volunteers.

15 Except for worker's compensation and professional liability insurance, the policies mentioned  
16 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
17 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT  
18 receives any notice of cancellation or nonrenewal from its insurer.

19 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be  
20 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any  
21 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,  
22 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute  
23 with it.

24 **(3) Reporting Provisions.** Any failure to comply with the reporting  
25 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,  
26 employees, or volunteers.

27 **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
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1 certificates of insurance and the original endorsements effecting coverage required by this Agreement.  
2 The certificates and endorsements for each insurance policy are to be signed by a person authorized by  
3 that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an  
4 insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and  
5 shall be delivered to CITY at the time of the execution of this Agreement or before work commences.  
6 Such policies and certificates shall be in a form approved by the City Attorney. CITY reserves the  
7 right to require complete certified copies of all required insurance policies at any time.

8 **10. Indemnification.** CONSULTANT shall indemnify, defend, and hold harmless CITY  
9 against and from any and all claims or suits for damages or injury arising from CONSULTANT's  
10 negligence, errors or omissions in the performance of this Agreement, and shall further indemnify,  
11 defend, and hold harmless CITY against and from any and all claims or suits arising from any breach  
12 or default of any performance of any obligation of CONSULTANT hereunder, and against and formal  
13 costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought  
14 within the scope of this indemnification.

15 **11. Independent Contractor.** CONSULTANT is an independent contractor retained by  
16 CITY to perform the work described herein. All personnel employed by CONSULTANT, including  
17 subcontractors and personnel of said subcontractors approved by CITY, are not and shall not be  
18 deemed to be employees of CITY. CONSULTANT and approved subcontractors shall comply with  
19 all State and Federal laws pertaining to employment and compensation of their employees or agents,  
20 including the provision of Workers' Compensation. CITY shall not, under any circumstances, be  
21 liable to CONSULTANT or any person or persons acting for him/her/it for any death, injury, or  
22 property destruction or damage received or claimed relating to or stemming from the activities  
23 undertaken pursuant to this Agreement.

24 **12. Notice.** All notices required herein shall be sent via First Class U.S. Mail with postage  
25 prepaid thereon to the parties as follows:

26 To CITY: Susanne Meyer Brown, Esq.  
27 City Attorney  
28 City of Concord  
1950 Parkside Drive MS/08  
Concord, CA 94519

To CONSULTANT: Gerald J. Ramiza, Esq.  
Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Suite 900  
Oakland, CA 94612

Notices shall be deemed effectively served upon deposit in the United States Mail.

**13. Assignment.** CITY is entering into this Agreement in consideration of the rendition of the services required herein by CONSULTANT. CONSULTANT shall not assign any of the duties, responsibilities, or obligations of this Agreement to any other firm, company, entity, or individual, except with the express written consent of CITY. Nothing set forth in this paragraph shall preclude CONSULTANT from assigning any of the monies due and owing to him/her/it from CITY.

**14. Amendment.** This Agreement may be amended, modified, or changed by the parties provided that said amendment, modification, or change is in writing and approved by both parties.

**15. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in the Agreement has been or is relied upon by any party hereto.

**IN WITNESS WHEREOF,** the parties have executed this Agreement the day and year written above.

**CONSULTANT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Burke, Williams & Sorensen, LLP

**CITY OF CONCORD**

By: \_\_\_\_\_  
Susanne Meyer Brown, City Attorney