



STAFF REPORT

CITY COUNCIL OF THE CITY OF SAUSALITO

AGENDA TITLE:

Approve Professional Services Agreement with Burke, Williams & Sorenson for Special Legal Services

RECOMMENDED MOTION:

By minute order approve the Professional Services Agreement with Burke Williams & Sorenson

SUMMARY

The City Council previously approved using the law firm of McDonough Holland and Allen (MHA) to provide special legal services to the City. The Oakland office of MHA has merged with Burke, Williams & Sorenson. The attached Professional Services Agreement (Attachment No. 1) formalizes the transfer and memorializes the agreement with the City.

BACKGROUND

The City Council previously approved the provision of special legal services by the law firm of McDonough Holland and Allen (MHA). Specifically MHA is handling the Zacks v. Sausalito case for the City as well as advising the City on the processing of certain development applications that have been filed with the Community Development Department on an as needed basis.

The Oakland office of MHA has joined with the law firm of Burke, Williams & Sorenson. Burke, Williams & Sorensen, founded in 1927, was one of a select number of private law firms to have originated the specialized practice of public law in California. It has been a pioneer in providing public entities with a full range of legal, advisory, transactional and litigation services. The Firm's practice is organized into six practice groups: Public Law; Labor and Employment; Litigation; Environmental Law and Sustainability, Real Estate and Business; and Education.

The same terms apply to the Agreement with BWS as were agreed upon with MHA and the same attorneys will be providing the requested services for the City.

Legal services are considered to be "professional or special" services for purposes of the City's Purchasing Ordinance, Sausalito Municipal Code Chapter 3.30.

FISCAL IMPACT

BWS will provide the services requested by the City on an hourly basis which will be paid out of the budgeted amount for special legal services.

STAFF RECOMMENDATIONS

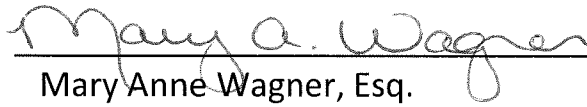
By minute order approve the Professional Services Agreement with Burke Williams & Sorenson

ATTACHMENTS:

Attachment No. 1 Professional Services Agreement.

PREPARED BY:

SUBMITTED BY:



Mary Anne Wagner, Esq.
City Attorney

Adam W. Politzer
City Manager

CITY OF SAUSALITO
PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (this "Agreement") is made and entered into this 19th day of October, 2010, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and BURKE, WILLIAMS & SORENSEN, LLP (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

Section 1. Scope of Work

Consultant shall provide City with special legal services as requested by the City. Such services may include, without limitation:

- a. Advice on processing of applications submitted to the Community Development Department.
- b. Advice on general issues of municipal law.
- c. Litigation legal services related to eminent domain actions and other general civil litigation brought by or against the City.

The duties and services required of Consultant under this Agreement and pursuant to this Section 1 are referred to throughout the remainder of this Agreement as "the Work."

Section 2. Responsible Individual.

Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so. The person responsible for the Work is Benjamin Stock.

Section 3. Work Schedule.

Consultant shall be available to work as many hours as required to complete the Work immediately upon receipt of the signed Agreement from the City and shall complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.

Section 4. Compensation.

In consideration of the performance of the Work described in Section 1, Consultant shall be compensated at the rates attached hereto as Exhibit A and incorporated herein. Consultant's billing rates are subject to revision annually, starting

January 1, 2011. If the increase is equal to or less than the Consumer Price Index for the prior 12 months, the City will be notified in writing of such increase. Any increase greater than the CPI shall require written agreement by the City. Miscellaneous expenses are covered by a standard administrative charge, currently set at 4%, which compensates the cost of normal photocopying, long distances telephone calls, regular mail postage, telecopy charges and other expenses as to which individual itemization is impractical. Costs specific to your matter such as investigation and filing fees, process server fees, required costs of travel, out-of-town lodging and meals, courier and express delivery and mail services, deposition and court reporter fees, computerized legal research, major photocopying, conference calls and staff overtime, as needed, are itemized and will appear on your monthly statement as separate items. Consultant acknowledges and agrees that the compensation to be paid to Consultant under this Section 4 represents the full amount due and owing to Consultant in connection with performance of the Work.

Section 5. Amendments.

In the event City desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this Agreement, specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

Section 6. Independent Contractor - Subcontractors.

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent or servant of City. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

Section 7. Consultant's Responsibility.

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that City relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work.

Acceptance by City of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 3 of this Agreement.

4G
4

Section 8. Hold Harmless and Indemnification.

Consultant shall indemnify, defend and save City, its officers, elected and appointed officials, employees, contractors and agents harmless from and against any and all liability, claims, suits, actions, damages and/or causes of action of any kind arising out of any bodily injury, personal injury, property damage or in violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of Consultant, or on account of the performance or character of the Work or otherwise related to its performance of this Agreement to the extent that any such liability, claims, suits, actions, damages and/or causes of action arises out of the intentional, gross negligent or willful misconduct of the Consultant.

Section 9. Insurance.

Consultant shall take out and maintain during the life of the Contract: (a) Comprehensive General Liability and Automobile Liability insurance in an amount not less than \$250,000 combined single limit applying to bodily injury, personal injury and property damage; (b) comprehensive business liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 aggregate.

The liability policy(ies) are to contain, or be endorsed to contain, the following provisions:

The City, its officers, elected and appointed officials, employees, contractors and agents must be named as a Named Insured under the coverage afforded with respect to the work being performed under the Agreement.

Section 10. Nondiscrimination.

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 11. City Personnel Conflict of Interest.

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 12. Consultant Conflict of Interest.

Consultant covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

Section 13. Assignment.

Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

Section 14. Ownership of Documents.

Consultant agrees that all documents produced in the performance of this Agreement shall be the sole property of the City including all rights therein of whatever kind and whether arising from common or civil law or equity.

Section 15. Termination.

Either party may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least seven calendar days before the effective date of such termination. If the Agreement is terminated by City as provided herein, Consultant shall be paid for all effort and material expended on behalf of the Work under the terms of this Agreement, less any charges against Consultant as otherwise provided herein, up to the effective date of termination, except that upon notification of such termination, Consultant shall immediately cease to undertake any duties under the Agreement not yet underway, and shall limit its further activities up to the effective date of termination to those duties necessary to wind up work then underway.

In Witness Whereof, City and Consultant have executed this Agreement as of the date first written above.

City of Sausalito

Consultant

By: _____
Its: _____

By: _____
Its: _____

Approved as to Form:

Mary Anne Wagner
City Attorney

4G
7

EXHIBIT A

RATES

<u>CATEGORY</u>	<u>HOURLY RATE</u>
Jerry Ramiza	\$295
Other Senior Partners	\$295
Benjamin Stock	\$260
Other Junior Partners	\$260
Senior Associates (4+ years)	\$250
Junior Associates (1-3 years)	\$225
Paralegals	\$140

46
8