

RESOLUTION NO. 3755-2014

RESOLUTION OF THE FORT BRAGG CITY COUNCIL

and

RESOLUTION NO. ID 367-2014

RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD

and

RESOLUTION NO. RS 11-2014

RESOLUTION OF THE FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY

**APPROVING AN AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND BURKE,
WILLIAMS & SORENSON LLP FOR THE PROVISION OF LEGAL SERVICES AND
AUTHORIZING THE CITY MANAGER TO EXECUTE SAME**

WHEREAS, in June 2014, Fort Bragg's City Attorney, David Warner, resigned after providing services to the City for 1.5 years under a contract with Meyers Nave; and

WHEREAS, at that time, Meyers Nave indicated that it could not provide a long-term replacement City Attorney to the City of Fort Bragg; and

WHEREAS, the City subsequently conducted a procurement process for City Attorney services which resulted in the submittal of proposals from ten different entities; five of which were interviewed by the Council on October 17, 2014; and

WHEREAS, the City Council has deemed it to be in the best interest of the City to enter into a Professional Services Agreement with Burke Williams & Sorenson LLP for the provision of legal services; and

WHEREAS, approval of the Professional Services Agreement for Legal Services will not result in a direct or reasonably foreseeable indirect change in the environment; therefore the requested action is not subject to the California Environmental Quality Act and does not require environmental review, pursuant to Title 14, Chapter 3 of California Code of Regulations (CEQA Guidelines), section 15060(c)(2).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve an Agreement for Legal Services, as set forth in Exhibit "A", attached, and authorizes the City Manager to execute said Agreement on behalf of the City.

The above and foregoing Resolution was introduced by Council/Board/Agency Member Deitz, seconded by Council/Board/Agency Member Kraut, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1/Fort Bragg Redevelopment Successor Agency held on the 10th day of November, 2014, by the following vote:

AYES: Council/District/Agency Members Courtney, Deitz, Kraut, and Mayor/Chair Turner.

NOES: None.

ABSENT: Council/District/Agency Member Hammerström.
ABSTAIN: None.



DAVE TURNER,
Mayor/Chair

ATTEST:



Cynthia M. VanWormer, MMC
City/District Clerk/Agency Secretary

EXHIBIT "A"

**LEGAL SERVICES AGREEMENT
BETWEEN
THE CITY OF FORT BRAGG AND BURKE, WILLIAMS & SORENSEN, LLP**

This LEGAL SERVICES AGREEMENT ("Agreement") is effective as of November 11, 2014 and is between the CITY OF FORT BRAGG, a City in the State of California ("CITY"), and BURKE, WILLIAMS & SORENSEN, LLP, a limited liability partnership ("BWS") (collectively, the "Parties").

1. RECITALS. This Agreement is entered into with respect to the following:

A. This Agreement is a written legal services agreement containing the terms under which BWS has been retained by CITY to serve as its City Attorney.

B. California Business and Professions Code section 6148 requires a written fee agreement between attorneys and their clients setting forth the scope of services and fees to be charged. When executed by CITY and BWS, this Agreement will satisfy the requirements of Section 6148.

2. APPOINTMENT OF CITY ATTORNEY. By this Agreement, CITY appoints BWS as CITY's City Attorney, and BWS undertakes the responsibility of that appointment. BWS will serve at the pleasure of CITY's City Council ("Council") and may be replaced at any time, with or without cause, without amending this Agreement. The designated City Attorney or an approved successor will be responsible for providing or causing to be provided the legal services contemplated by this Agreement.

3. DESIGNATED CITY ATTORNEY AND ASSISTANT. Samantha W. Zutler will perform the functions of BWS as CITY's designated City Attorney, and Rafael Mandelman will perform the functions as CITY's designated Assistant City Attorney. No changes in these assignments may be made without the consent of CITY. In the absence of the City Attorney, the Assistant City Attorney may act on the City Attorney's behalf. BWS retains authority to assign from time to time such of its attorneys, paralegals, or law clerks as may be necessary to perform other legal services called for by this Agreement.

4. TERM OF AGREEMENT. This Agreement shall be effective as of November 11, 2014 and shall expire on November 11, 2017 unless extended by a written agreement signed by both parties.

4. LEGAL SERVICES. The scope of BWS's appointment as City Attorney includes without limitation the following basic legal services and those special legal services as requested by CITY.

A. **Basic Legal Services.** BWS will perform the following designated as "Basic Legal Services" to serve CITY, which will include, without limitation, the following:

- (i) Attendance at an agreed upon number of meetings of the Fort Bragg City Council (including regular sessions, closed sessions, and as needed work sessions).

- (ii) Attendance, as needed and as directed by the City Council and/or City Manager, at certain meetings of the City's Commissions or other City committees.
- (iii) Review and/or preparation of ordinances, resolutions, orders, agreements, contracts, forms, notices, declarations, certificates, deeds, leases, and other documents required by the City.
- (iv) Consultation with the City Council and City staff as needed - rendering of legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions. Perform research and interpret laws, court decisions, and other legal authorities in order to prepare legal opinions and to advise the Council and management staff on legal matters pertaining to City operations.
- (v) Legal work pertaining to routine issues related to property acquisition, zoning, property disposal, public improvements, public rights-of-way and easements, public utilities, and public works projects.
- (vi) Coordinate the work of outside legal counsel as needed and as directed by the City Council and/or City Manager.
- (vii) Office hours at City Hall on City Council or Planning Commission meeting days, as agreed upon.
- (viii) Preparation of legal budgets, attorney performance measures and legal work plans as requested by the City Council or the City Manager.
- (ix) Preparation and review of staff reports and staff projects regarding legal issues and consult with staff as needed.
- (x) Consult with staff and review documents pertaining to routine labor and employment matters.
- (xi) Training and preparation of training materials for City elected and appointed officials and staff. One AB 1234 training will be provided every other year, in person, free of charge.

B. Special Legal Services. Services not defined as Basic Legal Services above will be considered "Special Legal Services" and will be undertaken as such upon agreement of BWS and the CITY, through the Council or Manager. Special Legal Services may include, but are not limited to:

- (i) Represent the CITY in civil litigation brought on behalf of, or against, the CITY, appellate and trial work.

- (ii) Represent the CITY in enforcement of CITY codes, ordinances and resolutions by all available procedures, including civil, criminal, or administrative procedures.
- (iii) Provide advice and options regarding, and represent the CITY in all non-routine employment, disciplinary, labor and similar matters;
- (iv) Provide employment or disciplinary investigative services;
- (v) Provide legal advice to CITY as to any particular project or issues that might otherwise be deemed Basic Legal Services when the project or issue is mutually deemed by CITY and BWS to be legally complex or to require extraordinary in-depth legal review;
- (vi) Provide legal advice and assist CITY with negotiation of purchase agreements, development agreements, and other property-related transactions;
- (vii) Provide legal advice on the preparation of environmental documents under CEQA, NEPA, the Integrated Waste Management Act, the Clean Water Act; and
- (viii) Other duties as requested by the Council or Manager as Special Legal Services and agreed upon, not to include work involving bond counsel or workers compensation issues.

C. **Annual Review.** CITY and BWS agree to review BWS's performance under this Agreement and the rates of compensation provided in Section 6 below on an annual basis.

5. **CITY'S OBLIGATIONS.** CITY agrees to cooperate and to keep BWS advised of information and developments pertaining to this engagement. CITY also agrees to promptly pay the fees, costs and other sums incurred under this Agreement when due.

6. **COMPENSATION.** BWS will be compensated for providing the legal services contemplated by this Agreement as follows:

A. **Basic Legal Services.** Fees for the Basic Legal Services described in Section 4.A. above will be charged at a blended rate of \$225 per hour for associates and partners. BWS will not charge CITY for travel time to the CITY's office.

B. **Special Legal Services.** Fees for Special Legal Services described in Section 4.B above will be charged at a blended rate of \$240 per hour for associates and partners.

C. **Travel Time.** Fees for time spent travelling to and from Fort Bragg will be charged at a flat rate of \$450 each way (equivalent to 2 hours of the Basic Legal Services rate).

Annual Budget for Legal Expenditures. Each year, CITY will establish an annual budget for legal services by appropriating funds in the Budget. The legal services budget will be developed by CITY in consultation with BWS. BWS will work with CITY to control and reduce legal costs,

including implementing strategies to streamline routine legal tasks. BWS will notify CITY if CITY's legal expenditures with BWS are approaching the maximum set by the budget.

Fee Adjustments. BWS's billing rates are subject to revision on July 1, 2016. Effective July 1, 2016 the foregoing base rates shall be increased based on the U.S. Department of Labor Bureau of Labor Statistics San Francisco-Oakland-San Jose County Consumer Price Index-All Urban Consumers ("CPI-U"), using the CPI-U for each prior October as the base and the value to escalate the hourly rates in the ratio of the most recent October CPI-U value, rounded up to the nearest \$5 increment, unless BWS provides at least sixty (60) days notice of an alternative rate adjustment.

The U.S. Dept. of Labor Bureau of Labor Statistics (BLS) website will be the source of the data utilized (if the URL is changed, the parties shall agree on the replacement web page to be as close as reasonably possible to the page detailed herein): <http://data.bls.gov/cgi-bin/surveymost?r9>

Third Party Reimbursable Rate. Whenever the CITY provides work on a project that is reimbursed by a third party (for example, cost recovery for processing applications from developers, or litigation funded by a third party) to the CITY, such work will be billed at the rate of \$295.

C. **Cost and Expense Reimbursement.** BWS will bill CITY for authorized costs and expenses actually and reasonably incurred by BWS in performance of the services provided by BWS to the CITY under this Agreement. CITY preauthorizes routine costs including but not limited to postage, courier services, copying charges, cost of producing and reproducing photographs, and court, county, recording and other filing fees. In addition, CITY agrees to reimburse BWS for the City Attorney's and Assistant City Attorney's automobile mileage at the standard rate for business use as announced from time to time by the Internal Revenue Service to and from the CITY, or other locations as the CITY may direct from residence or office as the case may be.

D. **Reimbursable Extraordinary Expenses.** If BWS obtained prior approval from the Manager and a Council officer, other non-routine costs and expenses incurred by BWS for or on behalf of CITY will be reimbursed to BWS, including but not limited to consultants; expert witnesses; travel; outside investigative services; and similar expenses.

E. **Billing.** BWS will bill CITY monthly for the services provided by BWS to CITY pursuant to this Agreement, as well as all reimbursable costs and expenses. All bills for legal fees will set forth in detail the work performed during the billing period in line item format, so that each task is separately described and has specific time recorded. BWS attorneys bill in 1/10th of one hour increments. Bills for reimbursable costs and expenses will set forth the cost for each category of such expenses incurred during the billing period in addition to the total cost of the expenses. Reimbursement for expenses incurred by an outside vendor will include the vendor's invoice.

F. **Payment.** CITY will pay BWS for all of BWS's services, costs and expenses provided or incurred pursuant to this Agreement following receipt and approval of the bill. CITY will make its best effort to process and pay such bill within 30 days of receipt.

G. **Taxpayer Information.** BWS will provide a completed W-9 Form to facilitate tax reporting for payments made by CITY to BWS under this Agreement.

7. CONFLICTS OF INTEREST.

A. BWS represents that neither BWS nor any of the attorneys or other persons employed by BWS have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of CITY that may be affected by the services to be provided to CITY pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public. BWS further agrees that no attorney or other person having any such interest will be employed by BWS while this Agreement remains in effect. If BWS or an attorney or other person employed by BWS acquires such an interest while this Agreement remains in effect, BWS will immediately disclose such interest to CITY, and the interested individual will not participate in or influence the performance of the services to be provided to CITY pursuant to this Agreement.

B. The California Rules of Professional Conduct, as promulgated by the California State Bar, require that an attorney receive informed written consent from a client prior to undertaking work where there is a potential for conflicts between existing or future clients (Rule 3-310). BWS represents numerous cities, school CITYs, and public agencies, which from time-to-time may be adverse to CITY. Should an actual conflict occur between any one of these clients and CITY, BWS will attempt to resolve the conflict in a manner that protects our ability to continue our concurrent representation of all our clients. However, that may not be possible or practical under the applicable ethical rules. By signing below, CITY represents that it is fully informed regarding the potential conflict of interests between it and existing and future clients of BWS, and it waives all rights regarding such conflicts and consents to the BWS's representation in this regard.

8. INSURANCE. BWS agrees to obtain and maintain in full force and effect, during the term or extended terms of this Agreement, the following insurance coverage which shall either meet or exceed CITY's established requirements:

- A. Liability insurance coverage as is customary for law firms;
- B. Workers' compensation coverage; and
- C. Professional errors and omissions liability insurance.

The City, and its respective officials, officers, employees, agents and volunteers will be added as additional insureds concerning general liability and property damage liability arising from the performance of legal services pursuant to this agreement, and BWS agrees to provide to CITY evidence of such coverage satisfactory to CITY.

9. PROFESSIONAL STANDING. BWS attorneys working with the CITY shall, at all times, be members in good standing of the State Bar of California, and shall conduct themselves in full compliance with the standards of Professional Conduct of the State Bar.

10. NON-DISCRIMINATION. BWS shall not discriminate on the basis of race, religion, color, creed, national origin, gender, sexual orientation, marital status, age, physical or mental disability, legally protected medical condition, veteran status, or any other basis protected by state or federal laws.

11. TERMINATION OF SERVICES.

A. CITY may terminate this Agreement with or without cause at any time by written notice of such termination.

B. BWS may terminate this Agreement with or without cause upon 60 days' written notice to CITY. BWS may terminate this Agreement immediately in the event that BWS determines that to continue services to CITY would be illegal, unethical, impractical, or improper.

C. CITY will compensate BWS for its services and reimburse it for costs rendered through the effective date of any termination.

12. DOCUMENT RETENTION. CITY is entitled upon written request to any files in BWS's possession relating to the legal services performed by BWS for CITY, excluding BWS's internal accounting records and other documents not reasonably necessary to CITY's representation, subject to BWS's right to make copies of any files withdrawn by CITY. Once a CITY matter is concluded, BWS will close the file. The physical files may be sent to storage offsite, and thereafter there may be an administrative cost for retrieving them from storage. Thus, BWS recommends that CITY request the return of a file at the conclusion of any individual matter. Please be advised that BWS may destroy closed files three years after a matter is closed, unless other arrangements are made with CITY, and CITY hereby authorizes the firm to do so. BWS will work with CITY to provide or preserve any documents that may be subject to the California Public Records Act.

13. FEE DISPUTES. If a dispute between CITY and BWS arises over fees or other amounts charged to CITY for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code sections 6200 through 6206. The arbitrator or arbitration panel will have the authority to award to the prevailing party in such arbitration attorney's fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service will not be required.

14. NOTICES. Notices required under this Agreement must be given by personal service or by first class mail, postage prepaid, and addressed as follows:

To BWS: BURKE, WILLIAMS & SORENSEN, LLP
101 Howard Street, Suite 400
San Francisco, CA 94105
Attn: Samantha W. Zutler, Esq.

To CITY: CITY OF FORT BRAGG
416 North Franklin Street
Fort Bragg, CA 95437
Attn: City Manager

Service of notice by personal service is deemed to be given as of the date of service. Notices by mail are deemed to have been given two consecutive business days after deposit into the U.S. Postal Service. Either party may, from time to time, by written notice to the other, designate a different address or person to be substituted for that specified above.

15. INDEPENDENT CONTRACTOR. CITY and BWS agree that BWS will act as an independent contractor and will have control of all work and the manner in which it is performed. BWS will be free to contract for similar service to be performed for other clients while under contract with CITY. BWS is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in

this Agreement that may appear to give CITY the right to direct BWS as to the details of doing the work or to exercise a measure of control over the work means that BWS will follow the direction of the CITY as to end results of the work only.

14. OUTSIDE COUNSEL. Nothing in this agreement precludes CITY from engaging outside legal counsel by separate agreement whenever CITY determines it serves the interests of the CITY. As well, BWS may from time to time recommend or refer CITY to outside legal counsel whenever BWS believes such a referral may serve the CITY's interests.

16. MISCELLANEOUS. This Agreement sets forth the entire understanding of the Parties and will be governed by the laws of the State of California. The terms of this Agreement are not set by law, but are the result of negotiation between the Parties. CITY has the right to consult with another attorney regarding this Agreement before signing it. This Agreement may be modified only by a written amendment signed by both Parties.

The undersigned authorized representatives of the Parties have executed this Agreement effective as the day and year first set forth above.

CITY OF FORT BRAGG
a municipal corporation

By: _____
Linda Ruffing, City Manager

ATTEST:

By: _____
Cynthia M. Van Wormer, City Clerk

BURKE, WILLIAMS & SORENSEN, LLP
a limited liability partnership

By: 
John J. Welsh, Managing Partner