

City of Piedmont
COUNCIL AGENDA REPORT

DATE: September 7, 2010

FROM: Geoffrey L. Grote, City Administrator

SUBJECT: **Approval of a Successor Name Change in the City's Legal Services Agreement from McDonough, Holland, and Allen to Burke, Williams, and Sorensen LLP and appoint Michelle Marchetta Kenyon as Acting City Attorney**

RECOMMENDATION

Approve a successor name change in the city's legal services agreement from McDonough, Holland, and Allen to Burke, Williams, and Sorensen LLP and appoint Michelle Marchetta Kenyon as Acting City Attorney.

BACKGROUND

On July 6, 2010, the City Council appointed Thomas Curry as the City Attorney and approved a one year agreement with him and his firm of McDonough, Holland, and Allen. At the end of August, that firm ceased operations. At that time, the attorneys from McDonough who specialize in public agency law joined the firm of Burke Williams & Sorenson, LLP, which is a respected firm based in Southern California. Their Menlo Park office has recently represented several Bay Area agencies including BART and the City of Oakland.

The attached agreement has been reviewed by our City Attorney Emeritus George Peyton and matches the language and costs of the agreement you approved with McDonough, Holland, and Allen.

As you know, after his appointment, Mr. Curry experienced a medical issue the treatment of which necessitated him temporarily stepping aside as City Attorney for a period of 6 to 8 weeks. Prudence dictates that you appoint an Acting City Attorney to act during this period. After discussing the matter with Mr. Curry, I recommend selecting Michelle Kenyon, a shareholder in Tom's firm of Burke, Williams, and Sorensen to fill this role. Ms. Kenyon has extensive public agency law experience and will serve the city well while Mr. Curry recuperates. I have attached her resume for your reference.

AGREEMENT

This AGREEMENT, dated September 7, 2010, is made and entered into by and between the City of Piedmont, a municipal corporation ("City"), with offices at 120 Vista Avenue, and Burke, Williams & Sorensen, LLP ("Burke") with offices at 1901 Harrison Street, 9th Floor, Oakland, California 94612.

WHEREAS, the firm of McDonough Holland & Allen PC ("MHA") has provided legal services to City since 2010; and

WHEREAS, on behalf of MHA, Thomas Curry has served as the City Attorney for the City and Michelle Marchetta Kenyon has been providing services as Acting City Attorney; and

WHEREAS, MHA has determined to wind down its firm operations and dissolve its operations; and

WHEREAS, Thomas Curry, Michelle Marchetta Kenyon and MHA's Oakland Office have joined the law firm of Burke, Williams & Sorensen, LLP effective August 30, 2010; and

WHEREAS, it is the desire of the parties to enter into this Agreement to establish the terms and conditions for rendition of City Attorney and special counsel services to the City.

NOW THEREFORE, IT IS MUTUALLY AGREED as follows:

It is the desire of the parties to enter into this Agreement and establish the terms and conditions for provision of legal services to City and compensation of Burke.

Now, therefore, it is mutually agreed as follows:

Section 1. Legal Services.

City hereby retains Burke as its legal counsel and Burke agrees to faithfully represent the legal interests of City during the term of this Agreement.

Thomas R. Curry shall serve as City Attorney for City, and at least 90% of the General City Attorney Duties shall be performed by Thomas R. Curry. In Thomas Curry's absence, Michelle Marchetta Kenyon shall serve as Acting City Attorney. Other Burke attorneys shall provide services to carry out General City Attorney Duties only as approved by City.

Burke's duties shall be that of City Attorney to City, as described generally in Section 3.06 of the City Charter and as more specifically set forth hereafter. Burke shall perform any and all legal duties and functions entrusted to it by City including, without limitation, attendance at City Council meetings and other bodies as requested, provision of legal advice on City matters to City staff, attendance at a weekly staff meetings when required by the City Administrator, and upon request by City to have weekly office hours at City Hall, preparation of ordinances, resolutions, contracts and other legal documents pertaining to City affairs, preparation of opinions regarding City matters as requested by appropriate City officials, and code

enforcement. These General City Attorney Duties are spelled out in more detail in Exhibit A, attached hereto and incorporated herein.

Burke may provide representation to City in all other matters, including litigation unless, upon consultation with Burke, City determines to retain separate outside counsel. The City Attorney's duties shall include the supervision of outside counsel, unless City indicates in writing in a specific situation that no such supervision is necessary.

1. Legal services will not include matters in which Burke has a conflict of interest that precludes Burke from representing the City, members of the City Council, or City officers or employees, in which case outside counsel will be retained by City.

2. Burke shall promptly advise City upon determining that it has a conflict of interest, and when requested by City, will assist City in locating appropriate experienced outside counsel based on the requirements of that particular legal matter. City and its members recognize that the firm of Burke provides legal representation to public entities throughout California. Legal services will not include matters in which Burke has a conflict of interest that precludes Burke from representing City, members of the City Council, or officers or employees of City. City also agrees to exercise reasonable discretion in providing waivers for any potential or perceived conflicts that might arise out of representation of Burke's other clients, which representation does not directly involve Burke's representation of City.

Thomas R. Curry as City Attorney shall maintain at his expense and carry with him at all times between 9 a.m. and 5 p.m. on weekdays, except when on vacation, a mobile or cell phone, which shall remain open and available to receive calls at all times during that period, except in meetings or similar situations where receipt of a call would cause a serious disruption. Mr. Curry shall provide the number of such phone to the City for contact purposes.

Section 2. Compensation.

In consideration for the rendition of legal services, City shall compensate Burke as follows:

A. City shall pay the rate of \$227 per hour for General City Attorney Services performed by Thomas R. Curry or Michelle Marchetta Kenyon. For general City Attorney services performed by other Burke attorneys, the rate shall be at the rate in Exhibit B but in no event higher than \$227 per hour.

B. Work other than General City Attorney Services performed by Burke attorneys at the request of the City shall be compensated at the rates reflected in Exhibit "B" attached to this Agreement and made a part hereof but in no event shall such rates exceed \$295 per hour.

C. For special services provided in connection with litigation, (including arbitration and mediation), legal services chargeable to third parties, or matters other than General City Attorney Services requiring extraordinary time commitments or which are of unusual complexity, Burke shall bill the City at the rates billed by Burke for special services such as those described in Exhibit "B."

D. Costs as set forth in Exhibit C, attached to this Agreement and made a part hereof, incurred by Burke on behalf of City shall be reimbursed by City.

E. No changes shall be made in the rates for compensation or costs without the prior written approval of City.

Section 3. Monthly Billings.

Burke shall bill the City on a monthly basis. Each bill shall be reasonably detailed as to the specific work performed, and shall indicate the date of the work done, the specific work that was accomplished, the attorney or paralegal who performed the work done, and the fee for the work done. Costs described in Exhibit "C" shall be itemized. Fees and costs shall become payable to Burke within 30 days of receipt of the monthly statement for them by City.

Section 4. Amendment; Annual Review.

This Agreement may be amended from time to time by written agreement of the parties. The City and Burke agree that there shall be an annual review of the provisions contained in this Agreement to ensure that its terms and conditions are mutually satisfactory to both parties.

Section 5. Termination.

This Agreement may be terminated by the City at any time upon written notice to Burke and by Burke upon sixty (60) days written notice to City. In the event of termination, City shall be responsible only for fees and costs incurred as of the effective date of the termination.

Section 6. Professional Liability Coverage.

During the term of this Agreement, Burke shall at all times maintain insurance coverage for professional liability, with coverage of at least \$1,000,000.00 per claim and \$3,000,000.00 in aggregate on an annual basis, which insurance coverage shall apply to all services to be provided by Burke to the City pursuant to this Agreement. A certificate of insurance shall be provided to City upon request.

Section 7. Indemnification.

Burke agrees to defend, indemnify and hold City harmless from and against claims or liabilities arising out of the negligent errors or omissions or wrongful conduct of Burke discharging its obligations under this Agreement, excluding claims or liabilities arising out of the City's active negligence or wrongful conduct.

CITY OF PIEDMONT

Burke, Williams & Sorensen, LLP

By: _____
Mayor or Vice Mayor

By: _____
John J. Welsh
Managing Partner

Attest:

City Clerk

EXHIBIT A

General City Attorney Duties

1. General Goal: To provide high quality municipal legal services to City at a reasonable price.
2. To carry out the provisions of Section 3.06 of the Piedmont City Charter outlining the specific duties of the City Attorney, including but not limited to attendance at regular meetings of the City Council, preparation of Ordinances and Resolutions, and representing and advising the Council and all City officers in all matters of law pertaining to their offices.
3. To prepare and/or review Contracts and Agreements on behalf of the City.
4. To assist the City staff and departments in the enforcement of Piedmont laws and Ordinances.
5. To assist the Director of Public Works, City Planner, and City Building Official in implementation and enforcement of matters relating to Chapters 17 and 19 of the City Code pertaining to planning, construction, and subdivisions.
6. To assist the City Administrator and City Clerk in the formulation of documentation for City Council Meetings, including but not limited to preparation of Resolutions, Ordinances, and Council Agenda Reports.
7. To review and sign Contracts and Agreements, and to approve their form and legality.
8. To provide advice and respond to questions of City Council Members, as well as the City Administrator, City department heads and other staff.
9. Coordinate matters relating to litigation including matters that will be carried out through the law firm of Burke; provided that the City Attorney will not normally be involved with claims for personal injuries or property damage, which legal matters are handled through the auspices of Bay Cities Joint Powers Insurance Authority.
10. The City Attorney will represent the City in matters relating to personnel, employment or labor relations, as well as labor negotiations, unless the City contracts separately with outside counsel for any of these legal matters.
11. Supervise outside counsel, unless City indicates in writing in a specific situation that no such supervision is necessary.
12. Be fully responsible for all matters relating to compliance with the Federal Clean Water Act and the City's sewers, including but not limited to all orders, NPDES Permits, requirements, enforcement actions, and/or litigation involving the Environmental Protection Agency and/or the U.S. Department of Justice, and/or the State of California and/or the

California State Water Resources Control Board and/or the California Regional Water Quality Control Board, San Francisco Bay Region, and/or any claims or litigation relating thereto by non-governmental organizations, non-profit organizations, citizens groups or the like, and specifically including legal representation of the City in U.S., et. al., Plaintiffs v. City of Alameda, et. al., Defendants, U.S. District Court, Northern District of California, and in the related matter of Civil Case No. CV 09-5684 CW, Complaint in Intervention filed by Baykeeper, Inc. d/b/a San Francisco Baykeeper, in U.S., et. al. v. City of Alameda, et. al.

EXHIBIT B

Public Law Practice Group

PUBLIC RATES

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ATTORNEYS

Thomas Brown	\$295
Thomas R. Curry	\$295
Wynne S. Furth	\$295
Michelle M. Kenyon	\$295
Gerald J. Ramiza	\$295
Benjamin L. Stock	\$260
Susanne Meyer Brown	\$255
J. Leah Castella	\$255
James J. Atencio	\$240
Veronica Ramirez	\$235
Benjamin D. Winig	\$225
Megan A. Burke	\$205
Arielle O. Harris	\$205
Matthew D. Visick	\$205

PARALEGALS

Phyllis Mutter	\$145
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EXHIBIT C

Allowable Costs To Be Charged To City of Piedmont

1. Photocopies at \$.06 per copy.
2. Delivery service and messengers by Federal Express, UPS and other such services both local and national at the exact cost charged.
3. Any other specific costs or cost categories previously approved in writing by the City Administrator.



McDonough Holland & Allen PC
Attorneys at Law



Michelle Marchetta Kenyon | Shareholder

Professional Experience

Michelle provides legal representation for cities, redevelopment agencies and other public agencies as city attorney and special counsel. Her areas of specialty include land use and planning law, environmental law, redevelopment, eminent domain, rent control, land use litigation and appellate advocacy. She is experienced in both state and federal trial and appellate courts, including written appearances in the U.S. Supreme Court. She has successfully served as lead attorney in litigation involving CEQA, inverse condemnation, election law, police powers, civil rights and rent control, where the outcome garnered published decisions.

Michelle currently serves at Town Attorney for the Town of Moraga, City Attorney for the Cities of Rohnert Park and Calistoga, Special Counsel to the cities of Berkeley, Burlingame, Pacifica, San Mateo and Yountville, General Counsel for the Livermore-Amador Valley Water Management Agency, and District Counsel for the Ross Valley Sanitary District. She previously has served as City Attorney for the Cities of Lincoln and Pacifica, Interim City Attorney for the cities of Danville, Pacifica, Pleasant Hill, San Bruno, Daly City, and General Counsel for the Eastern Contra Costa Transit Authority. Her practice includes advising city councils and staff in municipal law issues such as annexation procedures, bidding and claims procedures, CEQA, code enforcement, conflict of interest laws, contract review, elections, Government Tort Claims Act, initiatives, referenda, land use and planning, municipal finance, open meeting laws, personnel, and redevelopment.

Michelle assisted in establishing and is currently the Shareholder-in-Charge of the firm's Oakland office which specializes in public and municipal law. Her management duties include office administration, marketing, budgeting, recruitment and case management.

Representative Matters

O.W.L. Foundation et al v. City of Rohnert Park, 168 Cal.App.4th 568 (2008)

Chip Worthington v. City Council of Rohnert Park, 130 Cal.App.4th 1132 (2005)

Hillsboro Properties v. City of Rohnert Park, 138 Cal.App.4th 379 (2006)

108 Holdings v. City of Rohnert Park, 136 Cal.App.4th 186 (2006)

Citizens to Enforce CEQA v. City of Rohnert Park, 131 Cal.App.4th 1594 (2005)

Milagra Ridge Partners Ltd. v. City of Pacifica, 62 Cal.App.4th 108 (1998)

Broadmoor Police Protection Dist. v. San Mateo Local Agency Formation Commission, 26 Cal.App.4th 304 (1994)

Sierra Lakes Reserve v. City of Rocklin, 938 F.2d 951 (1991) [113 S. Ct. 31; 121 L.Ed.2d 4]

Northwood Homes, Inc. v. Town of Moraga, 216 Cal.App.3d 1197 (1989)

Admitted to Practice

State Bar of California, 1987

U.S. District Court, Northern and Eastern Districts of California

United States Court of Appeals, Ninth Circuit

Education

University of California, Davis, School of Law
J.D., 1986

La Raza Law Students Association

King Hall Legal Foundation
National Lawyers Guild

University of California, Berkeley

B.A., Political Science, 1980

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mkenyon@mhalaw.com

Practice Focus
Appeals
Eminent Domain
Environmental Law
Government Relations
Land Use
Litigation
Public Law
Redevelopment



McDonough Holland & Allen PC
Attorneys at Law

Michelle Marchetta Kenyon | Page 2

Presentations/Publications

Author, "How Cities Can Manage Legal Costs Without Increasing Risk," *Western Cities Magazine*, July 2009

Co-author, "O.W.L. Foundation Case Sets Precedent for Analyzing Adequacy of Water Supply Assessments for Projects," *McDonough Public Law Bulletin*, November 2008

Paper and Presentation, "Procedural Hurdles And Defenses In Litigating Regulatory Takings Claims Under The Fifth Amendment," Georgetown University Law Center, CLE/Environmental Law & Policy Institute, October 2004

Paper and Presentation, "Demystifying Substantive Due Process," Hastings Municipal Law Institute, October 2003

Paper and Presentation, "Land Use Litigation Update," League of California Cities, Spring and Fall Conferences, 2002

Paper and Presentation, "Update on Regulatory Takings," Mayors and Council Members Executive Forum, League of California Cities, Annual Conference, 2000

Paper and Presentation, "1999 Legislative Update," League of California Cities, Annual Conference, 1999

Paper and Presentation, "Brown Act Update," League of California Cities Annual Conference, 1998

Paper and Presentation, "Open and Public: What the Brown Act Does and Does Not Require," League of California Cities, Annual Conference, 1997

Speaker, "Proposition 62 and the Guardino Decision," Quarterly Meeting of Bay Area Municipal Finance Officers, Winter 1996

Paper and Presentation, "Update on Selected Constitutional Limits on City Powers: Takings, First Amendment, Commerce Clause, and Substantive Due Process," League of California Cities, Annual Conference, 1994

Paper and Presentation, "Section 1983 Liability Arising Out Of Land Use Regulations: Regulatory Takings," League of California Cities Continuing Education Seminar for Municipal Attorneys, Winter 1991

Leadership Positions/Affiliations

Chair, League of California Cities, City Attorneys Department Nominating Committee, 2010

President, City Attorneys Department, League of California Cities, 2008-2009

First Vice President, City Attorneys Department, League of California Cities, 2007-2008



McDonough Holland & Allen PC
Attorneys at Law

Michelle Marchetta Kenyon | Page 3

Second Vice President, City Attorneys Department, League of California Cities, 2006-2007

President, Contra Costa County City Attorneys Association, 2006

Advisory Board Member, California Community Land Use Project, 1998-2002

Member, League of California Cities, City Attorneys Department Nominating Committee, 1993, 1996, 2003

Chair, League of California Cities, City Attorneys Department Legislative Committee, 1999-2000

Member, League of California Cities, City Attorneys Department Legislative Committee, 1998-2000

Chair, League of California Cities, Legal Advocacy Committee, 1995-1996

Member, League of California Cities, Legal Advocacy Committee, 1994-1996

Honors/Awards

Selected for inclusion in 2004, 2007, 2008 & 2009 *Northern California Super Lawyers*[®]