

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: November 3, 2015

SUBJECT: AGREEMENT FOR LEGAL PROFESSIONAL SERVICES BETWEEN THE CITY OF CONCORD AND LIBOW & WELLMAN FOR THE SERVICES OF BRIAN M. LIBOW AS CONCORD'S INTERIM CITY ATTORNEY FOR A NOT TO EXCEED CONTRACT AMOUNT OF \$150,000 (General Fund)

Report in Brief

The City Attorney is appointed by and reports to the City Council. Due to the recent passing of City Attorney Mark Coon, it is necessary to appoint an individual to serve as Interim City Attorney, pending selection of a permanent replacement for Mr. Coon. On October 27, 2015, the City Council held a closed session pursuant to Government Code Sections 54957(b)(1) and 54957(b)(4) to consider appointment of an Interim City Attorney. The City Council's action was reported out in open session, however Mr. Libow's name was withheld pending successful contract negotiations. The City Manager and Mr. Libow have successfully negotiated the terms of an agreement.

Background and Discussion

Mr. Libow is a graduate of the University of California at Los Angeles, and Santa Clara University School of Law, and was admitted to the State Bar of California in 1979. He brings extensive municipal law experience to the role of Interim City Attorney. He retired in June 2015 as the City of San Pablo City Attorney, after 25 years of service to that city. In that capacity, he served as sole in-house legal advisor, handled numerous complex land use and litigation issues, and dispensed Brown Act and conflict of interest advice, as well as providing all other services routine to City Attorneys.

Mr. Libow's hourly rate is \$195, and he expects to spend approximately 20 hours per week serving in the Interim City Attorney role, with the additional workload being handled by existing City Attorney Office staff and outside counsel, according to practices currently in place. Mr. Libow's indicated start date is November 4, 2015, and his term as Interim City Attorney is expected to run until the City Council appoints a new City Attorney. The contract amount is capped at \$150,000 for the fiscal year 2015/2016 and may not be increased without City Council approval.

Successful contract negotiations have concluded.

**AGREEMENT FOR LEGAL PROFESSIONAL SERVICES BETWEEN
THE CITY OF CONCORD AND LIBOW & WELLMAN FOR THE
SERVICES OF BRIAN M. LIBOW AS CONCORD'S INTERIM CITY
ATTORNEY FOR A NOT TO EXCEED CONTRACT AMOUNT OF \$150,000**

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Fiscal Impact

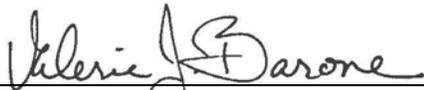
The cost of this contract (\$150,000) will be covered by personnel funds in the City Attorney's Office that are available in the adopted budget.

Public Contact

Posting of the Council Agenda in accordance with the Brown Act.

Recommendation for Action

Approve the agreement for legal professional services with Libow & Wellman for the services of Brian M. Libow as Concord's Interim City Attorney for a not to exceed contract amount of \$150,000, in substantially the form attached hereto as Attachment No. 1.



Valerie J. Barone
City Manager

Valerie.Barone@cityofconcord.org

Prepared by: Susanne Meyer Brown

Senior Assistant City Attorney

Susanne.Brown@cityofconcord.org

Attachment No. 1: Legal Services Agreement with Libow & Wellman for the services of Brian M. Libow, Esq. as Interim City Attorney

1 District, and iii) the Redevelopment Agency of the City of Concord Successor Agency.

2 6. Perform other related services as may be requested by the City Council
3 or the City Manager.

4 B. CONSULTANT shall obtain prior CITY approval for the retention of any
5 subconsultants and/or expert witnesses. Such approval may be granted by the City Manager.

6 **2. Term.** The term of this Agreement shall be from the EFFECTIVE DATE, set forth
7 above, through June 30, 2016, subject to available funds or unless earlier terminated in accordance
8 with the terms of this Agreement.

9 **3. Consideration.** As full consideration for the work to be performed by
10 CONSULTANT, CITY shall pay CONSULTANT based upon the hourly rate of \$195 per hour upon
11 submission and CITY approval of invoices, in a sum not to exceed \$150,000 without CITY's express
12 written authorization. If requested by CITY, the "not to exceed" amount described in Paragraph 3
13 may be increased upon execution of an amendment setting forth the new "not to exceed amount," that
14 is approved by the City Council and in accordance with Paragraph 14 of this Agreement.

15 CONSULTANT will bill time monthly on a straight hourly basis. CONSULTANT shall not
16 charge phone costs to the City. Travel costs shall be billed at 25%. Other extraordinary expenses
17 such as courier services and express mail may be charged to the City at actual cost of reimbursement.
18 CONSULTANT shall endeavor to have all copying, mailing, etc. done by the City of Concord so no
19 additional charges to the City would result.

20 For each monthly billing, CONSULTANT shall submit an invoice identifying the total amount
21 billed for general City Attorney services and attendance at meetings of legislative bodies.

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

27 **5. Key Personnel.** All of the services required hereunder shall be performed by
28 CONSULTANT. The following is the key person for the subject of this Agreement: Brian M.

1 Libow, Esq. Any change in the key person shall be subject to the prior written approval of the City
2 Council.

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

9 **7. Termination.**

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

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

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

23 D. This Agreement shall automatically terminate one day before the start date of
24 the new Concord City Attorney, if and when one is appointed by the City Council.

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
28 employment because of race, sex, creed, physical handicap, color, sexual orientation, or

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

- 15 1. Umbrella Policy in an amount not less than \$1,000,000.
- 16 2. Automobile Liability (with coverage at least as broad as ISO form CA
17 00 01 07 97, for "any auto") coverage in an amount not less than \$500,000 per accident
18 for bodily injury and \$100,000 for property damage.
- 19 3. Workers' Compensation coverage if required by the State of California.
- 20 4. Professional Liability coverage for damages that may be the result of
21 errors, omissions, or negligent acts of CONSULTANT in an amount not less than
22 \$100,000/\$300,000 per claim.

23 B. Insurance Requirements:

- 24 1. CONSULTANT's insurance shall be primary to any other insurance
25 available to the City with respect to any claim arising out of this Agreement. Any
26 insurance maintained by the City shall be excess of the CONSULTANT's insurance
27 and shall not contribute with it.
- 28 2. CONSULTANT's insurance will not be canceled, limited, or allowed to

1 expire without renewal until after 30 days written notice has been given to the City.
2 During the term of this Agreement, Consultant will not materially alter any of the
3 policies or reduce any of the levels of coverage afforded by its insurance policies.

4 3. Qualifications of Insurers. All insurance companies providing coverage
5 to CONSULTANT shall be insurance organizations authorized by the Insurance
6 Commissioner of the State of California to transact the business of insurance in the
7 State of California, and shall have an A.M Best's rating of not less than "A:VI."

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 professional negligence, errors or omissions in the performance of this Agreement, and shall further
11 indemnify, defend, and hold harmless CITY against and from any and all claims or suits arising from
12 any breach or default of any performance of any obligation of CONSULTANT hereunder, and against
13 and from all costs, attorney's fees, expenses, and liabilities related to any claim or any action or
14 proceeding brought within the scope of this indemnification. Provided, that such defense and
15 indemnity obligations shall only be to the maximum amount available in CONSULTANT'S policy
16 limits, as set forth in Section 9.A.4 of this Agreement.

17 **11. Independent Contractor.** CONSULTANT is an independent contractor retained by
18 CITY to perform the work described herein, is expressly not an employee of the CITY, and is not
19 eligible for any benefits, including salary, leave pay, medical or retirement benefits which the CITY
20 may provide to its employees. Similarly, any and all personnel employed by CONSULTANT,
21 including subcontractors and personnel of said subcontractors approved by CITY, are not and shall
22 not be deemed to be employees of CITY, are expressly not employees of the CITY, and are not
23 eligible for any benefits, including salary, leave pay, medical or retirement benefits which the CITY
24 may provide to its employees. CONSULTANT and approved subcontractors shall comply with all
25 State and Federal laws pertaining to employment and compensation of their employees or agents,
26 including the provision of Workers' Compensation. CITY shall not, under any circumstances, be
27 liable to CONSULTANT or any person or persons acting for it for any death, injury, or property
28 destruction or damage received or claimed relating to or stemming from the activities undertaken

1 pursuant to this Agreement.

2 In performing services under this Agreement, CONSULTANT shall:

3 A. Use its own independent professional judgment in performing such legal
4 professional services required in accordance with its own methods and ethics, in order to
5 accomplish City's objectives and desires.

6 B. Except for attendance at City Council or other meetings of city legislative
7 bodies as may be needed, and such meetings as may be mutually agreed upon, independently
8 determine the days and hours of actual work, the location of such work, and the order and
9 sequence in which such legal professional services are completed. CONSULTANT shall be
10 available to the Council, City Manager, and City's Office staff by phone and email during
11 regular working hours when not physically available at the Concord Civic Center.

12 C. At its own sole expense, provide and maintain such business and professional
13 licenses as may be required to perform the legal professional services under this Agreement,
14 including but not limited to:

- 15 1. Admission to practice law before all of the courts of the State of
16 California.
- 17 2. Active membership in the State Bar of California in good standing.
- 18 3. Obtain all continuing legal education required by the State Bar of
19 California.
- 20 4. A valid business license issued by the City.

21 D. Select, hire, pay and supervise such of its own employees as may be necessary,
22 at its own expense at no cost to City, including such secretarial or administrative assistance as
23 may be required at its own law offices.

24 E. Provide, at its own expense, an independent law office which shall include, but
25 not be limited to, law office space, furniture, equipment, supplies, and independent stationery.
26 CONSULTANT shall also pay all of his own business and training expenses without
27 reimbursement. Such expenses shall be CONSULTANT's sole financial responsibility.
28 CONSULTANT is responsible for purchasing, bringing, providing, and controlling any and all

1 equipment, tools, instruments, etc. needed for its own office as well as for maintenance and
2 use of such equipment.

3 F. Provide, at its own expense, all training as may be required to perform such
4 legal professional services.

5 G. CONSULTANT currently has other client engagements, and shall have the
6 right to continue to represent clients other than City in its private practice.

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

9 To CITY: Valerie J. Barone
10 City Manager
11 City of Concord
12 1950 Parkside Drive MS/01A
13 Concord, CA 94519
14 Valerie.Barone@cityofconcord.org

15 To CONSULTANT: Brian M. Libow
16 Libow & Wellman
17 2453 Harborview Drive
18 San Leandro, CA 94577
19 libowwellmanlaw@yahoo.com

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

21 **13. Assignment.** CITY is entering into this Agreement in consideration of the rendition of
22 the services required herein by CONSULTANT. CONSULTANT shall not assign any of the duties,
23 responsibilities, or obligations of this Agreement to any other firm, company, entity, or individual,
24 other than those matters typically referred to outside counsel or experts by cities, except with the
25 express written consent of CITY. CONSULTANT may, however, assign this Agreement to a
26 different named or structured business entity comprised substantially of the existing partners. Nothing
27 set forth in this paragraph shall preclude CONSULTANT from assigning any of the monies due and
28 owing to 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 the
CONSULTANT and the City Council.

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

1 is relied upon by any party hereto.

2 **IN WITNESS WHEREOF**, the City Council has authorized the Mayor to execute this
3 Agreement on the CITY’s behalf, and the parties have executed this Agreement the day and year
4 written above.

5 **CONSULTANT:**

CITY:

6 LIBOW & WELLMAN,
7 a general partnership

CITY OF CONCORD,
a California municipal corporation

8 By: _____

By: _____

9 Name: Brian M. Libow

Timothy S. Grayson, Mayor

10 Its: General Partner

11 **ATTEST:**

By: _____

Joelle Fockler, CMC, City Clerk

13 **APPROVED AS TO FORM:**

14 By: _____

Susanne Meyer Brown, Acting City Attorney

16 **FINANCE DIRECTOR’S CERTIFICATION:**

17 Concord, California

18 Date: _____, 2015

19 I hereby certify that adequate funds exist or will be received during the current fiscal year 2015/16 to
20 pay the anticipated expenses to be incurred pursuant to this contract. The sum of \$150,000.

21 _____
22 Finance Director

23 Account Code: _____
24
25
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