



REPORT TO MAYOR AND COUNCIL

TO THE HONORABLE MAYOR AND COUNCIL:

DATE: December 8, 2015

SUBJECT: APPROVAL OF AN AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT FOR SPECIALIZED LEGAL SERVICES WITH EBBIN MOSER + SKAGGS, L.L.P. IN THE AMOUNT OF \$50,000 IN CONNECTION WITH DEVELOPMENT OF A NATURAL RESOURCE CONSERVATION STRATEGY AND SITE WIDE RESOURCE PERMITS FOR THE CONCORD REUSE PROJECT AREA PLAN. TOTAL FUNDING SINCE 2012, INCLUDING THIS AMENDMENT, IS \$360,000. (FUNDING WILL BE PROVIDED BY A LOAN TO THE LOCAL REUSE AUTHORITY (LRA) FROM THE GENERAL FUND).

Report in Brief

Staff is recommending that the Local Reuse Authority (LRA) approve an amendment to the Professional Services Agreement with Ebbin Moser + Skaggs, L.L.P. to authorize the additional expenditure of up to \$50,000. The term of the agreement, which is July 1, 2015 – June 30, 2016, is not changing.

The Ebbin Moser + Skaggs, L.L.P. scope of work includes specialized legal services associated with the Endangered Species Act and the Clean Water Act. The LRA continues to require this specialized legal support for the U.S. Army Corp of Engineers Section 404 permit under the Clean Water Act, Section 7 Consultation with the U.S. Fish and Wildlife Service and other site-wide resource permitting.

The funding for this amendment, \$50,000, will be provided through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2015/2016 budget. The loan will be repaid, with interest, from land sales or leases within the former Concord Naval Weapons Station (CNWS). Total funding since 2012, including this amendment, is \$360,000.

Background

Ebbin Moser + Skaggs, L.L.P. have been providing specialized CEQA and Endangered Species Act legal advice to LRA staff during the development and adoption of the Reuse Plan, development/certification of the Final EIR on the Reuse Plan, adoption of the Concord Reuse Project Area Plan and amendment of the Concord 2030 General Plan. Staff requires these services to continue for preparation of a Section 404 permit under the Clean Water Act with the U.S. Army Corps of Engineers, Section 7 Consultation with U.S. Fish and Wildlife Service, operating and maintenance Agreements for conservation areas with the East Bay Regional Park District (EBRPD), and site-wide resource management permits.

**APPROVAL OF AN AMENDMENT TO THE PROFESSIONAL SERVICE
AGREEMENT FOR SPECIALIZED LEGAL SERVICES WITH EBBIN MOSER +
SKAGGS, L.L.P. IN THE AMOUNT OF \$50,000 IN CONNECTION WITH
DEVELOPMENT OF A NATURAL RESOURCE CONSERVATION STRATEGY
AND SITE WIDE RESOURCE PERMITS FOR THE
CONCORD REUSE PROJECT AREA PLAN**

December 8, 2015

Page 2

Discussion

The Executive Director of the LRA requests legal services on an “as needed” basis as the site-wide permitting effort progresses.

The law firm of Ebbin Moser + Skaggs, L.L.P. has been successfully providing legal services to the City since 2006. Staff recommends they continue legal support on the Clean Water Act and related state laws administered by the Regional Water Quality Control Board and Department of Fish and Game and the federal Endangered Species Act and Migratory Bird Treaty Act and related state laws administered by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. These services are also required in support of negotiations with the EBRPD over operation of conservation areas within the new regional park.

Fiscal Impact

The \$50,000 of funding to support this contract amendment will be provided through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2015/2016 budget. The loan will be repaid, with interest, from land sales or leases within the former CNWS.

Public Contact

The agenda has been posted as required by law.

Recommendation for Action

Staff recommends approving an amendment to the Professional Services contract with Ebbin Moser + Skaggs, L.L.P. in an amount not to exceed \$50,000 and authorize the City Manager to execute the agreement on behalf of the City.



Valerie Barone
City Manager

Prepared by: Guy S. Bjerke
Executive Director, Local Reuse Authority
guy.bjerke@cityofconcord.org

**SIXTH AMENDMENT TO AGREEMENT FOR LEGAL SERVICES
RELATING TO THE CONCORD REUSE PROJECT**

This Sixth Amendment to the Agreement is entered into on December 8, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and Ebbin Moser + Skaggs L.L.P. (“ATTORNEY”) and is the sixth amendment to an Agreement for Legal Services dated June 5, 2012 referenced as the City’s document No. CCA-5225.

WHEREAS, the CITY and ATTORNEY entered into an agreement dated June 5, 2012, in the amount of \$50,000, for services in connection with development of a natural resource conservation strategy and site-wide resource permits for the Concord Naval Weapons Station, with a term ending date of June 30, 2013; and

WHEREAS, the Agreement has been amended on February 15, 2013, and was approved by Council as 5225-A, for an additional amount of \$50,000 and extending the term ending date to December 30, 2014; and

WHEREAS, the Agreement has been amended on July 24, 2013, and was approved by Council as 5225-B, for an additional amount of \$40,000; and

WHEREAS, the Agreement has been amended on July 1, 2014, and was approved by Council as 5225-C, for an additional amount of \$70,000 and extending the term ending date to June 30, 2015; and

WHEREAS, the Agreement has been amended on May 1, 2015, and was approved as 5225-D, for an additional amount of \$10,000; and

WHEREAS, the Agreement has been amended on July 1, 2015, and was approved as 5225-E, for an additional amount of \$90,000 and extending the term ending date to June 30, 2016; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term and provide for additional compensation; therefore

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 5, COMPENSATION, is hereby amended to read as follows:

SECTION 5 - COMPENSATION

5. COMPENSATION

With this amendment to the original agreement of June 5, 2012, the ATTORNEY shall be compensated in the additional amount of **\$50,000** for a total amount not to exceed **\$360,000** for services rendered, as more particularly described in Exhibit A of the original agreement, in accordance with the terms and conditions included therein.

ATTORNEY may submit monthly statements for services rendered. It is intended that payments to ATTORNEY will be made by CITY within thirty (30) days of receipt of invoice.

Except as expressly amended herein all terms and conditions of the Agreement dated June 5, 2012 shall remain in full force and effect.

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

CONSULTANT

Dated

By: _____
David Moser
Partner

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this sixth amendment to the Master Agreement for Professional Services entered into on December 8, 2015 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Ebbin Moser + Skaggs L.L.P. ("Attorney").