

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

461



FROM: Executive Office

SUBMITTAL DATE:
March 25, 2010

SUBJECT: Pension Reform Advisory Committee

RECOMMENDED MOTION: That the Board approve the attached agreement with Burke, Williams & Sorensen.

BACKGROUND: On March 2, 2010, item #3.33, the Board formed the Pension Reform Advisory Committee (PRAC) to review the County's pension system and directed that the committee be facilitated by an independent labor attorney as selected by the Board of Supervisors. At the Board's direction, the attached agreement with Mr. William Kay, with Burke, Williams, & Sorensen, is being presented to the Board for your approval. The term of the agreement will be for a period of five (5) months expiring on September 1, 2010, per Board direction.
(CONTINUED)

FORM APPROVED COUNTY COUNSEL
BY: *P. S. Victor* 3/31/10 DATE
MARSHA L. VICTOR
Departmental Concurrence

[Signature]
Dean Deines, Deputy County Executive Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 20,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 20,000	Budget Adjustment:	No
	Annual Net County Cost:	\$ 40,000	For Fiscal Year:	09-10

SOURCE OF FUNDS: pension admin fund	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
Ed Corser

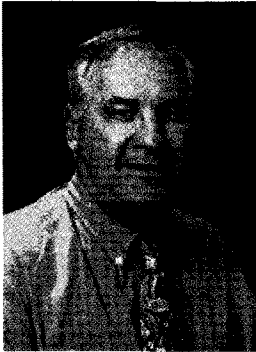
County Executive Office Signature Ed Corser, County Finance Director

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

3.77

Mr. Kay will assist the County's Pension Reform Advisory Committee to include facilitating PRAC meetings, reviewing County's current pension system, identifying modifications and/or improvements to County's pension system, identifying necessary actions needed to implement modifications/improvements to the County's pension system, and general assistance to the PRAC as directed by the County. Mr. Kay's compensation will be \$275 per hour (public sector rate) for an amount not to exceed \$40,000. The fee is reasonable for legal services provided to public agencies. Mr. Kay brings over 40 years of experience in labor matters as the PRAC facilitator. His resume is attached.

The agreement will be paid from the pension admin fund which is funded from departmental collections for repayment of the county's pension obligation bonds.



William F. Kay

*Partner
Menlo Park*

545 Middlefield Road, Suite 180
Menlo Park, California 94025-3471
Phone: (650) 327-2672
Fax: (650) 688-8333

E-mail: wkay@bwslaw.com

A founding partner of Kay & Stevens, Bill Kay is currently a partner in the law firm of Burke, Williams & Sorensen, LLP.

A highly respected state-wide authority on public sector labor and employment law, Mr. Kay is a creative, intelligent, and accomplished negotiator. Using a combination of legal knowledge, interest/criteria based skills, and more than 40 years of practical problem solving experience, he has successfully resolved complex disputes and negotiated hundreds of collective bargaining agreements for public agencies.

Mr. Kay created both the National Public Employers Labor Relations Association (NPELRA) Academies and the California Public Employers Labor Relations Association (CALPELRA) Academies. Mr. Kay continues to update, improve, and present the CALPELRA Labor Relations Academies 1, 2, 3, 4, and 5, and created the curriculum for the new Academy 6: Bargaining Your Way Through Economic Crisis and the new Academy 7: Impasse And Unilateral Adoption During Economic Crisis. Throughout the year, Mr. Kay provides CALPELRA's members with Alerts on new or developing areas of labor and employment law.

Mr. Kay has written extensively about labor relations issues. He was the Co-Editor-in-Chief of California Public Sector Labor Relations, a comprehensive text on employment law published by Matthew Bender, September 1989 (now published by Lexis-Nexis). Mr. Kay is also a contributing author of the annual publication, Legal Trends.

A graduate of Yale University (B.A., 1963), Mr. Kay earned his Juris Doctor from the George Washington University School of Law.

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this 6th day of April 2010, by and between Burke, Williams, & Sorensen, Inc. (herein referred to as "CONSULTANT"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY").

WHEREAS, Government Code Section 23000 authorizes the COUNTY to contract for special services with a person who is specially trained and experienced, and who is competent to perform the special services required; and

WHEREAS, CONSULTANT has the expertise, special skills, knowledge and experience to perform the duties set out herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. DESCRIPTION OF SERVICES: CONSULTANT shall provide services in the general nature of financial advisory as outlined and specified in Exhibit A, consisting of one page, attached hereto and by this reference incorporated herein.

1.1 CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform all services, duties and obligations required by this Agreement to fully and adequately complete the project. CONSULTANT shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONSULTANT further represents and warrants to the COUNTY that it has all licenses, permits, qualifications and approvals of whatever nature are legally required to practice its profession. CONSULTANT

further represents that it shall keep all such licenses and approvals in effect during the term of this Agreement.

2. PERIOD OF PERFORMANCE: The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through September 1, 2010, unless terminated as specified in Paragraph 6. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

3. COMPENSATION: The COUNTY shall pay the CONSULTANT for services performed and expenses incurred in accordance with the terms of Exhibit B attached hereto. The total amount of hourly compensation paid to the CONSULTANT under this Agreement shall not exceed the sum of \$40,000, unless a written amendment to this Agreement is executed by both parties prior to performance of additional services.

3.1 Said compensation shall be paid in accordance with an invoice submitted to COUNTY by CONSULTANT within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice.

4. INDEPENDENT CONSULTANT: COUNTY retains CONSULTANT on an independent contractor basis. CONSULTANT is not, and shall not be considered to be in any manner, an employee, agent or representative of the COUNTY. Personnel performing the Services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT'S exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Service and as required by law. CONSULTANT shall be responsible for all reports and obligations respecting

such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

5. INDEMNIFICATION: CONSULTANT shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of CONSULTANT, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of CONSULTANT, its officers, agents, employees, subcontractors, agents or representatives from this Agreement; and CONSULTANT shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by CONSULTANT, CONSULTANT shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONSULTANT'S indemnification to COUNTY as set forth herein. CONSULTANT'S obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given CONSULTANT written notice within a

reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at CONSULTANT'S expense, for the defense or settlement thereof. CONSULTANT'S obligation hereunder shall be satisfied when CONSULTANT has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONSULTANT'S obligations to indemnify and hold harmless the COUNTY herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONSULTANT from indemnifying the COUNTY to the fullest extent allowed by law.

6. INSURANCE: Without limiting CONSULTANT'S indemnification, CONSULTANT shall maintain in force at all times during the performance of this Agreement, insurance policies evidencing coverage during the entire term of the Agreement as follows:

6.1 Workers' Compensation: If CONSULTANT has employees as defined by the State of California, CONSULTANT shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the County of Riverside; and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

6.2 Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed

operations, personal and advertising injury covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

6.3 Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments their respective directors, officers, Board of Supervisors, elected officials, employees, agents, or representatives as Additional Insureds.

6.4 Professional Liability: CONSULTANT shall maintain Professional Liability Insurance providing coverage for performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage

provided under items; 1), 2) or 3) will continue for as long as the law allows.

6.5 General Insurance Provisions - All lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the COUNTY'S Risk Manager. If the COUNTY'S Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. The CONSULTANT'S insurance carrier(s) must declare its self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the COUNTY'S Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retentions which are deemed unacceptable to the COUNTY, at the election of the COUNTY'S Risk Manager, CONSULTANT'S carriers shall either; 1) reduce or eliminate such self-insured retentions as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.
- c. The CONSULTANT shall cause their insurance carrier(s) to furnish the County of Riverside with 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; or, 2) if requested to do so orally or in writing by the COUNTY'S Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) shall

provide no less than thirty (30) days written notice be given to the County of Riverside prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance. ***CONSULTANT shall not commence operations until the County of Riverside has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.***

- d. It is understood and agreed by the parties hereto and the CONSULTANT'S insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or performance of work the COUNTY'S Risk Manager reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages required

herein, if; in the COUNTY'S Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.

- f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of sub-consultants working under this Agreement

7. TERMINATION: COUNTY may, by written notice to CONSULTANT, terminate this Agreement in whole or in part at any time. Such termination may be for COUNTY'S convenience or because of CONSULTANT'S failure to perform its duties and obligations under this Agreement including, but not limited to, the failure of CONSULTANT to timely perform Services pursuant to the Schedule of Services described in Exhibit A to this Agreement.

7.1 Discontinuance of Services. Upon receipt of written Notice of Termination, CONSULTANT shall discontinue all affected Services within seven (7) days of receipt of the Notice, unless otherwise directed by the Notice, and deliver to the COUNTY all data, estimates, graphs, summaries, reports, and other related materials as may have been prepared or accumulated by CONSULTANT in performance of Services, whether completed or in progress.

7.2 Effect of Termination For Convenience. If the termination is to be for the convenience of the COUNTY, the COUNTY shall compensate CONSULTANT for Services satisfactorily provided through the date of termination. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. CONSULTANT shall provide documentation deemed adequate by COUNTY'S Representative to show the Services actually completed by CONSULTANT prior to the date of

termination. This Agreement shall terminate seven (7) days following receipt by the CONSULTANT of the written Notice of Termination.

7.3 Effect of Termination For Cause. If the termination is due to the failure of CONSULTANT to fulfill its obligations under this Agreement, CONSULTANT shall be compensated for those Services which have been completed and accepted by the COUNTY. In such case, the COUNTY may take over the work and prosecute the same to completion by contract or otherwise. Further, CONSULTANT shall be liable to the COUNTY for any reasonable additional costs incurred by the COUNTY to revise work for which the COUNTY has compensated CONSULTANT under this Agreement, but which the COUNTY has determined in its sole discretion needs to be revised in part or whole to complete the Project. Following discontinuance of Services, the COUNTY may arrange for a meeting with CONSULTANT to determine what steps, if any, CONSULTANT can take to adequately fulfill its requirements under this Agreement. In its sole discretion, COUNTY'S Representative may propose an adjustment to the terms and conditions of the Agreement, including the contract price. Such contract adjustments, if accepted in writing by the Parties, shall become binding on CONSULTANT and shall be performed as part of this Agreement. In the event of termination for cause, unless otherwise agreed to in writing by the parties, this Agreement shall terminate thirty (30) days following the date the Notice of Termination was mailed to the CONSULTANT. Termination of this Agreement for cause may be considered by the COUNTY in determining whether to enter into future agreements with CONSULTANT.

7.4 Cumulative Remedies. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

8. CONFLICT OF INTEREST: CONSULTANT shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement. It is possible that some of the CONSULTANT'S present or future clients will have disputes with COUNTY during the time that CONSULTANT'S are representing/providing services to the COUNTY. COUNTY and CONSULTANT agree that should the situation arise where a new or existing client engages CONSULTANT in any matter in a position adverse to COUNTY or in which COUNTY'S interest may be adversely affected, that CONSULTANT will so advise COUNTY and upon receipt of such notice COUNTY may determine that the conflict may be waived or may determine that it is in the COUNTY'S best interest to terminate the services of CONSULTANT. Should COUNTY determine that it is best to terminate the services of CONSULTANT, COUNTY will notify CONSULTANT of such decision. CONSULTANT may then submit any outstanding invoices for payment up to the date of termination as determined by the notice from COUNTY.

9. ADMINISTRATION: The County Executive Officer (or designee) shall administer this Agreement on behalf of COUNTY.

10. ASSIGNMENT: This Agreement shall not be assigned by CONSULTANT, either in whole or in part, without prior written consent of COUNTY. Any assignment or purported assignment of this Agreement by CONSULTANT without the prior written consent of COUNTY will be deemed void and of no force or effect.

11. NONDISCRIMINATION: CONSULTANT represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, physical condition, or

age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

12. ALTERATION: No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

13. ELIGIBILITY: Services and benefits shall be provided by CONSULTANT to individuals without reference to their religion, color, sex, national origin, age or physical or mental handicap.

14. LICENSE AND CERTIFICATION: CONSULTANT verifies upon execution of this Agreement, possession of a current and valid license in compliance with any local, State, and Federal laws and regulations relative to the scope of services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.

15. CONFIDENTIALITY: CONSULTANT shall observe all Federal, State and COUNTY regulations concerning confidentiality of records. CONSULTANT shall refer all requests for information to COUNTY.

16. WORK PRODUCT: All reports, preliminary findings, or data assembled or compiled by CONSULTANT under this Agreement become the property of the COUNTY. The COUNTY reserves the right to authorize others to use or reproduce such materials. Therefore, such materials shall not be circulated in whole or in part, nor released to the public, without the direct authorization of the County Executive Officer or an authorized designee.

17. JURISDICTION, VENUE, ATTORNEY'S FEES: This Agreement is to be construed under the laws of the State of California. The parties agree to the jurisdiction and

venue of the appropriate courts in the County of Riverside, State of California. Should action be brought to enforce or interpret the provisions of the Agreement, the prevailing party shall be entitled to attorney's fees in addition to whatever other relief is granted.

18. WAIVER: Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of the COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping COUNTY from enforcement hereof.

19. SEVERABILITY: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

20. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein. Any modifications to the terms of this Agreement must be in writing and signed by the parties herein.

21. SURVIVABILITY OF TERMS. Provisions of this Agreement that are not fully performed or are not capable of being fully performed as of the date of termination will survive termination of this Agreement.

22. NOTICES: All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:

COUNTY:
County Executive Office

CONSULTANT:
Burke, Williams, & Sorensen

4080 Lemon Street
Riverside, California 92501
Attn: County Executive Officer

Menlo Park Office
545 Middlefield Rd. Suite 180
Menlo Park, Ca. 94025
Attn: William F. Kay

IN WITNESS WHEREOF, the parties hereto have caused their duly representatives to execute this Agreement.

DATED: _____

FORM APPROVED COUNTY COUNSEL
BY: MR. VICTOR 3/31/10
MARSHAL VICTOR DATE

By: _____
William F. Kay
Burke, Williams, & Sorensen

County of Riverside

By: _____
Chairperson, Board of Supervisors

Exhibit A

DESCRIPTION OF SERVICES

The CONSULTANT may provide any or all of the following services ("Services") at the discretion and direction of the COUNTY.

To assist the COUNTY'S Pension Reform Advisory Committee (PRAC) to include facilitating PRAC meetings, reviewing COUNTY'S current pension system, identifying modifications and/or improvements to COUNTY'S pension system, identifying necessary actions needed to implement modifications/improvements to the COUNTY'S pension system, and general assistance to the PRAC as directed by the COUNTY.

Staffing for this contract will be determined in coordination with the COUNTY provided by the following:

- ❖ William F. Kay

Exhibit B

COMPENSATION

CONSULTANT shall be compensated as follows:

1. CONSULTANT shall bill the COUNTY for hours worked at the hourly rate of \$275 per hour.
2. Total compensation shall not exceed \$40,000 during the initial term of the contract.