



Council Agenda Report

From: Thomas Frutchey, City Manager

Subject: Updated Agreement for City Attorney Legal Services

Date: June 6, 2017

Facts

1. Iris Yang, JD, has served as the City's City Attorney since 1994.
2. In 2010, Iris joined with Best Best & Krieger LLP, out of its Sacramento Office. BB&K is one of the largest municipal Services attorney firms in California, serving as City Attorney to over 35 cities.
3. Advantages to the City from this arrangement, include, among others:
 - a. A dedicated City Attorney, recognized as one of the top city attorneys in the state, who has broad and deep knowledge of municipal legal matters and of the City.
 - b. A long-lasting relationship, one that has developed deep reservoirs of knowledge, understanding, and trust.
 - c. Associates who specialize in the wide variety of legal matters in which cities are involved or are subject to, to whom Iris can turn.
 - d. Templates, successful staff reports, and other documents that can be made available to Iris and assist the City in our joint efforts.
 - e. Training and instructive memoranda on such matters as the Political Reform Act, Fair Political Practices Commission Regulations, the Brown Act, the Public Records Act, new legislation, and judicial decisions affecting local governments.
4. BB&K is proposing an amended and restated agreement. Other than minor clean-ups, the only changes are: (1) an increase in hourly rates from \$180 to \$190, the first increase requested by BB&K since 2006; and (2) an annual CPI adjustment, capped at 4%.

Options

1. Take no action;
2. Approve the requested increase;
3. Direct the City Manager to proceed with an alternative action.

Analysis and Conclusions

The requested increase is certainly justified. Even with this increase, Iris's hourly rate would be significantly lower than that offered by many competing firms. It represents a 5.6% increase, during the same time interval that the CPI has increased by over 22.2%. This increase does not significantly impact the basic relationship between costs and benefits of the City's long-standing relationship with Iris and with BB&K.

Fiscal Impact

The projected cost increase for FY 2017-18, if the City requires the same number of legal hours as are anticipated for FY 2016-17, is \$7,500. This increase was not anticipated when the two-year budget was developed in May 2016 and will need to be budgeted.

Recommendation

1. Approve the Amended and Restated Agreement for City Attorney Legal Services between the City and Best Best & Krieger LLP.
2. Authorize the City Manager to make any minor changes to the agreement needed to ensure it fully conforms to City Council direction.

Attachments

1. Amended and Restated Agreement For City Attorney Legal Services

**AMENDED AND RESTATED AGREEMENT
FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF EL PASO DE ROBLES
AND
BEST BEST & KRIEGER LLP**

1. PARTIES AND DATE.

This Amended and Restated Agreement (“Agreement”) is made and entered into as of the ___ day of ___, 2017, by and between the City of El Paso de Robles, a municipal corporation (“Client”) and Best Best & Krieger LLP, a limited liability partnership engaged in the practice of law (“BB&K”).

2. RECITALS.

2.1 BB&K has been providing the Client with City Attorney services since September 2010. Prior to that time, McDonough Holland and Allen PC and Iris P. Yang had been providing those services since 1994. This Agreement updates and makes certain minor amendments to the existing agreement between the Client and BB&K. Iris P. Yang shall continue to serve as Successor Agency Counsel pursuant to a separate existing agreement with the Successor Agency, which agreement is not affected by this Agreement.

3. TERMS.

3.1 Term. The term of this Agreement shall commence on July 1, 2017, and shall continue in full force and effect until terminated pursuant to Section 3.12 hereof.

3.2 Scope of Services. BB&K shall serve as City Attorney and shall perform legal services (“Services”) as may be required from time to time by the Client as set forth by this Agreement, unless otherwise agreed to by the Client and BB&K. The services to be performed by BB&K hereunder are as follows:

3.2.1 Basic City Attorney Services:

- a. Preparation for, and attendance at, regular meetings of the Client;
- b. Provision of legal counsel at such other meetings as directed by the Client;
- c. Preparation or review of all Client ordinances and resolutions, together with such staff reports, orders, agreements, forms, notices, declarations, certificates, deeds, ordinary leases and other documents as requested by the Client;

- d. Rendering to the officers and employees of the Client legal advice and opinions on all legal matters affecting the Client, including new legislation and court decisions, as directed by the Client;
- e. Providing advice and training on the Brown Act, Public Records Act, and Political Reform Act
- f. Responding to inquiries and review for legal sufficiency ordinance, resolutions, contracts and administrative matters, as directed by the Client.
- g. Researching and interpreting laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Client on legal matters pertaining to Client operations, as directed by the Client

3.2.2 Special Legal Services: Special Legal Services shall include the following, as requested by Client:

- a. Representing and assisting on litigation, formal administrative or other adjudicatory hearing matters involving Client;
- b. Complex acquisition, disposal, and resolution of real estate, easements, rights-of-way, easements, leases, licenses, and other property transactions;
- c. Non-routine contract negotiation matters;
- d. Non-routine land use, development and environmental law (CEQA/NEPA) matters;
- e. Non-routine public works/capital projects contracts;
- f. Non-routine labor, employment, personnel and disability law matters
- g. Fees, taxes, and assessments matters;
- h. Complex Code enforcement matters;
- i. Tort liability and risk management matters;
- j. Telecommunication matters;
- k. Other matters mutually agreed upon between BB&K and the City.

3.2.3 Third-Party Reimbursable Services For those legal services for which the Client can be reimbursed by third parties, either pursuant to Client policy or by statutory or other authority, BB&K shall charge the Client its then-current standard hourly rate for private clients.

3.2.4 BB&K's Public Policy and Ethics (PP&E) Program provides participants with memoranda on laws that directly affect public agencies, such as the Political Reform Act, Fair Political Practices Commission Regulations, the Brown Act, and the Public Records Act. The Program also provides participants with updates on new legislation and judicial decisions affecting local governments.

3.3 Designated City Attorney. Iris P. Yang shall be designated as City Attorney, and shall be responsible for the performance of all Services under this Agreement, including the supervision of Services performed by other members of BB&K. Kimberly Hood shall be designated as Back-Up City Attorney, and shall attend such meetings as may be requested by the City Attorney. No change in these assignments shall be made without the consent of the Client.

3.4 Time of Performance. The Services of BB&K shall be performed expeditiously in the periods and as directed by the Client.

3.5 Assistance. The Client agrees to provide all information and documents necessary for the attorneys at BB&K to perform their obligations under this Agreement.

3.6 Independent Contractor. BB&K shall perform all legal services required under this Agreement as an independent contractor of the Client and shall remain, at all times as to the Client, a wholly independent contractor with only such obligations as are required under this Agreement. Neither the Client, nor any of its employees, shall have any control over the manner, mode or means by which BB&K, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. The Client shall have no voice in the selection, discharge, supervision or control of BB&K's employees, representatives or agents, or in fixing their number, compensation, or hours of service.

3.7 Fees and Costs. BB&K shall render and bill for legal services on an hourly basis. As of July 1, 2017, the rate for Basic City Attorney Services shall be increased from \$180 to \$190. The rates for Special Legal Services shall be BB&K's then-current rates for public agency clients. Beginning July 1, 2018 and every July 1 thereafter during the term of this Agreement, rates and amounts shall be increased for the change in the cost of living for the twelve (12) month period published for the most recent calendar year end, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Francisco-Oakland-San Jose area, provided, however, that such adjustment shall never be lower than zero percent (0%) nor more than four percent (4%). Individual rates, which are specific to individual attorneys and/or legal personnel, are reviewed annually and may be increased from time to time with 30 days advance written notice to the Client.

BB&K attempts to serve its clients with the most effective support systems available. Miscellaneous expenses are covered by a standard administrative charge, currently set at 4%, which compensates the cost of normal photocopying, long distance telephone calls, regular mail postage, telecopy charges and other expenses as to which individual itemization is impractical. Costs specific to Client's matters, such as investigation and filing fees, process server fees, required costs of travel, out-of-town lodging and meals, mileage at the current IRS-approved rate

per mile, courier and express delivery and mail services, deposition and court reporter fees, computerized legal research, major photocopying, conference calls and staff overtime, as needed, are itemized and will appear on Client's monthly statement as separate items.

3.8 Billing. BB&K shall submit monthly to Client a detailed statement of account for Services. The Client shall review BB&K's monthly statements and pay BB&K for Services rendered and costs incurred, as provided for in this Agreement, on a monthly basis.

3.9 Insurance. BB&K carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California. A separate schedule containing BB&K's insurance policies will be available for inspection upon Client's request.

3.10 Attorney-Client Privilege. Confidential communication between Client and BB&K shall be covered by the attorney-client privilege. As used in this article, "confidential communication" means information transmitted between the Client and BB&K in the course of the relationship covered by this Agreement and in confidence by a means that, so far as the Client is aware, discloses the information to no third persons other than those who are present to further the interests of the Client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which BB&K is consulted, and includes any legal opinion formed and advice given by BB&K in the course of this relationship.

3.11 Files. All files, both hard copy and electronic, are the property of the Client, and are available at Client's request.

3.12 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon thirty (30) days' prior written notice from either party, with or without cause. In the event of such termination, BB&K shall be paid for all Services authorized by Client and performed up through and including the effective date of termination. BB&K shall also be reimbursed for all costs associated with transitioning any files or other data or documents to a new law firm or returning them to the Client.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.14 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Luis Obispo County.

3.15 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

3.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or

CITY OF EL PASO DE ROBLES

service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

3.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Delivery of Notices. All notices permitted or required under this Agreement notices shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Client: City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Attention: Thomas Frutchey

BB&K: Best Best & Krieger LLP
50 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attention: Iris P. Yang

IN WITNESS WHEREOF, the Client and BB&K have executed this Amended and Restated Agreement for City Attorney Legal Services as of the date first written above.

(signatures contained on following page)

**SIGNATURE PAGE TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF EL PASO DE ROBLES
AND
BEST BEST & KRIEGER LLP**

CITY OF EL PASO DE ROBLES

By: _____
Thomas Frutchey
City Manager

Date: _____

Attest:

By: _____
Kristy Buxkemper
Deputy City Clerk

BEST BEST & KRIEGER LLP

By: _____
Jeffrey Ballinger
Partner

Date: _____