

# LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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**DATE:** APRIL 11, 2018



**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer

**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** Agenda Item #6(b)(i): Review and Approval of Contract with Best Best and Krieger for Legal Counsel

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## **RECOMMENDATION:**

Staff recommends that the Commission approve the Agreement for Legal Services as presented with Best Best & Krieger LLP for Legal Counsel services effective July 1, 2018 and authorize the Executive Officer to sign.

## **BACKGROUND:**

At today's hearing a significant facet of the Commission's history is changing. For 43 years Clark Alsop has served as Legal Counsel for San Bernardino LAFCO beginning at the July hearing in 1975 as a Deputy County Counsel for the San Bernardino County. The Commission transitioned with Mr. Alsop when he made the move to private practice at Best Best & Krieger in August of 1985. Mr. Alsop notified staff that he would be relinquishing his position as Legal Counsel during the late fall of 2017 noting his desire to reduce his schedule transition to assistant LAFCO Legal Counsel for San Bernardino LAFCO. At that time, Ms. Paula De Sousa Mills, current assistant LAFCO Counsel for San Bernardino LAFCO, indicated her interest in stepping into Legal Counsel role. This matter was reviewed with Administrative/Budget Committee since there were a number of personnel changes anticipated for the Commission during Fiscal Year 2018-19, and direction was provided to the Executive Officer.

Due to the unique nature of LAFCO law and the expertise needed, staff was directed to begin negotiations with Best Best & Krieger LLP for a new contract with Ms. De Sousa Mills. Ms. De Sousa Mills is familiar with San Bernardino LAFCO, the uniqueness of our County, and the range of considerations being presented having participated in the review of LAFCO 3216 -- City of Upland Fire Reorganization and formation issues. The existing

contract, signed in August 1985 and amended for hourly rate through the years, specifically identified Mr. Alsop as Legal Counsel and was in need of an updated scope of services.

The proposed Agreement for Legal Services includes the following specific provisions:

1. LAFCO Legal Counsel and any assistant Legal Counsel (with approval of the Executive Officer) shall be considered general counsel services and charged at the rate of \$250 per hour beginning July 1, 2018. Current contract rates would have been \$237 per hour and included all counsel services from Best Best & Krieger, which was no longer acceptable to the Firm. This rate will have an annual increase, effective July 1 of each year, for an adjustment commensurate with the Consumer Price Index for the Urban Consumers in the Los Angeles-Anaheim-Riverside area. The rate will be rounded up to whole dollars and cannot exceed 5% for any year.

It is noted that Ms. De Sousa Mills will be designated as LAFCO Legal Counsel, and as of the effective date of the agreement, Clark Alsop will be the assistant Legal Counsel.

2. Special Counsel Services are now defined in the agreement and effective July 1, 2018 will be charged at \$300 per hour. This rate will not increase for the first two years of the contract (allowing for staff to identify costs) and then will have the same annual increase rate as outlined in Item #1 above.
3. Ms. De Sousa Mills is based out of Best Best & Krieger's San Diego office. The contract identifies that the travel and mileage to be billed for her services will be from the Best Best & Krieger Riverside office location.

Staff has reviewed the rates to be charged and found that they are comparable with other LAFCOs utilizing Best Best & Krieger LLP services. Outside Special Counsel services have not been used by the Commission since 2014 but at that time (the FY 2014-15) the rate for Colantuno Highsmith and Whatley was \$270 per hour and the rate for Rutan and Tucker was \$275. We believe that the rates and scope of services to be performed are fair and equitable.

### **CONCLUSION:**

Staff is recommending that the Commission approve the new Agreement for Legal Services between the Local Agency Formation Commission for San Bernardino County and Best Best & Krieger LLP for the provision of legal representation by Ms. Paula De Sousa Mills effective July 1, 2018.

KRM/

Attachment:

1. Agreement for Legal Services with Best Best & Krieger LLP

## **AGREEMENT FOR LEGAL SERVICES**

This AGREEMENT is made and entered into by and between the Local Agency Formation Commission for San Bernardino County, hereinafter referred to as "LAFCO", and the law firm of Best Best & Krieger LLP, hereinafter referred to as "Counsel." LAFCO and Counsel agree to the following terms and conditions by which Counsel will be engaged to represent LAFCO in connection with the provision of legal services.

### **RECITALS**

- A. WHEREAS, LAFCO desires to obtain from Counsel all legal services which Counsel can provide in the capacity of legal counsel for LAFCO; and
- B. WHEREAS, this Agreement is entered into pursuant to the provisions of Government Code section 56384(b).

NOW, THEREFORE, LAFCO and Counsel, for the consideration hereinafter named, agree as follows:

#### **1.0 Scope of Services**

- 1.1 Counsel shall perform all general and specialized legal services as may be required by LAFCO and shall attend all meetings of LAFCO as well as other meetings as required.

##### **1.1.1 General Counsel Services**

All services with the exception of the Special Counsel Services described in Section 1.1.2 shall be considered General Counsel Services for purposes of this Agreement.

##### **1.1.2 Special Counsel Services**

- A. Litigation and formal administrative or other adjudicatory hearing matters
- B. Labor relations and employment matters, including benefits, tax and ERISA related matters
- C. Non-routine real estate matters
- D. Land acquisition and disposal matters (including pre-condemnation)
- E. Taxes, fees and charges matters (e.g. Prop. 218 & Mitigation Fee Act)
- F. Public construction disputes
- G. Non-routine contract negotiation matters (including non-BB&K model agreements and franchise agreements)
- H. Non-routine land use and development matters (including issues related to general plans, Williamson Act, and development

- agreements)
- I. Non-Routine environmental law, water law and toxic substance matters
  - J. Complex public utility matters (e.g. electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues)
  - K. Renewable energy and energy efficiency project contracts and power purchase agreements
  - L. Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level.
  - M. Other matters mutually agreed upon between Counsel and the Executive Officer.

## 2.0 **Personnel**

- 2.1 Paula C. P. de Sousa Mills shall serve as legal counsel to LAFCO. Ms. de Sousa Mills shall be responsible for the performance of services hereunder and shall supervise any services performed by other members of Counsel.
- 2.2 An assistant legal counsel shall be designated by Paula C. P. de Sousa Mills with the approval of the Executive Officer. At the time of execution of this agreement Clark H. Alsop shall serve as assistant legal counsel.
- 2.3 In addition, Ms. de Sousa Mills shall make available to LAFCO other Counsel attorneys having the requisite experience on LAFCO matters, and shall make available other Counsel attorneys services specifically requested by LAFCO or its staff.

## 3.0 **Compensation**

### 3.1 General Counsel Services:

LAFCO shall compensate Counsel on an hourly basis for General Counsel Services rendered as follows:

- \$250.00 per hour for partners and of counsel
- \$225.00 per hour for associate attorneys
- \$145.00 per hour for paralegals and clerks

Hourly rates for General Counsel Services shall automatically increase effective for the services provided by Counsel on and after July 1 of each calendar year (commencing July 1, 2019) in an amount equal to the increase in the Consumer Price Index (CPI) for the previous calendar year (January 1 through December 31) for all Urban Consumers in the Los Angeles-Anaheim-Riverside area; provided that the CPI adjustment shall be rounded up to the near full dollars, and further provided that the CPI adjustment shall not exceed five percent (5%) for any year.

3.2 Special Counsel Services and Applicant-Initiated/ Third Party Reimbursable Services rendered as follows:

\$300.00 per hour for all attorneys  
\$155.00 per hour for paralegals and clerks

Hourly rates for Special Counsel Services and Applicant-Initiated/ Third Party Reimbursable Services shall automatically increase effective for services provided by Counsel on and after July 1 of every calendar year (commencing July 1, 2020) in an amount equal to the increase in the Consumer Price Index (CPI) for the previous calendar year (January 1 through December 31) for all Urban Consumers in the Los Angeles-Anaheim-Riverside area; provided that the CPI adjustment shall be rounded up to the near full dollars, and further provided that the CPI adjustment shall not exceed five percent (5%) for any year

3.3 Reimbursement of costs advanced by Counsel on LAFCO's behalf, as well as other expenses, shall be billed in addition to the amount billed for fees. These include automobile mileage at the current IRS approved rate per mile, actual expenses away from Counsel's office on LAFCO's business, and extraordinary photocopy charges at \$0.17 per page and \$0.85 per page for color copies. All costs will be itemized on LAFCO's monthly statement and supporting documents of the direct costs will be provided to LAFCO for payment. For purposes of mileage reimbursement to and from LAFCO meetings the parties agree that Counsel shall bill for mileage to and from its Riverside office.

3.4 Counsel shall submit monthly to LAFCO a statement of account for services which clearly sets forth by date the type of work for which the billing is submitted. LAFCO shall review Counsel's monthly statements and pay Counsel for services rendered and costs incurred, as provided for in this Agreement, on a monthly basis.

4.0 **Insurance Coverage**

Counsel carries errors and omissions insurance with Lloyd's of London. After a standard deductible amount, this insurance provides coverage which exceeds what is required by the State of California. Counsel shall provide LAFCO with a copy of this insurance policy. Counsel agrees to notify LAFCO if this policy is cancelled or non-renewed.

5.0 **Term of Agreement**

This Agreement shall become effective on July 1, 2018, and shall continue thereafter, unless terminated by either party upon reasonable written notice from either party.

6.0 **Notice of Parties**

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:

LAFCO: Local Agency Formation Commission for San Bernardino County  
1170 West 3rd Street  
Unit 150  
San Bernardino, CA 92415  
Attention: Executive Officer

Counsel: Best Best & Krieger LLP  
655 West Broadway 15th Floor  
San Diego CA 92101  
Attention: Paula C. P. de Sousa Mills

7.0 **Enforcement**

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

8.0 **Entire Agreement**

This Agreement constitutes the entire written agreement for legal services between LAFCO and Counsel and may be modified only by further written agreement between the parties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY**

By: \_\_\_\_\_  
Kathleen Rollings-McDonald, Executive Officer

**BEST BEST & KRIEGER LLP**

By: \_\_\_\_\_  
Paula C. P. de Sousa Mills, Partner