



## CITY COUNCIL STAFF REPORT

DATE: MARCH 15, 2017 NEW BUSINESS

SUBJECT: APPROVAL OF AN AGREEMENT WITH GARY SCHONS TO PROVIDE SUPPLEMENTAL LEGAL SERVICES FOR THE CITY

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

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### SUMMARY

The City Council will consider approval of (1) an agreement with Gary Schons of the law firm of Best, Best and Krieger, to provide legal services for the City in connection with potential issues involving Government Code Section 1090 and (2) an advance waiver of potential or actual conflicts that may arise due to Best, Best and Krieger's representation of CVAG and DWA.

### RECOMMENDATION:

Approve an Agreement with the law firm of Best, Best and Krieger to provide legal services for the City in an amount not to exceed \$100,000 and authorize the City Manager to execute the Agreement on behalf of the City.

### STAFF ANALYSIS:

The City Attorney has identified a need for the City to bolster its legal resources to address potential Government Code Section 1090 issues related to various projects potentially implicated in the recent criminal indictment levied against a former city official and two local developers. Gary Schons, a former Assistant Attorney General for the State of California and currently with the law firm of Best, Best and Krieger is experienced in Government Code Section 1090 and was recommended to the City Attorney by Grover Trask, a former District Attorney for the County of Riverside. The City Attorney recommends the City Council retain Mr. Schons to assist the Office of the City Attorney in devising approaches for unwinding or renegotiation of each implicated transaction as may be required in response to any Government Code Section 1090 impacts.

There are currently no existing conflicts between the City and Mr. Schon's law firm, Best, Best and Krieger. However, Best, Best and Krieger represents the Desert Water Agency (DWA) and the Coachella Valley Association of Governments (CVAG) and it is asking the City to acknowledge these relationships and prospectively waive any conflict that may arise in the event of any dispute between the City and either one of these two clients. It is the City Attorney's opinion that Mr. Schon's and his firm's representation of the City is narrow in scope and the work Mr. Schon will perform on behalf of the City is not likely to

ITEM NO. S.F.

conflict with or affect either CVAG or DWA. The City Attorney recommends the Council consent to the waiver and authorize the City Manager to execute the advance waiver of any conflict of interest. The waiver letter is also attached to this Staff Report.

FISCAL IMPACT:

The cost for the agreement will be paid from the City's Risk Fund.



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David Ready, City Manager



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Douglas Holland, City Attorney

Attachments: Agreement  
Waiver



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March 9, 2017

City of Palm Springs  
Attn: Mr. Doug Holland, Palm Springs City Attorney  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92263-2743

Engagement Letter: re Legal Services

Dear Mr. Holland:

ABOUT OUR REPRESENTATION

Gary Schons of Best Best & Krieger LLP is pleased to represent the City of Palm Springs (“Palm Springs”). Mr. Schons will represent Palm Springs regarding projects potentially implicated in the recent criminal charges levied against the former Mayor of Palm Springs, Stephen Pougnet, and two local developers, John Wessman and Richard Meaney. Specifically, Mr. Schons would assist the City Attorney’s Office in devising approaches for the unwinding or renegotiation of each transaction as may be required in response to the Government Code Section 1090 allegations.

This letter constitutes our agreement setting the terms of our representation. If you want us to represent you and agree to the terms set forth in this letter, after you review the letter please sign it and return the signed copy to us.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing Palm Springs. Similarly, Palm Spring’s name will be included in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to your firm.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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We have checked the following names against our client index: City of Palm Springs, Doug Holland, Stephen Pougnet, John Wessman, and Richard Meaney. Based on that check, we can represent the City if we obtain the advance written consent from you as discussed in the accompanying letter describing future conflict of interests with our existing clients. Please review the list to see if any other persons or entities should be included. If you do not tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.

YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

We have already discussed with you the fee arrangement. My current billing rate is \$330 rate per hour. The billing rates for others are described in the memorandum attached to this letter which is entitled "Best Best & Krieger LLP's Billing Policies." It also describes the other aspects of our firm's billing policies. You should consider the Billing Policies memorandum part of this agreement as it binds both of us. For that reason, you should read it carefully.

INSURANCE

We are also pleased to let you know that Best Best & Krieger LLP 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.

NEW MATTERS

When we are engaged by a new client on a particular matter, we are often later asked to work on additional matters. You should know that such new matters will be the subject of a new signed supplement to this agreement. Similarly, this agreement does not cover and is not a commitment by either of us that we will undertake any appeals or collection procedures. Any such future work would also have to be agreed upon in a signed supplement.

HOW THIS AGREEMENT MAY BE TERMINATED

You, of course, have the right to end our services at any time. If you do so, you will be responsible for the payment of fees and costs accrued but not yet paid, plus reasonable fees and costs in transferring the case to you or your new counsel. By the same token, we reserve the right to terminate our services to you upon written notice, order of the court, or in accordance with our attached Billing Policies memorandum. This could happen if you fail to pay our fees and costs as agreed, fail to cooperate with us in this matter, or if we determine we cannot continue to represent you for ethical or practical concerns.



**BEST BEST & KRIEGER**  
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CLIENT FILE

If you do not request the return of your file, we will retain your file for five years. After five years, we may have your file destroyed. If you would like your file maintained for more than five years or returned, you must make separate arrangements with us.

THANK YOU

On a personal note, we are pleased that you have selected Best Best & Krieger LLP to represent you. We look forward to a long and valued relationship with you and appreciate your confidence in selecting us to represent you in this case. If you have any questions at any time about our services or billings, please do not hesitate to call me.

If this letter meets with your approval, please sign and date it, and return the original to us. Unless you sign, date and return the original by March 20, 2017, we will not represent you in any capacity, and we will assume that you have made other arrangements for legal representation. We have enclosed a separate signed copy of this letter for your records.

Very truly yours,

Gary W. Schons  
For BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: \_\_\_\_\_  
Dated: \_\_\_\_\_

## BEST BEST & KRIEGER LLP'S BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to our Accounts Receivable Department. Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

### Fees for Professional Services

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. Time is accrued on an incremental basis for such matters as telephone calls (minimum .3 hour) and letters (minimum .5 hour), and on an actual basis for all other work. Our attorneys are currently billed at rates from \$225 to \$750 per hour, and our administrative assistants, law clerks, litigation analysts, research analysts, and paralegals are billed at rates from \$140 to \$290 per hour. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

**Non-Attorney Personnel:** BBK may employ the services of non-attorney personnel under the supervision of a BBK attorney in order to perform services called for in the legal services agreement. The most common non-attorney personnel utilized are paralegals. Other types of non-attorney personnel include, but are not limited to, case clerks, IT analysts, and specialty consultants. The client agrees that BBK may use such

non-attorney personnel to perform its services when it is reasonably necessary in the judgment of the responsible BBK attorney. Hourly fees for non-attorney personnel will be charged at the rate then in effect for such personnel. A copy of BBK's current rates and titles for non-attorney personnel will be provided upon request. Except for paralegals, BBK will not incur more than \$550 in fees for a non-attorney's work on a client matter without first confirming by email or written correspondence with the client the intended use of the non-attorney and the hourly rate for that person.

### Fees For Other Services, Costs and Expenses

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

**ESI:** BBK provides Electronically Stored Information (ESI) services for matters requiring ESI support – typically litigation or threatened litigation matters. BBK shall receive payment for ESI support, if needed, at BBK's then current rates. A copy of BBK's current rates for such services will be provided upon request. BBK shall not incur costs for ESI support on a particular matter without first confirming by email or written correspondence with the client that the client agrees such services are necessary for the matter at hand.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

### Advance Deposit Toward Fees And Costs

Because new client matters involve both a substantial undertaking by our firm and the establishment of client credit with our accounting office, we require an advance payment from clients. The amount of this advance deposit is determined on a case-by-case basis discussed first with the client, and is specified in our engagement letter.

Upon receipt, the advance deposit will be deposited into the firm's client trust account. Our monthly billings will reflect such applications of the advance deposit to costs and not to attorney's fees (unless otherwise noted in our accompanying engagement letter). At the end of engagement, we will apply any remaining balance first to costs and then to fees. We also reserve the right to require increases or renewals of these advanced deposits.

By signing the initial engagement letter, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, when we issue our invoice to the client. If we succeed in resolving your matter before the amounts deposited are used, any balance will be promptly refunded.

### Monthly Invoices and Payment

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice shall be added to the balance owed, commencing with the next statement and continuing until paid.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We reserve the right to terminate our engagement and withdraw as attorney of record whenever our invoices are not paid. If an invoice is 60 days late, however, we may advise the client by letter that the client must pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

### Changes in Fee Arrangements and Budgets

It may be necessary under certain circumstances for a client to increase the size of required advances for fees after the commencement of our engagement and depending upon the scope of the work. For example, prior to a protracted trial or hearing, the firm may require a further advance payment to the firm's trust account sufficient to cover expected fees. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing.

Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP



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**Gary W. Schons**  
(619) 525-1348  
gary.schons@bbklaw.com

February 24, 2017

City of Palm Springs  
Attn: Mr. Doug Holland, Palm Springs City Attorney  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92263-2743

Advance Conflict Waiver re: Representation of Desert Water Agency &  
Coachella Valley Association of Government

Dear Mr. Holland:

The City of Palm Springs (“Palm Springs”) has requested that Best Best & Krieger LLP (“BBK”) represent Palm Springs regarding projects potentially implicated in the recent criminal charges levied against the former Mayor of Palm Springs, Stephen Pougnet, and two local developers, John Wessman and Richard Meaney. Specifically, Gary Schons of BBK would assist the City Attorney’s Office in devising approaches for the unwinding or renegotiation of each transaction as may be required in response to the Government Code Section 1090 allegations.

Before BBK can represent Palm Springs, BBK performed a conflict check and found that there are no actual conflicts with its existing clients as of today. However, we found that BBK does represent other clients which may have in the future conflicting interests with Palm Springs in matters unrelated to the Palm Springs Matters. This letter concerns our relationship with the Desert Water Agency (“DWA”) and the Coachella Valley Association of Government (“CVAG”). If we are to advise Palm Springs about the Palm Springs Matters, we must first get Palm Spring’s advance informed written consent to any potential or actual conflict of interest concerning our representation of DWA and CVAG.

**RULES OF PROFESSIONAL CONDUCT**

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

- (C) A member [of the Bar] shall not, without the informed written consent of each client:



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- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

**REPRESENTATION OF DESERT WATER AGENCY &  
ADVANCE WAIVER OF CONFLICTS**

BBK has represented DWA for many years in a variety of different types of matters. BBK is not currently representing DWA with respect to the Palm Springs Matters. Furthermore, we do not believe that we are representing DWA on any matters which are adverse to Palm Springs. However, BBK has represented DWA on matters adverse to Palm Springs in the past. Having DWA as a longtime client, BBK may be asked to represent DWA in a transaction or dispute, including litigation, which is directly adverse to Palm Springs.

If we are still representing Palm Springs on the Palm Springs Matters or other issues, and DWA asks BBK to represent DWA against Palm Springs on unrelated matters, then we would first need to obtain consent from Palm Springs to do so. Because DWA has been a BBK client for so many years, however, we cannot take the chance that Palm Springs would refuse such consent. Therefore, we ask that you sign this letter giving Palm Springs's consent now to any future representation of DWA against Palm Springs so that we do not need to ask you for such consent in the future. Furthermore, Palm Springs agrees that we can continue representing DWA on other unrelated matters despite the conflict issue.

**REPRESENTATION OF COACHELLA VALLEY ASSOCIATION OF  
GOVERNMENTS & ADVANCE WAIVER OF CONFLICTS**

BBK has represented CVAG for many years in a variety of CEQA matters. We do not believe that we are representing CVAG on any matters which are adverse to Palm Springs. However, BBK does represent CVAG in a specific matter known as the CV Link Project that involves Palm Springs. We understand that there is no current conflict with Palm Springs in the CV Link Project and that Palm Springs has been, and continues to be, supportive of the CV Link Project. However, circumstances could always change, and a conflict could arise between Palm



**BEST BEST & KRIEGER**  
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Springs and CVAG in the future. Because BBK has been representing CVAG on the CV Link Project, we ask that you sign this letter giving Palm Springs's consent now to any future representation of CVAG against Palm Springs so that we do not need to ask you for such consent in the future. Furthermore, as part of this consent, Palm Springs will not seek advice from BBK about the CV Link Project and agrees that we can continue representing CVAG on the CV Link Project and other matters despite the conflict issue.

**POTENTIAL ADVERSE CONSEQUENCES**

Because DWA and CVAG are not currently adverse to Palm Springs, it is impossible to predict exactly the facts related to any such future conflict, but we do believe it is possible to describe the reasonably foreseeable adverse consequences that would arise which include the following:

- We may be tempted to favor the interests of our other clients over Palm Springs's interests.
- Our exercise of independent judgment to Palm Springs may be impaired or clouded by our relationship with our other clients.
- We may be restricted from forcefully advocating Palm Springs's position for fear of alienating our other clients depending upon the circumstances.
- We may inadvertently disclose confidential information to a client that Palm Springs would not like revealed.
- Lawyers from BBK might conduct discovery against Palm Springs, appear in court to argue against Palm Springs, and depose or question Palm Spring employees or representatives in an adverse manner.
- There may be an appearance of impropriety in our representation of multiple clients simultaneously in unrelated matters.

**YOUR CONSENT**

We believe that we have provided you enough information about the matters described here to allow you to make an informed choice about how to proceed. If you believe you need additional information, please let us know.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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You are entitled to, and should consider asking a non-BB&K attorney to review this letter and provide independent advice to you whether you should sign this letter and provide the consent that we have requested.

If you are willing to consent, please sign and return to us the enclosed copy of this letter:

- i. acknowledging that we have informed Palm Springs of our relationship with DWA and CVAG;
- ii. acknowledging that Palm Springs has been advised of Rule 3-310 and although no conflict of interest exists today, BBK is requesting for advance consent to future conflicts regarding DWA and CVAG;
- iii. indicating that Palm Springs consents to our continued representation of DWA and waives any future conflicts described in this letter so that a further waiver is not needed;
- iv. indicating that Palm Springs consents to our continued representation of CVAG and waives any future conflicts described in this letter so that a further waiver is not needed.

If you have any questions, please do not hesitate to call.

Sincerely,

Gary W. Schons  
for BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Enclosure