



Local Agency Formation Commission
2222 M Street
Merced, CA 95340
Phone (209) 385-7671 / Fax (209) 726-1710
www.lafcomerced.org

Date: June 19, 2008
To: LAFCO Commissioners
From: ^{BN} Bill Nicholson, LAFCO Executive Officer
Re: Renew Contract with Best Best and Krieger fro LAFCO Legal Services
Agenda Item VII. A.

The agreement for LAFCO Legal Services must be approved in order to continue receiving legal services from Malathy Subramanian with Best Best and Krieger during the upcoming fiscal year. Section 2 "Term of Agreement" has been modified so the Commission will not have to adopt a new contract each fiscal year. Instead, the contract will continue indefinitely unless terminated by either party upon 30 days written notice. The cost for legal services is set each year through the budget progress, and the budgeted amount for fiscal year 08-09 is \$25,920.

Requested Action:

Approve the Agreement for Legal Services between the Local Agency Formation Commission of Merced County and the law firm Best Best and Kreiger LLP.

AGREEMENT FOR LEGAL SERVICES

This AGREEMENT is made and entered into by and between the Local Agency Formation Commission of Merced County, hereinafter referred to as "LAFCO", and the law firm of Best Best and 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. **Scope of Services**

Counsel shall perform all general and specialized legal services as may be required by LAFCO.

Counsel shall attend all meetings of LAFCO, as well as other meetings as required.

2. **Term of Agreement**

This Agreement shall become effective on June 26, 2008, and shall continue thereafter, unless terminated by either Party upon thirty (30) days written notice from either Party with or without cause.

3. **Personal**

Malathy Subramanian shall serve as General Counsel to LAFCO. Ms. Subramanian shall be responsible for the performance of services hereunder and shall supervise any services performed by other members of Counsel. Ms. Subramanian is a partner. Ms. Subramanian shall make available other attorneys to LAFCO that have experience in LAFCO matters to provide backup regarding the provision of legal services.

4. **Compensation**

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

\$206 per hour for partners and of counsel

\$170 per hour for senior associates

\$144 per hour for junior associates

\$119 per hour for clerks and paralegals

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 currently include, but are not limited to, automobile mileage and actual expenses away from Counsel's offices on LAFCO's business, extraordinary photocopy charges and any costs of producing or reproducing photographs, documents and other things necessary for the preparation or presentation of LAFCO's case. All costs will be itemized on LAFCO's monthly statement and supporting documents of the direct costs will be provided to LAFCO for payment.

Counsel shall submit monthly to LAFCO a statements of account for services which clearly set 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.

As of 2008, on July 1 of each year, Counsel's hourly rates shall automatically increase by the lesser amount of either the percentage increase in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose for the previous calendar year or five percent.

5. **Mutual Cooperation**

Counsel has an extensive public law practice on a regional basis. Counsel represents various public agencies in Merced County. Counsel will not represent LAFCO and one of Counsel's public agency clients interacting with LAFCO unless both LAFCO and the public agency client have consented to such dual representation.

Counsel understands that clients interested in matters under California Rule of Professional Conduct 3-310 are clients qualifying as "affected agencies" under the Cortese-Knox-Hertzberg Act. Counsel will provide the Executive Officer notice under Rule 3-310 as clients appear on staff's work in progress matrix or as counsel otherwise becomes aware of their involvement as "affected agencies". The Executive Officer will forward such notices to the Commission prior to Commission workshops, or if no workshop occurs, with notices of hearings. The Executive Officer may acknowledge disclosures and may waive conflicts under Rule 3-310, subject to revocation by the Commission when such disclosures or requests for waivers can be reviewed by the Commission.

In the event that one of the Counsel's public agency clients appears before LAFCO, subject to Rule 3-310, Counsel shall not represent Counsel's public agency client on the LAFCO matter.

6. **Indemnity**

Counsel shall defend, indemnify and hold LAFCO harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or

on account of, injuries to, or death of any person, including but not limited to workers, LAFCO employees and the public, or damage to property or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with negligent acts or omissions of Counsel's services, operations or performance hereunder. This duty of Counsel to indemnify and save LAFCO harmless includes the duties to defend set forth in California Civil Code section 2778.

7. **Insurance**

Counsel shall provide proof of a policy of insurance satisfactory to the Merced County Risk Manager and documentation evidencing that Counsel maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Counsel as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Counsel in the performance of this Agreement.
- D. In the event Counsel is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purpose of this Agreement, professional liability is required.
- E. Counsel shall furnish a certificate of insurance satisfactory to the Merced County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Counsel agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Counsel agrees to provide at least (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of term of the Agreement, or for a period of not less than (1) year. New certificate of insurance are subject to the approval of Risk Management and Counsel agrees that no work or services shall be performed prior to the giving of such approval. In the event the Counsel fails to keep in effect at all times insurance coverage as herein provided, LAFCO may, in addition to any other remedies it may have, terminate the Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
- (1) The insurer will not cancel the insured's coverage without (30) days prior written notice to the LAFCO, AND ;
 - (2) LAFCO, its – officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. Counsel's insurance coverage shall be primary insurance as respects the LAFCO, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by LAFCO, its officers, officials, employees or volunteers shall be in excess of the Counsel's insurance and shall not contribute with it.
- J. Any deductible of self-insured retentions must be declared to and approved by LAFCO, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects LAFCO, its officers, officials, employees and volunteers; or the Counsel shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to LAFCO, it officers, employees or volunteers.
- L. The insurance companies shall have no recourse against LAFCO, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Counsel's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of the Agreement.
- N. In the event Counsel cannot provide an occurrence policy, Counsel shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

8. **Notice of Parties**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United State Post Office, postage prepaid by registered.

Notices to LAFCO shall be addressed as follows:

County of Merced LAFCO
2222 M Street
Merced, California 95340
Attention: Bill Nicholson

Notices to Counsel shall be addressed as follows:

Best Best & Krieger LLP
2001 North Main Street, Suite 390
Walnut Creek, California 94596
Attention: Malathy Subramanian

9. **Enforcement**

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

10. **Entire Agreement**

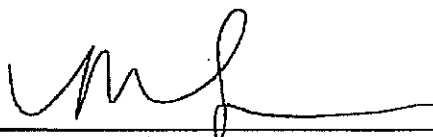
This Agreement constitutes the entire written agreement between LAFCO and Counsel and may be modified only by further written agreement between the parties.

Dated this _____ day of June 2008.

LOCAL AGENCY FORMATION COMMISSION OF MERCED COUNTY

By: _____
Robert Bertao, Chair

BEST BEST & KRIEGER LLP

By: 

Malathy Subramanian