

**EXTENSION AND AMENDMENT OF AGREEMENT
FOR CITY ATTORNEY SERVICES CONTRACT NO. C28882**

This Extension and Amendment of Agreement for City Attorney Service dated August 27, 2009, (“2009 Agreement”) is made effective March 28, 2019, by and between the CITY OF PALM DESERT (“CITY”), a California municipal corporation and charter city, and BEST BEST & KRIEGER LLP (“BB&K”), a California limited liability partnership.

RECITALS

1. CITY has retained BB&K to perform legal services as City Attorney since 1988.
2. Effective August 27, 2009, CITY and BB&K entered into the 2009 Agreement to perform those service until August 31, 2014.
3. On August 28, 2014 CITY extended the 2009 Agreement for an additional five years, until August 31, 2019.
4. On November 14, 2015, with the passing of City Attorney David Erwin, the City Council appointed Robert Hargreaves to that position.
5. On March 28, 2019, CITY extended the 2009 Agreement an additional five years, until August 31, 2024.

EXTENSION AND AMENDMENT

NOW, THEREFORE, CITY AND BB&K agree as follows:

1. The 2009 Agreement is amended throughout to reflect that Robert Hargreaves is the designated City Attorney.
2. Section 13 of the 2009 Agreement is amended to provide that the Agreement will continue until August 31, 2024, subject to the CITY’s termination rights provided in that section.
3. All other provisions of the 2009 Agreement shall remain the same.

BB&K:

Best Best & Krieger LLP

By:


Robert W. Hargreaves, Partner


CITY:

City of Palm Desert

By:


Susan Marie Weber, Mayor

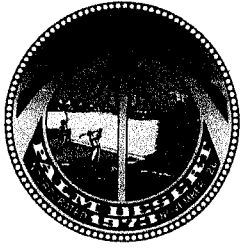
By:


Lauri Aylaian, City Manager

Attest:

By:


Rachelle D. Klassen, City Clerk



CITY OF PALM DESERT

73-510 FRED WARING DRIVE
PALM DESERT, CALIFORNIA 92260-2578
TEL: 760 346-0611
info@cityofpalmdesert.org

mailed 9-5-2014

Amendment No. 1 to C28880

September 5, 2014

David J. Erwin, Esq.
Best, Best & Krieger, LLP
74-760 Highway 111, Suite 200
Indian Wells, California 92210

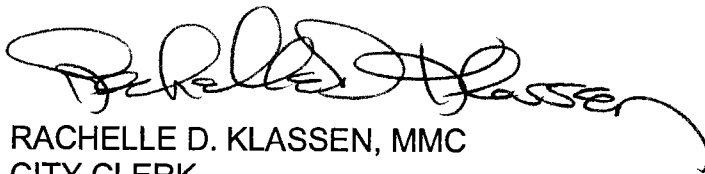
Dear Dave:

Subject: Contract No. C28881 - Extension of Contract for City Attorney Services With the Firm of Best, Best, & Krieger LLP

At its regular meeting of August 28, 2014, the Palm Desert City Council, by Minute Motion, extended the City Attorney Contract with Best, Best, & Krieger LLP, for five (5) years under the same terms and conditions as the existing (Contract No. C28880).

Enclosed for your records is a copy of the staff report with City Council Action stamp affixed thereto. If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,



RACHELLE D. KLASSEN, MMC
CITY CLERK

RDK:mgs

Enclosure (as noted)

cc/enc: John M. Wohlmuth, City Manager
Finance Department

CITY OF PALM DESERT

CITY MANAGER'S OFFICE

STAFF REPORT

REQUEST: CITY ATTORNEY CONTRACT EXTENSION

SUBMITTED BY: John M. Wohlmuth, City Manager

DATE: August 28, 2014

CONTENTS: Letter from David J. Erwin dated July 8, 2014
Contract No. C28880 from Best, Best and Krieger LLC
Letter from Best, Best and Krieger dated June 20, 2014

Recommendation

Extend the City Attorney contract with Best, Best and Krieger LLP for five years under the same terms and conditions as the existing contract.

Background

In 2009, the City of Palm Desert released a Request for Proposal for City Attorney Services. The City received nine proposals and interviewed the three top firms with a committee comprised of:

1. Mr. Bob Spiegel, Mayor
2. Mr. Jim Ferguson, Councilmember
3. Mr. John M. Wohlmuth, City Manager
4. Judge Rob Taylor; and
5. Mr. Larry Parrish, retired Riverside County CEO

The three firms that were interviewed by the Selection Committee were:

1. Best, Best and Krieger
2. Richard Watson and Gershon
3. Aleshire and Wynder

The committee chose Best, Best and Krieger as the top proposal and interview. During the month of July 2009, a contract was negotiated culminating in a five-year contract awarded by the City Council on August 27, 2009. The contract terminates on August 27, 2014.

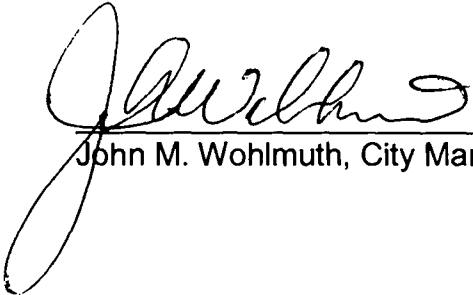
Staff Report
City Attorney Contract Extension
Page 2
August 28, 2014

Please find attached a letter from Dave Erwin dated July 8, 2014 requesting a five-year extension.

If approved by Council the contract would consist of the same terms and conditions as the August 27, 2009 contract. The only modifications to the contract is the retainer amount and Special Services billing rate. The contract allows for Cost of Living Adjustments once per year. Best, Best and Krieger voluntarily waved two COLA's in 2011 and 2012; therefore, the price in the original contract reflects an increase equal to two out of four COLA adjustments. Other than the two 2% COLA adjustments the price, terms and conditions are all the same as the 2009 contract.

Submitted By/Approval:

Reviewed:



John M. Wohlmut, City Manager

Paul S. Gibson, Director of Finance

CITY COUNCIL ACTION

APPROVED DENIED _____
RECEIVED _____ OTHER _____

MEETING DATE 08-28-2014

AYES: Benson, Harnik, Spiegel, & Tanner

NOES: WEBER

ABSENT: None

ABSTAIN: None

VERIFIED BY: RDK/mgs

Original on File with City Clerk's Office



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Ontario
(909) 989-8584
Riverside
(951) 686-1450

Post Office Box 13650, Palm Desert, CA 92255-3650
74-760 Highway 111, Suite 200, Indian Wells, CA 92210
Phone: (760) 568-2611 | Fax: (760) 340-6698 | www.bbklaw.com

Sacramento
(916) 325-4000
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

David J. Erwin
(760) 837-1607
david.erwin@bbklaw.com

July 8, 2014

John Wohlmuth
City Manager
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

Re: City Attorney Contract

Dear John:

The Contract with Best Best & Krieger currently has an expiration date of August 27, 2014. The provisions for a five (5) year Contract were placed in the Contract for the Council to review and determine whether to send out a request for proposals.

I would specifically request that the Contract be extended for an additional five (5) year period. It is my considered opinion that we at BB&K have provided an excellent service to the City for many years and wish to continue to do so into the future. As a matter of information, the Contract allows the City to terminate the Contract on 30 days' notice without a reason stated.

Your affirmative action to assist in the extension is appreciated and hopefully the Council will agree.

Sincerely,

A handwritten signature in black ink, appearing to read 'David J. Erwin'.

David J. Erwin
of BEST BEST & KRIEGER LLP

DJE:alr

**AGREEMENT
FOR CITY ATTORNEY SERVICES
CONTRACT NO. c28880**

This Agreement is made as of the 27th day of August, 2009, by and between, on the one hand, the CITY OF PALM DESERT ("CITY"), a California municipal corporation and charter city, acting on behalf of itself, and BEST BEST & KRIEGER LLP ("BB&K"), a limited liability partnership engaged in the practice of law.

CITY and BB&K AGREE AS FOLLOWS:

1. RECITALS

- A. CITY has heretofore retained BB&K to perform legal services as City Attorney.
- B. CITY and BB&K desire and intend that BB&K shall continue to provide CITY legal services as city Attorney on the terms set forth hereinafter.

2. SCOPE OF SERVICES

BB&K shall serve as City Attorney and shall perform the Services to include, by way of example, preparation for and attendance at all regular, special and study session meetings of the City Council, the Planning Commission including study sessions, Executive Management meetings, and other boards, commissions, and committees established by CITY, unless otherwise directed by CITY; preparation or review and monitor of all CITY ordinances, resolutions, agreements, deeds, agenda reports, daily police (SIR) reports, and other legal documents requested by CITY; provision to all officials, officers, and staff of CITY of legal advice and opinions concerning all matters affecting CITY, as directed by the City Council, City Manager, and City staff.

3. BB&K PERSONNEL

David J. Erwin ("Erwin") shall be the individual designated as City Attorney and shall be responsible for the performance of services by BB&K under this Agreement and the supervision of any and all other BB&K professional and support personnel who provide services to CITY.

No change in this designation shall be made without the prior consent of CITY. CITY and BB&K understand that Erwin may, on occasion, be temporarily unavailable to respond to requests by CITY for specific legal assistance. Thus, BB&K may from time to time assign other attorneys and may use paralegals to assist in the provision of City Attorney services pursuant to this Agreement; provided, however, that prior to use of any attorney other than Erwin, BB&K shall seek and, wherever reasonably possible, obtain the prior approval of CITY regarding any attorney who may be asked to provide assistance to CITY. Attorneys and paralegals who receive such approval from CITY shall hereinafter be referred to as "Approved Personnel".

4. OFFICE HOURS AND AVAILABILITY OF BB&K PERSONNEL

Erwin shall attend and conduct office hours one half work day (four hours) twice every week at Palm Desert City Hall on Monday morning and Wednesday morning. In addition, if and when requested by CITY, Erwin shall attend and conduct additional office hours at Palm Desert City Hall on any additional day or days of any week, as needed in the determination of CITY. On any and all days when Erwin is not present at Palm Desert City Hall, Erwin and/or other Approved Personnel of BB&K shall remain available at all times to provide City Attorney legal services to CITY from BB&K offices.

5. COMPENSATION

In consideration for the performance of the Services by BB&K, CITY shall pay BB&K a flat-rate, all-inclusive sum of (\$18,500.00 per month) ("Monthly Compensation"), which shall be payment of fees for the Retainer Services. BB&K LLP shall be reimbursed for reasonable and necessary expenses incurred, subject to approval of City Manager including but not limited to, printing, copying, long distance phone and fax charges, court fees, computer research expenses, extraordinary mail or delivery costs and actual fees and expenses for subconsultants retained by BB&K LLP. CITY and BB&K agree that the Monthly Compensation shall automatically increase effective for the Services provided by BB&K on and after July 1 of each calendar year (commencing July 1, 2010) in an amount equal to the increase in the cost of living for the most recently published twelve (12) month period as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth in the Los Angeles-Anaheim-Riverside area up to a maximum of five percent (5%).

Notwithstanding any provision herein to the contrary, BB&K may request on or before March 31 of each year an increase in the Monthly Compensation over and above the CPI adjustment upon a showing of good cause for such increase; provided that the approval or disapproval of any such request shall be made by CITY in its sole and absolute discretion.

6. USE OF SPECIAL COUNSEL

CITY and BB&K recognize and agree that Special Services will be required by CITY from time to time. CITY in its sole and absolute discretion shall select any and all special legal counsel to provide such Special Services. CITY and BB&K understand and intend that such special legal counsel shall not be attorneys from BB&K unless approved separately by the City Council or City Manager. BB&K shall at the request of CITY, be available to supervise and coordinate the provision of Special Services by special legal counsel.

7. SPECIAL SERVICES

BB&K through approved personnel shall provide special services for Code Enforcement, Mobile Home Rent Control, Litigation, Administrative Hearing, environmental challenges, endangered species, labor and employment matters, and other items specifically approved by the City Council or City Manager. Bond counsel matters are based upon Section 11 hereof. For any and all such legal services, the fees shall be billed by BB&K and payable by Palm Desert as follows: \$255.00 per hour for attorney partners, \$245.00 per hour for Of Counsel attorneys, \$230.00 per hour for attorney associates and \$150.00 per hour for paralegals and law clerks. Billing shall be in tenth's of an hour for each billing person. Such hourly fees shall be subject to increase effective July 1 of each calendar year(commencing July 1, 2010) in the manner set forth in Section 5 hereof. The costs associated with such service, including without limitation, telephone expense, document reproduction expense, mileage expense, computer research, Court and Administrative filing fees, messenger service fees, fees for expert appraisers and other consultants(subject to prior approval of City of Palm Desert) and the like, shall be billed by BB&K and payable by Palm Desert monthly.

8. BILLING

BB&K shall submit to CITY monthly an invoice in the amount of the Monthly Compensation, covering the preceding calendar month. The invoice shall contain a written description of all legal matters for which BB&K performed legal services during the preceding calendar month. CITY shall make every reasonable effort to pay BB&K for each monthly invoice within twenty-one (21) calendar days following receipt of each invoice. If the Services provided by BB&K during the first or last calendar month of the term of this Agreement (as set forth in Section 10 hereafter) do not cover an entire calendar month, then the Monthly Compensation due and owing to BB&K shall be prorated for that month and shall be calculated by multiplying the Monthly Compensation by a fraction wherein the numerator is the number of days during which BB&K provided the services in the calendar month and the denominator is the number thirty (30).

9. STANDARD AND TIMELINESS OF SERVICES

BB&K shall adhere to all reasonable and lawful standards and procedures established by CITY for the provision of the Services by BB&K under this Agreement and for the fulfillment by BB&K of its duties as the City Attorney. BB&K shall work cooperatively at all times with the City Council and the City Manager and shall keep them informed on all matters of importance. BB&K shall perform the Services expeditiously and in a timely manner in order to meet the needs and requirements of CITY.

10. INSURANCE COVERAGE

BB&K currently maintains errors and omissions insurance with Lloyd's of London. After a standard deductibility amount, this insurance provides coverage which exceeds the amount required by the State of California.

11. All Bond counsel and general financial counsel legal services would be rendered to CITY at BB&K standard public finance rates set forth in Exhibit "A" attached hereto. Appropriate adjustments may be made to the rates on file as recommended from time to time by underwriters and/or financial advisors to the CITY.

12. All legal services provided to CITY for which CITY receives reimbursement or requires deposit in advance from developer or third party and for litigation paid by developer with CITY represented by BB&K such as review of CC&R's, establishment of Community Facilities District, Assessment Districts, Landscaping and Lights Districts and the like, land use and/or environmental projects shall be billed at BB&K's then current standard private rate minus ten percent (10%).

13. TERMS OF AGREEMENT

The provision of the Services under this Agreement shall commence on September 1, 2009 and continue for a period of five years until August 31, 2014. BB&K understands and agrees that BB&K serves at the will and pleasure of CITY. CITY retains BB&K to provide the Services under this Agreement, and BB&K shall continue to provide the Services under this Agreement until such time as either CITY or BB&K provides thirty (30) days written notice to the other of termination of this Agreement, either with or without cause. In the event of termination of this Agreement, CITY shall pay BB&K for all of the Services rendered by BB&K through and including the effective date of termination.

IN WITNESS WHEREOF, CITY and BB&K have executed this Agreement as of the date first set forth hereinabove.

CITY OF PALM DESERT




By: Mayor

ATTEST:



City Clerk

BEST BEST & KRIEGER LLP



By: David J. Erwin, Partner

EXHIBIT "A"
TO
LEGAL SERVICES AGREEMENT
(SCHEDULE OF BOND COUNSEL FEES)

1. Certificates of Participation and Revenue Bonds. For services in connection with the issuance and sale of certificates of participation and revenue bonds, BB&K shall be paid a fee which will be the greater of (i) \$30,000 or (ii) an amount based on the total principal amount of the certificates of participation or bonds to be sold, computed as follows:

.50% of the first \$10 million of the amount of the certificates or bonds issued, plus

.25% of the next \$10 million of the amount thereof, plus

.125% of the amount thereof, if any, over \$20 million.

2. Community Facilities Districts. For services in connection with the issuance and sale of bonds of community facilities districts, BB&K shall be paid its hourly rates for conducting the formation proceedings of the Community Facilities District, and negotiation of funding agreements and other agreements relating to the CFD, payable from the landowner's initial deposit. Additionally, upon issuance of bonds, BB&K will charge a fee which will be the greater of (i) \$30,000 or (ii) an amount based on the total principal amount of the bonds to be sold, computed as follows:

.50% of the first \$10 million of the amount of the bonds issued, plus

.25% of the next \$10 million of the amount thereof, plus

.125% of the amount thereof, if any, over \$20 million.

3. Assessment Districts. For services in connection with the issuance and sale of bonds of assessment districts, BB&K shall be paid its hourly rates for conducting the formation proceedings of the Community Facilities District, and negotiation of funding agreements and other agreements relating to the assessment district, payable from the landowner's initial deposit. Additionally, upon issuance of bonds, BB&K will charge a fee which will be the greater of (i) \$25,000 or (ii) an amount based on the total principal amount of the bonds to be sold, computed as follows:

.50% of the first \$10 million of the

amount of the bonds issued, plus

.25% of the next \$10 million of the amount thereof, plus

.125% of the amount thereof, if any, over \$16 million.

4. Tax Allocation Bonds. For services in connection with the issuance and sale of tax allocation bonds. BB&K shall be paid a fee which will be the greater of (i) \$30,000, or (ii) an amount based on the total principal amount of the bonds to be sold, computed as follows:

.50% of the first \$10 million of the amount of bonds issued, plus

.25% of the next \$10 million of the amount of bonds issued, plus

.20% of the next \$10 million of the amount of bonds issued, plus

.15% of the next \$10 million of the amount of bonds issued, plus

.125% of the amount thereof, if any, over \$40 million.

5. General Obligation Bonds and Tax and Revenue Anticipation Notes. For services in connection with the issuance and sale of general obligation bonds and tax and revenue anticipation notes of the City, BB&K shall be paid a fee which shall be determined based on the time expended by the attorneys and attorney assistants who perform services in connection with the issuance and sale of such bonds or notes at the following hourly rates: Attorneys (including partners and associates): \$350; Paralegals and Clerks: \$110.

6. Conduit Borrowings. For services in connection with the issuance of bonds for and on behalf of conduit borrowers to finance industrial development facilities, multifamily housing projects and other projects qualifying for tax-exempt financing, BB&K shall be paid a fee which will be \$30,000 for any bond issuance of \$3,000,000 or less. Because bond counsel fees for conduit bonds are paid by the conduit borrower, we would expect to negotiate the fee for any transaction over \$3,000,000 with the conduit borrower, subject to approval by the City.