

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: June 07, 2012

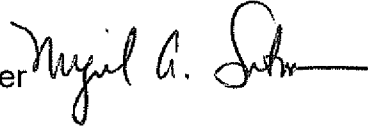
CAO File No. 0130-01756-1543

Council File No. 12-0014-S2

Council District: --

To: The City Council

From: Miguel A. Santana, City Administrative Officer



Reference: Attorney Conflicts Panel

Subject: **REQUEST TO HIRE THE LAW FIRMS OF BEST, BEST & KRIEGER AND BYRNE & NIXON TO REPRESENT THE CITY IN MATTERS RELATED TO THE CRA/LA A DESIGNATED LOCAL AGENCY (DLA) AND THE OVERSIGHT BOARD OF CRA/DLA; AND APPROVE RELATED CONFLICT WAIVER REQUEST**

SUMMARY

The Mayor's Office, the Office of the Chief Legislative Analyst (CLA), the Housing Department (Housing), and the Office of the City Administrative Officer (CAO) requests Council authority to hire and enter into contract agreements with two law firms, Best, Best & Krieger (BB&K) and Byrne & Nixon (B&N), to represent the City of Los Angeles (City) in matters relating to the former Community Redevelopment Agency of Los Angeles (CRA/LA), now known as the CRA/LA a Designated Local Agency (DLA) and the Oversight Board of the CRA/LA DLA. The proposed agreements are to be effective June 4, 2012, with funding up to \$450,000 per contract, and the billing rates based upon rates proposed by each law firm, as discussed in this report, for their respective assignments. Council approval is also requested relative to a waiver of potential conflicts of interest (see Attachment) for the firm of BB&K concerning other unrelated matters.

The City currently faces a variety of complex issues relating to the DLA, which includes the transfer of housing assets by the DLA to the City; advice and legal representation relative to the Recognized Obligation Payment Schedule and other DLA obligations; U.S. Department of Justice investigation and U.S. Department of Housing and Urban Development audit; and two civil law suits, *Mei Ling v. the City, et al.*, Case No. CV11-07774 and *Independent Living Center, et al.*, Case No. CV12-00551, involving Americans with Disabilities Act (ADA) claims. Both recommended law firms are Los Angeles-based, and are highly qualified and possess specialized expertise, knowledge and experience to handle the DLA issues and litigation on behalf of the City.

Both law firms will be retained under the Attorney Conflicts Panel (ACP). Retention under the ACP is based upon the statement made by the City Attorney's Office on May 11, 2012 before the City Council on its withdrawal as legal counsel to both the City and the DLA to avoid any existing or potential conflicts. Additionally, written notification was sent to the CAO via the ACP for retention of conflict counsel to represent the City on the above mentioned matters.

Both law firms were selected through a competitive process. A working group consisting of representatives from the Mayor's Office, the CAO, the CLA, and the Housing Department facilitated the solicitation of written proposals and conducted oral interviews. A summary of the recommended law firms is provided below.

Best, Best & Krieger

The City has interests adverse to the DLA, Oversight Board and the California Department of Finance, which includes the transfer of housing assets by the DLA to the City and the Recognized Obligation Payment Schedule and other DLA obligations. These issues relating to the DLA require an understanding in redevelopment law. For this work, BB&K is recommended. BB&K is considered one of the premier municipal and redevelopment law firms in California. BB&K has offices in Los Angeles, Irvine/Ontario, Sacramento and Washington, D.C., and is well versed and established within the legal circuits of State redevelopment, including legislation and litigation relative to State redevelopment and economic development fields. Ten law firms were considered for this assignment. The Firm's proposed rates are very competitive at the hourly rate of \$325-Partner and Of-Counsel; \$265-Associate; and \$150-Paralegal.

Conflict Waiver Request

The firm of BB&K does not have any conflicts of interest arising from the dissolution of the redevelopment agencies, in that the BB&K does not represent the DLA, the Department of Finance, or any oversight board relating to DLA matters. Currently, the firm of BB&K represents the City, as special counsel, in litigation relating to Hyperion construction involving the City's Department of Public Works, *Dillingham Ray Wilson v. City of Los Angeles*. The firm also represents interests in other matters adverse to the City; ongoing water adjudication and a matter involving toxic substances at two Los Angeles County landfills.

Conflict waivers were granted by the City to the Firm in 2008 (C.F. 08-1342) and 2010 (C.F. 10-2477) for these and other unrelated matters which have subsequently been resolved. Because the County is a member of the Oversight Board to the DLA and pursuant to the California Rules of Professional Conduct 3-310, Council approval is requested relative to a waiver of potential conflicts of interest (see Attachment) for the firm of BB&K.

Byrne & Nixon

Conflict counsel is needed to handle alleged ADA violations related to Federally-funded affordable housing units, which is the basis for the two civil lawsuits filed by private plaintiffs. Additionally, investigations into the same matters have been initiated by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice through the Office of the U.S. Attorney. Given the seriousness of the allegations and potential exposure, it is critical to hire a law firm with specialized expertise and experience in the handling of matters involving Federal prosecution.

The firm of B&N is recommended for this assignment. One of the partners is a highly regarded

former Assistant U.S. Attorney. Further, the firm of B&N provided a very effective presentation, demonstrating a clear understanding of the City's cases while providing a sensible strategy for resolution in the best interest of the City. Five law firms were considered for this assignment. The firm of B&N has offered a blended rate of \$400 per hour. Other law firms provided rates upwards of \$700 for this type of assignment.

The firm of BB&K is in compliance with the City's contractual policies and requirements. The firm of B&N is currently in the process of obtaining compliance with the City's contractual policies and requirements. Both proposed contracts will be in compliance with City Financial Policies in that all contractual expenditures will be funded through budgeted funds.

RECOMMENDATIONS

That the City Council:

1. Authorize the City Administrative Officer, or designee, to enter into legal services contract agreements with the firm of Best, Best & Krieger and Byrne & Nixon, effective June 4, 2012, for advice and legal representation to the City of Los Angeles in matters (identified within the City Administrative Officer report) relating to the former Community Redevelopment Agency of Los Angeles, now known as the CRA/LA Designated Local Agency (DLA) and the Oversight Board of the CRA/LA DLA, contracts; and to be administered through the Attorney Conflicts Panel program;
2. Authorize the City Administrative Officer to fund the two contracts in the total amount of \$450,000 each, through the Attorney Conflicts Panel Fund No. 46T, Department 10, subject to the review and approval by the City Attorney as to form and legality; and approve the proposed rates as provided by each firm for their respective assignment as identified in the City Administrative Officer report;
3. Approve the attached waiver of potential conflicts of interest from Best, Best & Krieger and authorize the City Administrative Officer to execute the waiver on behalf of the City; and,
4. Authorize the City Administrative Officer to prepare Controller's instructions for any technical adjustments, and authorize the Controller to implement the instructions.

FISCAL IMPACT STATEMENT

The recommendations in this report will have no additional impact on the General Fund. Sufficient funding is available in the 2011-12 and 2012-13 Adopted Budgets for the Attorney Conflicts Panel under ACP Fund No. 46T, to fund the necessary expenses incurred this fiscal year and next.

MAS:DMR:04120169c

Attachment

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June 5, 2012

Gregg W. Kettles, Deputy Counsel
Office of Mayor Antonio Villaraigosa
200 N Spring Street, Room 303
Los Angeles, CA 90012

Re: Waiver Letter — County of Los Angeles, City of Covina

Dear Mr. Kettles:

We have been asked to represent the City of Los Angeles on issues related to the dissolution of the Los Angeles Community Redevelopment Agency (“CRA/LA”), pursuant to the recent state legislation ABx1-26. However, we also currently represent the County of Los Angeles or its special districts on unrelated matters adverse to the City of Los Angeles.

Accordingly, we have to inform you about our representation of the County of Los Angeles and City of Covina, discuss with you the potential impact of our representation and obtain your informed written consent.

We have successfully worked through this waiver of potential conflict disclosure and consent with you on several matters in the past, including our representation of the City of Los Angeles on litigation involving the Cecil Hotel (2008) and the Hyperion construction project (2010).

A similar letter of consent is being obtained from the County of Los Angeles and City of Covina.

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:
 - (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or



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- (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.
- (D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

OUR REPRESENTATION

In this matter, we will represent the City of Los Angeles specifically on issues related to the dissolution of CRA/LA pursuant to state legislation ABx1-26. However, we also represent the County of Los Angeles or its special districts in the following unrelated matters:

1. We represent the County of Los Angeles Water Works District No. 40 in a pending water adjudication (Judicial Council Coordination Proceeding No. 4408) which is adverse to the Los Angeles World Airports.

2. We represent the County of Los Angeles in discussions among potentially responsible parties for the costs of clean up involving the BKK Landfill located in Carson CA. As potentially responsible parties, the County's and the City's interests are adverse in these discussions and possible future litigation.

We also represent the City of Covina in the following unrelated matter:

3. We represent the City of Covina in discussions among potentially responsible parties for the costs of clean up involving the BKK Landfill located in Covina, CA. As potentially responsible parties, Covina and the City of Los Angeles's interests are adverse in these discussions and possible future litigation.

The above matters are unrelated to the issues related to the dissolution of CRA/LA under state legislation ABx1-26.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. The following is possible, although we believe they are very unlikely:



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- We may be tempted to favor the interests of one client over the other.
- Our exercise of independent judgment to the City may be impaired or clouded by our relationship with the County of Los Angeles/City of Covina, and vice versa.
- We may not be able to present the appropriate position, claims or defenses for a client in order to avoid taking adverse positions to the other client.
- We may be restricted from forcefully advocating a client's position for fear of alienating the other client.
- We may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.
- There may be an appearance of impropriety in our representation of both clients simultaneously.

We understand that the issues related to the dissolution of CRA/LA are unrelated to the issues in the matters where the firm represents the County and City of Covina. Although it is very unlikely, if at any time during the firm's representation of the City of Los Angeles, a dispute were to arise between the City and the County (or City and City of Covina) involving the dissolution of CRA/LA, the firm will contact your office so that we may further evaluate any potential conflicts..

Of note, in order to mitigate further any possibility of any of the above consequences, the firm's representation of the City of Los Angeles related to the dissolution of CRA/LA will be conducted primarily by Brant Dveirin, Brent Hawkins, Elizabeth Hull and Seth Merewitz ("Dveirin, Hawkins, Hull and Merewitz"), and the Firm will create an ethical wall between Dveirin, Hawkins, Hull and Merewitz and any other firm personnel working on the dissolution of CRA/LA matter, and the firm's personnel who work on the above County and City of Covina matters.

As indicated above, the firm will obtain also consent of the County and City of Covina so that the firm can continue to work on the County and City of Covina matters.

YOUR CONSENT

In order for us to represent the City of Los Angeles related to the dissolution of CRA/LA, we need you to sign this consent letter. It is understood that this consent will not waive any protection that you may have with regard to attorney-client communications with us in this

Gregg W. Kettles, Deputy Counsel
Office of Mayor Antonio Villaraigosa
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matter. Those communications will remain confidential and will not be disclosed to any third party without your consent.

I believe that you are familiar with the factual background in these matters involving the County and City of Covina, and I have given you a sufficiently-detailed description for obtaining informed written consent.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

I should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter.

Please keep a copy of this letter for your files. If you have any questions, please do not hesitate to call.

Very truly yours,

BEST BEST & KRIEGER LLP

Brant Dveirin

AGREED AND ACCEPTED:

By: _____

Dated: _____

Enclosure