

**AGREEMENT FOR LEGAL SERVICES
FOR THE CITY OF POMONA
(Interim City Attorney)**

This Agreement is made and entered into this 17th day of December, 2018, by and between the law firm of Best Best & Krieger, LLP (hereinafter "BBK"), and the City of Pomona, a California municipal corporation (hereinafter "the City").

R E C I T A L S:

A. On December 3, 2018, the City Council appointed Christi Hogin of Best Best & Krieger to serve as Interim City Attorney. The City appointed her to perform the functions of the City Attorney as defined by Pomona Charter §703 and additionally to serve as counsel to the Pomona Housing Authority until the City Council selects and appoints a permanent City Attorney or takes further action.

B. The City desires to retain Christi Hogin and BBK to continue to discharge the duties of the office of City Attorney on an interim basis and to provide other legal services as required.

C. The attorneys of BBK are duly licensed under the laws of the State of California and are fully qualified to discharge the duties of Interim City Attorney and to provide the legal services contemplated by this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

BBK shall discharge the duties of the office of City Attorney of the City on an interim basis and shall use its best efforts to provide legal services in a competent and professional manner. BBK shall provide all services to the City of the kind and nature typically provided by an in-house City Attorney's office, including litigation services, unless specifically exempted by this Agreement or otherwise determined by the City Council. The legal services to be provided by BBK shall consist of those set forth in Exhibit "A" attached hereto and shall be billed at the rates set forth therein or as otherwise agreed by the parties. Except where conflict of interest rules require otherwise, BBK shall supervise the activities of all other counsel retained by or for the City and shall review their invoices prior to payment.

2. Designation of Interim City Attorney.

Christi Hogin is designated as Interim City Attorney for the City. The parties understand and agree that BBK may, from time to time, use other attorneys within

BBK to assist her in the performance of this Agreement. The designation set forth in this paragraph may be changed by mutual agreement without a formal amendment to this Agreement.

3. Billing Procedures and Monthly Statements.

3.1 Payment for all services set forth in Exhibit A shall be made on or before the last day of each month for services rendered during the preceding month. BBK shall submit to the City, within 10 days after the end of each calendar month, a general statement of professional services provided.

3.2 BBK will not bill the City for routine copying, telephone, mileage, facsimile or word processing or electronic research within BBK's current Westlaw Plan, which shall include California statutes and case and Ninth Circuit cases. BBK will bill the City, without any mark-up, actual expenses for out-of-contract electronic legal research, parking, filing fees, transcripts, delivery charges, extraordinary copying (over 50 pages) and similar out-of-pocket expenses. These items will be separately designated on BBK's monthly statements as "disbursements" and will be billed in addition to the fees for professional services.

3.3 Time will be charged by BBK in increments of 1/10th of an hour (six-minute units).

4. Term of the Agreement.

This Agreement shall commence as of December 17, 2018 and shall be and remain in full force and effect until terminated in accordance with the provisions of Section 6 hereof.

5. Resolution of Fee Disputes.

The City is entitled to require that any fee dispute be resolved by binding arbitration pursuant to the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. In the event that City chooses not to utilize the Los Angeles County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by BBK shall be submitted to binding arbitration in Santa Barbara County to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

6. Termination of the Agreement.

The City may terminate this Agreement, with or without cause, upon written notice to BBK. BBK may terminate, with or without cause, on sixty days written

notice to the City. In either event, the City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record. BBK agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of BBK's services, City will remain obligated to pay to BBK all fees and costs properly incurred prior to termination.

7. Conflict of Interest.

BBK represents that it presently is unaware of any interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement. BBK adheres to the rules of professional responsibility governing conflicts.

BBK represents that no City employee or official other than the members of BBK has a material financial interest in BBK. During the term of this Agreement and/or as a result of being awarded this contract, BBK shall not offer, encourage or accept any financial interest in BBK's business from any City employee or official.

In addition, Christi Hogin represents that she abides by the ethical principles adopted by the City Attorneys Department of the League of California Cities, including but not limited to Principle 3, which encourages city attorney conduct in a nonpolitical manner, such as not making political contributions to candidates for office in cities she represents as city attorney. BBK represents that it also abides by the ethical principles.

8. Files.

All legal files of BBK pertaining to the City shall be and remain the property of City. BBK shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at BBK's expense, upon termination of this Agreement.

9. Modifications to the Agreement.

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of BBK's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by BBK and paid by the City.

10. Nondiscrimination.

In the performance of this Agreement, BBK shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation or medical condition. BBK shall take affirmative action to

insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, sexual orientation or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

11. Assignment and Delegation.

This Agreement contemplates the personal professional services of BBK and it shall not be assigned or delegated without the prior written consent of the City. BBK shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

12. Insurance.

12.1 BBK shall obtain and maintain in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Said insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error or omission or neglect by BBK which arises out of the professional services required by this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by BBK.

12.2 BBK shall, if and as prescribed by law, obtain and maintain Workers' Compensation insurance in accordance with Section 3700 of the California Labor Code.

12.3 BBK agrees to notify City in the event the limits of its insurance should fall below the coverage stated in this paragraph or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

13. Indemnification.

13.1 BBK agrees to indemnify, hold harmless and defend City and City Council, its officers, employees, agents and volunteers, from any and all liability or financial loss including legal expenses and costs of expert witnesses and consultants resulting from any suits, claims, losses or actions brought by any person or persons, by reasons of injury and arising directly or indirectly from the negligent or wrongful activities and operations of BBK, including its officers, agents, employees, or subcontractors in the performance of this Agreement.

13.2 Notwithstanding the provisions of paragraph 13.1, City acknowledges its statutory obligation under California Government Code section 825 *et seq.* to defend and indemnify the Interim City Attorney and his assistants and deputies

from and against all and any claims, actions and liabilities arising from work performed within the scope of their duties under this Agreement.

13.3 The provisions of this Paragraph 13 shall survive the termination of this Agreement.

14. Legal construction.

14.1 This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

14.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

14.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

14.4 BBK shall for all purposes be an independent contractor to the City.

15. Notices.

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Linda Lowry, City Manager
City of Pomona
505 South Garey Avenue
Pomona, CA 91766

TO FIRM: Christi Hogen
Best Best & Krieger, LLP
1230 Rosecrans Avenue Suite 110
Manhattan Beach, CA 90266
TEL (310) 643-8448
FAX (310) 643-8441

16. Warranty of Authorized Signatures.

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

17. Entire Agreement.

This Agreement, together with any written modification pursuant to Paragraph 9 above, shall constitute the full and complete agreement and understanding of the parties and shall be deemed to supersede all other written or oral statements of either party relating to the subject matter hereof.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

Dated: December __, 2018

CITY OF POMONA

By _____
Mayor

ATTEST:

CITY CLERK
(Seal)

Dated: December 7, 2018

BEST BEST & KRIEGER, LLP
A Limited Liability Partnership

By 
CHRISTI HOGIN

Attachments: Exhibit A Scope of services and applicable bill rates
Exhibit B Oath of Office

EXHIBIT "A"

SCOPE OF SERVICES AND APPLICABLE BILLING RATES

I. GENERAL LEGAL SERVICES

A. The general legal services to be provided by BBK to the City shall include, without limitation, the following:

1. Provide routine legal assistance, advice and consultation to the City Council and to City staff relating to land use, CEQA, general municipal law issues, general and routine public employee relations issues, and interpretation of the Municipal Code, potential tort liability, risk management, and other legal issues
2. Prepare and review legal opinions, ordinances, resolutions, agreements and related documents
3. Review draft environmental impact reports and related environmental documents
4. Prepare for and attend all regular, special or adjourned meetings of the City Council and the Planning Commission
5. Telephone consultations with Councilmembers and staff
6. Assumption of all pending assignments within BBK's competence unless otherwise determined in consultation with the City Manager; coordination with and supervision of outside counsel, including taking whatever steps needed to assure valid contracts are in effect
7. Advice relating to implementation of the City's NPDES/stormwater permit
8. Office conferences and criminal prosecution services to secure code compliance

B. The general legal services specified in paragraph A above and all other transactional services shall be provided at the rate of \$210 per hour.

II. LITIGATION SERVICES

The litigation services performed under this Agreement shall be provided at the hourly rate of \$325 per hour for lawyers with more than 15 years of experience, \$275 per hour for lawyers with 10 to 15 years of experience and \$225 for lawyers with less than 10 years of experience.

BBK shall not be responsible for any pending litigation matters handled by attorneys previously or otherwise employed by the City unless the file has been transferred to BBK and a valid substitution of attorney has been filed with the applicable court.

III. SPECIAL LEGAL SERVICES

Matters that involve specialized or technical expertise beyond the ordinary or routine scope of general city attorney areas of practice will be billed at the firm's usual public agency rates for those individual matters.

Exhibit "B"

OATH OF OFFICE
California Constitution Article 20, Section 3

I, Christi Hogin, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.



Christi Hogin
Interim City Attorney
City of Pomona

Effective date: December 4, 2018

Ethical Principles for City Attorneys¹

Adopted October 6, 2005

City Attorneys Department Business Session

Preamble

A city attorney occupies an important position of trust and responsibility within city government. Central to that trust is an expectation and commitment that city attorneys will hold themselves to the highest ethical standards. Every effort should be made to earn the trust and respect of those advised, as well as the community served.

The City Attorneys Department of the League of California Cities has therefore adopted these ethical principles to:

- ❑ Serve as an aspirational guide to city attorneys in making decisions in difficult situations,
- ❑ Provide guidance to clients and the public on the ethical standards to which city attorneys aspire, and
- ❑ Promote integrity of the city and city attorney office.

City attorneys are also subject to the State Bar's Rules of Professional Conduct. For an explanation of how the rules apply to city attorneys, please see *Practicing Ethics* published by the League of California Cities in 2004, available at www.cacities.org/attorneys. These aspirational ethical principles are not an effort to duplicate or interpret the State Bar's requirements or create additional regulatory standards.

The role of the city attorney and the client city varies. Some city attorneys are full-time public employees appointed by a city council; some are members of a private law firm, who serve under contract at the pleasure of a city council. A few are directly elected by the voters; some are governed by a charter. When reflecting on the following principles, the city attorney should take these variations into account.

The city attorney should be mindful of his or her unique role in public service and take steps to ensure his or her words and deeds will assist in furthering the underlying intent of these principles.

¹ When used in this document, the term "city attorney" refers to all persons engaged in the practice of municipal law. This includes attorneys in firms that provide legal services to cities on an ongoing basis that are the functional equivalent to services provided by assistant or deputy city attorneys (for example, on redevelopment and personnel issues).

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Fundamental Principles (There is no significance to the order of the list.)

Principle 1 (Rule of Law). As an officer of the courts and local government, the city attorney should strive to defend, promote and exemplify the law's purpose and intent, as determined from constitutional and statutory language, the case law interpreting it, and evidence of legislative intent. As an attorney representing a public agency, the city attorney should promote the rule of law and the public's trust in city government by providing representation that helps create a culture of compliance with ethical and legal obligations.

***Explanation.** The city attorney's advice and actions should always proceed from the goal of promoting the rule of law in a free, democratic society. Because the public's business is involved, within the city organization the city attorney should consistently point out clear legal constraints in an unambiguous manner, help the city to observe such constraints, identify to responsible city officials known legal improprieties and remedies to cure them, and if necessary, report up the chain of command to the highest level of the organization that can act on the client city's behalf.*

Examples

1. The city attorney should give advice consistent with the law and the policy objectives underlying those laws, but may consider and explain good faith arguments for the extension or change of a legal principle.
2. The city attorney should not attempt to justify a course of action that is clearly unlawful. Where the city attorney's good faith legal assessment is that an act or omission would be clearly unlawful, the city attorney should resist pressure to be "creative" to come up with questionable legal conclusions that will provide cover for the elected or appointed public officials to take actions which are objectively unlikely to be in conformance with the legal constraints on the city's actions.
3. The city attorney's guiding principle in providing advice and services should be sound legal analysis. The city attorney should not advise that a course of action is legal solely because it is a common practice ("everyone else does it that way"), a past practice ("we have always done it that way"), or because the risk of suit or other consequence for action is considered low.
4. The city attorney's advice should reflect respect for the legal system.
5. If the city has made a decision that the city attorney believes may be legally harmful to the city, the city attorney should encourage the city to take any necessary corrective action but do so in a way that minimizes any damage to the city's interests.
6. The city attorney should be willing to give unpopular legal advice that meets the law's purpose and intent even when the advice is not sought but the legal problem is evident to the attorney.

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7. The city attorney should not only explain and advise the city on the law, but should encourage the city to comply with the law's purpose and intent.

Principle 2 (Client Trust). The city attorney should earn client trust through quality legal advice and the manner in which the attorney represents the city's interests.

***Explanation.** It is difficult for the city attorney to effectively represent the city if public officials do not trust the city attorney's competence and professionalism.*

Examples

1. The city attorney should use available resources to maximize his or her ability to advise knowledgeably on issues of municipal law.
2. The city attorney should be clear with individual council members and staff on the extent to which their communications with the city attorney can and will be kept confidential. The city attorney should be especially clear when confidentiality cannot be lawfully maintained.
3. Sometimes the city attorney will be asked a question during a public or private meeting and the city attorney is unsure of the answer. When time permits, the city attorney should advise that additional time is needed to research the matter and provide an appropriate response. If extra time is not available, then the city attorney should be candid regarding any uncertainty he or she feels about the answer given.
4. When a question is posed and the city attorney knows there is no definitive, clear conclusion, the city attorney should describe the competing legal considerations, as well as inform the city of the legally supportable courses of action, together with an evaluation of the course that is most likely to be upheld.
5. In the event the city attorney is asked in a public forum to provide advice that could undermine the city's ultimate position, the city attorney should seek to meet in closed session, if legally permissible, or, if time permits, provide his or her opinion in a confidential memorandum. If the advice must be given during an open session, then the city attorney must be mindful of the impact that advice given in public may have on the city's ultimate position.
6. When the city attorney has a duty to provide documents or other information to outside law enforcement authorities, he or she should do so in a way to minimize harm to the city consistent with that duty.

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Principle 3 (No Politicization). The city attorney should provide legal advice in a manner that avoids the appearance that the advice is based on political alignment or partisanship, which can undermine client trust.

Explanation. The city attorney and the city attorney's advice needs to be trusted as impartial by the entire council, staff and community.

Examples

1. The city attorney should provide consistent advice with the city's overall legal interests in mind to all members of the city team regardless of their individual views on the issue.
2. Each city council member, irrespective of political affiliation, should have equal access to legal advice from the city attorney, while legal work on a matter consuming significant legal resources should require direction from a council majority.
3. The city attorney or persons seeking to become city attorney should not make campaign contributions to or participate in the campaigns of that city's officials, including candidates running for that city's offices or city officers running for other offices. For private law firms serving as city attorney or seeking to become city attorney, this restriction should apply to the law firm's attorneys.
4. When considering whether to become involved in policy advocacy on an issue that may potentially come before the city, the city attorney should evaluate whether such involvement might compromise the attorney's ability to give unbiased advice or create the appearance of bias.

Principle 4 (No Self Aggrandizement). The city attorney should discharge his or her duties in a manner that consistently places the city's interests above self-advancement or enrichment.

Explanation. The city attorney, by his or her acts and deeds, should demonstrate that his or her highest professional priority is to serve the city's needs.

Examples

1. The city attorney's operating and legal services budget requests should be based on the goal of efficiently serving the client city's realistic legal needs (*i.e.* avoid "empire building").
2. The city attorney should provide advice without a focus on garnering personal support or avoiding personal criticism.

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3. While it is appropriate for a city attorneys to provide both advisory and litigation services, a city attorney should give the city a full range of reasonable options including alternatives to litigation for resolving issues.

Principle 5 (Professionalism and Courtesy). The city attorney should conduct himself/herself at all times in a professional and dignified manner, interacting with all elected officials, city staff, members of the public, and the media with courtesy and respect.

Explanation. The city attorney should be a role model of decorum and composure.

Examples

1. The city attorney should provide advice and information to the council and individual council members in an evenhanded manner consistent with city policy governing the provision of legal services to the city.
2. The city attorney should communicate in a way that is sensitive to both the context and audience, explaining the law in a way that is understandable.
3. In interactions with the public, the city attorney's role is to explain procedures and the law, but not engage in debate.
4. The city attorney should show professional respect for city staff, colleagues, the legal system and opponents. The city attorney should not personally attack or denigrate individuals, particularly in public forums.
5. The city attorney should not seem to endorse, by silence or otherwise, offensive comments made to him/her about others.
6. Sometimes the city attorney will provide advice in public, either because of a city's approved practices or as necessitated during a public meeting. Such advice should be provided in a low-key, dispassionate and non-confrontational manner.
7. The tone of the city attorney's advice and representation should not give the appearance of a personal attack on an individual, even when it is necessary to explain that a particular official's action is unlawful.
8. The city attorney should be open to constructive feedback and criticism.

Principle 6 (Policy versus Law). The city attorney's obligation is to understand the city's policy objectives and provide objective legal advice that outlines the legally defensible options available to the city for achieving those objectives.

Explanation. The city attorney must respect policymakers' right to make policy decisions.

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Examples

1. The city attorney may offer input on policy matters, but should make clear when an opinion is legal advice and when it is practical advice.
2. The city attorney should not let his or her policy preferences influence his or her legal advice.
3. If a city attorney finds it necessary to advise the city that a particular course of action would be unlawful, the city attorney should strive to identify alternative approaches that would lawfully advance the city's goals.

Principle 7 (Consistency). The city attorney should conduct his or her practice in a way that consistently furthers the legitimate interests of cities.

Explanation. Consistency in the legal positions taken by city attorneys is vital to city attorneys' credibility with the courts, clients, and the public.

Examples

1. The city attorney should not represent a private client if that representation will necessitate advancing legal principles adverse to cities' clearly recognized and accepted interests.
2. When providing advice, the city attorney should inform his or her city of any far-reaching negative impacts a position may have on the city's own potential future interests as well as cities' interests in general, particularly when establishing legal precedent.
3. The city attorney should carefully consider whether to hire or recommend a firm that advances legal principles adverse to city interests on behalf of private clients.

Principle 8 (Personal Financial Gain). The city attorney's primary responsibility is to serve the city's interest without reference to personal financial gain.

Explanation. An important aspect of the city attorney profession is public service.

Examples

1. The city attorney should provide the highest possible quality work regardless of the remuneration received.
2. The city attorney's representation should be based on a realistic understanding of the city's needs in light of the city's fiscal and other constraints. However the city

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attorney should advise the city when additional resources are necessary to provide the level of legal services the city requires.

3. The city attorney should refrain from providing unnecessary or redundant services to the city.

4. The city attorney should never use the power, resources or prestige of the office for personal gain.

Principle 9 (Hiring by and of City Attorneys). The selection and retention of the city attorney and city attorney staff should be based on a fair process that emphasizes professional competence and experience. The process should not include inappropriate considerations such as political, personal or financial ties.

Explanation. The public's trust in the quality of the city's legal services is undermined if it appears that considerations other than competence affected the decision to hire someone.

Examples

1. The city attorney should engage staff and vendors based on objective standards relating to professional competence and experience.

2. The city attorney should avoid providing gratuities to decision-makers during the pendency of decisions relating to the city attorney's employment.

3. City attorneys must keep employment negotiations separate from the city attorney's role as the city's legal advisor.

4. The city attorney should not undermine the employment of an incumbent city attorney. The city attorney may respond to unsolicited inquiries from a potential client about future representation.

5. The city attorney should maintain an office that is open to employees from diverse backgrounds and remove unnecessary barriers to success in his or her office and in the legal profession.

6. The city attorney should not award or recommend award of litigation or legal services-related contracts if the public could question whether the contract was awarded for reasons other than merit, such as the contractor (or member of the contractor) providing gifts to or participating in political campaigns of (including making campaign contributions to) officials with the power to award the contracts.

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7. The city attorney should hire or recommend staff and consultants who adhere to these ethical principles and encourage existing staff and consultants to do likewise.

8. The city attorney should seriously consider refusing to represent cities that do not support the city attorney's adherence to these principles

Principle 10 (Professional Development). The city attorney should contribute to the profession's development by improving his or her own knowledge and training and by assisting other public agency attorneys and colleagues in their professional development.

Explanation. For city attorneys to remain a vital, positive part of municipal government, members of the profession should take affirmative actions to advance respect for and proficiency by its practitioners.

Examples

1. City attorneys have a strong tradition of assisting their colleagues through formal or informal sharing of their knowledge and expertise, including active participation in the League of California Cities, the State Bar and a local municipal attorney group or bar association. This tradition also includes sharing of research and opinions when consistent with protecting client confidences.

2. The city attorney should continually strive to improve his or her substantive knowledge of the law affecting municipalities through presenting or attending appropriate educational programs.

3. The city attorney should keep in mind the dynamic nature of municipal law and update his or her understanding of the law on an issue, rather than relying on past knowledge.