

CITY OF YUBA CITY
STAFF REPORT

Date: June 18, 2019
To: Honorable Mayor & Members of the City Council
From: Human Resources
Presentation By: Natalie Springer, Human Resources Director

Summary

Subject: Updated Engagement Agreement with Best, Best & Krieger, LLP
Recommendation: Authorize the City Manager to enter into an updated Engagement Agreement with Best, Best & Krieger, LLP for labor and employment law advice and employment claim management
Fiscal Impact: Hourly rate increase of \$15 per hour

Purpose:

To continue our attorney-client relationship with Best, Best & Krieger, LLP for labor and employment law advice and employment claim management.

Background:

The City of Yuba City has worked closely with Best, Best & Krieger, LLP (BBK) on a variety of labor and employment law issues for many years. BBK assists with specific and complicated employee litigation, investigations, labor relations, and discipline matters. Because of their unique level of institutional knowledge and legal expertise, BBK is able to streamline processes and problem solve quickly and efficiently. In the past, Stacey Sheston, Partner, has successfully represented numerous City departments including the Police Department on employee matters.

Analysis:

Attorneys with Best, Best & Krieger, LLP provide comprehensive guidance to employers. Their services include resolving day-to-day employment issues, establishing policies, and providing training and litigation defense. Because BBK is located in Sacramento, they have established relationships with the network of attorneys in the Sacramento area. The City has a long-standing relationship with BBK and staff works regularly with their attorneys to assist with employment related issues.

Fiscal Impact:

Best, Best & Krieger, LLP has not changed their rates since 2017. Effective July 1, 2019, the hourly rate for our BBK attorney will increase from \$295 per hour to \$310 per hour. This is an increase of \$15 per hour or 5.08%. No retainer is being requested.

Alternatives:

1. Direct staff to request proposals from other employment law firms

2. Direct staff to contract with another employment law firm
3. Use City Attorney

Recommendation:

Authorize the City Manager to enter into an updated Engagement Agreement with Best, Best & Krieger, LLP for labor and employment law advice and employment claim management, with the finding that it is in the best interest of the City.

Attachments:

- A. Updated Fee Agreement and Engagement Letter

Prepared By:

/s/ Ciara Wakefield

Ciara Wakefield
Administrative Analyst II

Submitted By:

/s/ Diana Langley

Diana Langley
City Manager

Reviewed By:

Human Resources

Finance

City Attorney

NS

RB

SLC by email

ATTACHMENT A



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May 17, 2019

**VIA E-MAIL (dlanglely@yubacity.net)
AND U.S. MAIL**

Diana Langley
Interim City Manager
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

Re: Fee Agreement and Engagement Letter

Dear Diana:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to represent the City of Yuba City with respect to labor and employment law advice and employment claim management. This letter constitutes our updated agreement setting the terms of our representation. If you want us to continue 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 the City. Similarly, the City's name will be included in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to the City.

The City is already a client of our firm, and as matters have arisen, we have checked the names the City provided to us against our client index in search of potential conflicts. Based on



BEST BEST & KRIEGER
ATTORNEYS AT LAW

City of Yuba City

May 17, 2019

Page 2

these checks, we can represent the City in this capacity. 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 current fee arrangement, which is a continuation of our current rates. My current billing rate is \$295 per hour. (Note: this rate has been in effect for two years and will increase to \$305 as of July 1, 2019.) No retainer is being requested.

The billing rates for others and the advanced deposit 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 understand that you are not now insured or have any insurance that may cover potential liability or attorneys' fees in this case. If you think you may have such insurance, please notify me immediately.

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.

CIVILITY IN LITIGATION

In litigation, courtesy is customarily honored with opposing counsel, such as extensions to file pleadings or responses to other deadlines. In our experience, the reciprocal extension of such courtesies saves our clients' time and money. By signing this letter you will be confirming your approval of this practice in your case.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

City of Yuba City
May 17, 2019
Page 3

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.

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 continue representing you. We are grateful for the long and valued relationship with the City 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, date it, and return the original to us. Unless you sign, date and return the original by June 30, 2019, 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.

Sincerely,

Stacey N. Sheston
of 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. All legal services are billed in one-tenth of an hour (0.10/hour) or six-minute increments. Our attorneys are currently billed at rates from \$245 to \$750 per hour, and our administrative assistants, law clerks, litigation analysts, municipal analysts, research analysts, and paralegals are billed at rates from \$70 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 \$575 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.