



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

TO: MEMBERS, FORMATION COMMISSION
FROM: DAVID CHURCH, EXECUTIVE OFFICER
DATE: JANUARY 16, 2020
SUBJECT: LEGAL COUNSEL CONTRACT AMENDMENT #1

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County Member

STAFF

DAVID CHURCH
Executive Officer

BRIAN A. PIERIK
Legal Counsel

MIKE PRATER
Deputy Executive Officer

IMELDA MARQUEZ
Commission Clerk

Recommendation. It is respectfully recommended that the Commission consider the attached amendment with Burke, Williams & Sorensen to adopt a Flat Monthly Fee agreement as found in Attachment A.

Summary. On November 21, 2019 the Commission considered the Employee Evaluation for Mr. Brian Pierik San Luis Obispo's legal counsel. The Commission agreed that Mr. Pierik's performance in this first year has been exemplary. Today's item follows up with that evaluation with a Flat Monthly Amount of \$2,000 for legal services beginning in January 2020. The amendment would include an annual increase of \$100 per month in future years. In other words, this year's \$2,000/month fee would increase to \$2,100/month for the next fiscal year of 2020-21, beginning on July 1, 2020.

Background. Legal Services over the last year have been provided on an hourly and as needed basis. Over the 11 months LAFCO have averaged \$1,700 in legal services per month. The fiscal year 2019-20 Budget projected \$2,000 per month for legal services or \$24,000/year. Mr. Pierik has been very responsive to questions and issues, concise and accurate in his answers, and well-researched before he weighs-in on a matter. I have found Mr. Pierik to be an excellent referee/umpire when it comes to legal matters. He has completed work on the following key issues:

- Reviewed all agenda items for all LAFCO meetings
- Analyzed legal issues regarding the EPC Water District conditions
- Conducted employee evaluation for the Executive Officer
- Attended all LAFCO meetings and provided legal counsel/guidance
- Been available and responsive to Staff's emails and phone calls
- Worked on issues regarding SSJWD detachment
- Reviewed comment letters received from Morro Bay WRF Study
- Worked on issues regarding public records request for the WRF
- Worked on Clerk's Employment Contract
- Worked on issues regarding City of Pismo Beach/LRDM lawsuit

Conclusion. Excellent legal services support LAFCO in making carefully considered and well-founded decisions. A Flat Monthly Amount allows for legal advice to be readily available for a variety of legal issues at any time. Legal costs can add up quickly depending on the issue. If approved by your Commission, the flat monthly amount would begin on January 1, 2020.

Attachments

A: Amendment #1

B: Existing Agreement

Attachment A

Amendment to Agreement for Legal Services

FIRST AMENDMENT TO AGREEMENT FOR LEGAL SERVICES

This First Amendment to Agreement for Legal Services (“First Amendment”) is entered into by the San Luis Obispo Local Agency Formation Commission (“LAFCO” or “Commission”) and the law firm of Burke, Williams & Sorensen, LLP (“BWS”), which are collectively referred to herein as “Parties”. The Parties hereto do agree as follows:

1. On November 15, 2018, the Parties entered into an Agreement for Legal Services (“Agreement”) which provides for an hourly rate for Legal Services of \$250.00.
2. The Parties hereby amend Section 4 (“Compensation”) of the Agreement in the following manner:

A. Section 4 A (“Hourly Rate”) is hereby amended to read:

Charges for Legal Services: The charges for Legal Services shall be a flat monthly amount of \$2000 (“Flat Monthly Amount”) to be effective with services commencing January 1, 2020 for all Legal Services as defined in the Agreement except for Special Legal Services. Special Legal Services are defined as legal services which are complex in nature (as opposed to routine), and require significant amounts of work. Special Legal Services include, but are not limited to, all litigation, arbitration, and mediation activities (including all appellate work) and legal advice or representation regarding any project or issue that is particularly complex as determined by the Executive Officer or the Commission. Special Legal Services will be charged at a rate of \$250.00 an hour which will be in addition to the Flat Monthly Amount.

B. Section 4 B (“Increase in Hourly Rate”) is hereby amended to read:

Increase in Charges for Legal Services: Effective July 1 of each year, commencing July 1, 2020, the Flat Monthly Amount will increase by \$100 and the hourly rate for Special Legal Services will increase by \$5.00 per hour.

3. Except as amended by this First Amendment, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their representatives as follows:

SAN LUIS OBISPO LOCAL AGENCY FORMATION COMMISSION


By _____
David Church, Executive Officer

Date: January _____, 2020

ATTEST:

Imelda Marquez, Commission Clerk

BURKE, WILLIAMS & SORENSEN

By _____
John J. Welsh, Managing Partner

Date: November 25, 2019

Attachment B

Existing Agreement for Legal Services

67565

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT ("Agreement") is entered into by the San Luis Obispo Local Agency Formation Commission ("LAFCO" or "Commission") and the law firm of BURKE, WILLIAMS & SORENSEN, LLP ("BWS"), which are collectively referred to herein as "Parties". The Parties hereto do agree as follows:

SECTION 1. RECITALS.

This Agreement is made and entered into with respect to the following facts:

- A. LAFCO desires to engage BWS to provide legal services to LAFCO as described in Section 3 of this Agreement.
- B. LAFCO and BWS desire, pursuant to this Agreement, to provide the terms for such legal services; and
- C. LAFCO has determined that the public interest, convenience and necessity require the execution of this Agreement.

SECTION 2. APPOINTMENT

BWS is hereby appointed as the law firm to provide the legal services described in Section 3 of this Agreement to LAFCO. Brian Pierik, a BWS partner, is appointed to serve as Legal Counsel for LAFCO. BWS and Brian Pierik shall serve at the pleasure of the Legislative body of LAFCO. BWS may be replaced at any-time, with or without cause, by the Legislative body LAFCO without amending this Agreement. Legal Counsel, or his approved successor, shall be responsible for providing or causing to be provided the legal services contemplated by this Agreement.

SECTION 3. LEGAL SERVICES.

BWS shall perform the legal services ("Legal Services") necessary to serve LAFCO which shall include the following:

- A. Description of Services:
 - (1) Serve as LAFCO legal counsel and presentative in all Commission matters including litigation and administrative proceedings as necessary.
 - (2) Attend all regular LAFCO meetings, special meeting, annual strategic planning sessions, and study sessions.
 - (3) Provide general legal advice to the Commission and Executive Officer when requested on issues of general municipal or administrative law on matters relating to the Cortese- Knox-Hertzberg Act or case law specifically involving local government boundaries or organization in California.

(4) Serve as on-call counsel to the Commission, mainly from a remote location, unless attendance is requested in advance.

(5) Attend in-person meetings with the Executive Officer and/or Commission committees when required and/or maintain telephone and email contact as needed.

(6) Review and comment on documents prepared by LAFCO staff including staff reports, resolutions, correspondence, administrative policies and other documents as requested and in a timely manner. Legal Counsel will advise LAFCO on complex resolutions and reports that have specific legal issues.

(7) Conduct the annual performance evaluation for the Executive Officer by distributing and compiling the annual review form to all commissioners and alternates, presenting a summary of the evaluation at a closed session and complete the evaluation as directed by the Commission.

(8) Prepare legal opinions or responses on specified issues when needed.

(9) Provide annual updates on important developments concerning the Political Reform Act and other conflict of interest issues, legislative and judicial decisions.

(10) Prepare and/or review agency agreements, CEQA documentation, and other materials upon request;

(11) Prepare reports and present information at public meetings as needed.

B. Provide additional Legal Services upon request of the Commission and or the Executive Officer.

SECTION 4. COMPENSATION.

BWS shall be compensated for providing the Legal Services contemplated by this Agreement, in accordance with the following:

A. Hourly Rate: The hourly rate for the Legal Services by Legal Counsel and other BWS attorneys shall be \$250.00. There will be no charge for travel time.

B. Increase in Hourly Rate. Effective July 1 of each year, commencing July 1, 2020, the hourly rate specified in this Agreement, unless otherwise negotiated, will be increased by \$5.00 per hour.

C. Reimbursement Expenses. BWS shall be entitled to reimbursement for all reasonable and necessary expenses incurred by it in the performance of legal services hereunder. "Reimbursable expenses" shall mean and include, but not be limited to reproduction of documents (currently \$.20 per page), facsimile (currently \$1.00 per page) and other costs

reasonably and necessarily incurred in performing services for LAFCO. There will be no reimbursement for mileage.

D. Invoices. Payment for Services.

BWS shall submit monthly invoices to LAFCO for all Legal Services provided and costs incurred pursuant to the terms of this Agreement. Said invoices shall set forth by date the type of work performed, the time spent on a task and the identity of the attorney performing the task. Fees are charged in increments of 1/10th of an hour. Invoices shall contain itemized descriptions of any out-of-pocket expenses incurred during the prior month. Payment to BWS shall be made by LAFCO within thirty (30) days of receipt of the statement.

SECTION 5. TERM AND TERMINATION.

The term of this Agreement shall commence on November 15, 2018 and shall continue thereafter until terminated as follows:

A. Termination by LAFCO. The legislative body of LAFCO may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to BWS.

B. Termination by BWS. BWS may at any time, with or without cause, terminate this Agreement upon ninety (90) days written notice to LAFCO.

C. Compensation in the Event of Termination. BWS shall be compensated for its Legal Services and reimbursed for costs rendered through and including the effective date of such termination.

SECTION 6. COMPLIANCE WITH LAWS.

BWS shall comply with all obligations required of it pursuant to the State Bar Act and other applicable laws, in connection with its provision of Legal Services hereunder.

SECTION 7. NOTICES.

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

LAFCO : Executive Officer
San Luis Obispo LAFCO
1042 Pacific St Suite A
San Luis Obispo, CA 93401

BWS: Burke, Williams & Sorensen
2310 E. Ponderosa Drive, Suite 25
Camarillo, California 93010

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given five (5) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that above specified.

SECTION 8. INDEMNIFICATION.

BWS does hereby agree to hold LAFCO, and their respective elected and appointed officers and employees, free and harmless from any claim, demand or judgment which may arise based upon personal injury to a third party or damage to property of a third party arising out of the performance of services by BWS pursuant to this Agreement.

SECTION 9. INSURANCE.

Not in derogation of the provisions of Paragraph 8 hereof, BWS does hereby agree to take out and maintain, in full force and effect, during the term or extended terms of this Agreement, the following insurance coverage:

- A. Liability insurance coverage, as is customary for law firms; and
- B. Such insurance coverage as is required pursuant to the Workers' Compensation Laws of the State of California; and
- C. Professional Liability Insurance

SECTION 10. CONFLICT OF INTEREST.

BWS has searched its database for BWS clients in the County of San Luis Obispo and this search resulted in no known conflicts of interest. Brian Pierik has served as the City Attorney for the City of Atascadero since November 2009. The City of Atascadero is the only current BWS client located in the County of San Luis Obispo. If a conflict of interest should arise between SLOLAFCO and the City of Atascadero, then BWS will notify the parties of the conflict and seek waivers as required under the applicable rules or recuse itself from representing either party to the LAFCO matter while the parties seek independent counsel.

SECTION 11. GENERAL PROVISIONS.

- A. Assignment. BWS shall not assign this Agreement or any of the rights, duties or obligations hereunder.
- B. Status of Independent Contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the LAFCO and BWS, nor shall any employee of BWS be deemed to be an employee of LAFCO. BWS is an independent contractor. Employees of BWS shall not be deemed to be employees or agents of

LAFCO. Neither LAFCO nor any of their respective officers, employees, servants or agents shall have control over the conduct of BWS or any of BWS's officers, employees or agents.

C. Discrimination. In the performance of this Agreement, BWS shall not engage in any unlawful discrimination of any kind, including without limitation, in its employment practices.

D. Entire Agreement. This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. Except as expressly set forth herein, this Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the Parties hereto.

E. Interpretation. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the Parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

F. Waiver. No waiver of any provision of this Agreement by either party hereto shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.


SECTION 12. EFFECTIVE DATE.

This Agreement shall be effective on November 15, 2018.

SIGNATURES APPEAR ON NEXT PAGE

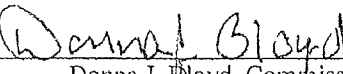
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their representatives as follows:

SAN LUIS OBISPO LOCAL AGENCY FORMATION COMMISSION

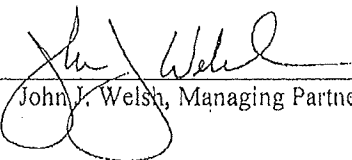
By 
David Church, Executive Officer

DATE: November 19, 2018

ATTEST:


Donna J. Boyd, Commission Clerk

BURKE, WILLIAMS & SORENSEN, LLP

By 
John J. Welsh, Managing Partner

Date: November 19, 2018