

AGENDA STAFF REPORT

DATE: January 10, 2018

TO: Mayor and City Council

APPROVED BY: David Dale, Interim City Manager *David Dale*

PREPARED BY: Best Best & Krieger LLP, Interim City Attorney

SUBJECT: Amended Professional Services Agreement for City Attorney Services with Best Best & Krieger LLP

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For Consideration:

Consideration of an Amended Professional Services Agreement for City Attorney Services with Best Best & Krieger LLP.

Background:

On October 6, 2015, City of Calexico entered into a Professional Services Agreement with Best Best & Krieger LLP ("BB&K") for interim City Attorney services designating Carlos Campos as the interim City Attorney for the City of Calexico. BB&K serves as City Attorney to more than 40 cities and serves as general counsel to close to 100 Special Districts. In addition, BB&K has more than 550 current public agency clients.

Founded in 1891, Best Best & Krieger LLP is a full-service law firm with nearly 200 attorneys in eight offices throughout California and one in Washington D.C. BB&K's lawyers focus on virtually all practices of law that may confront a public agency, including open meeting requirements, public policy, labor and employment, land use and environmental law, construction, public finance, tax and fee issues.

Carlos Campos is a partner in the firm and as of January 1, 2018 is the managing partner of the firm's Indian Wells office. Mr. Campos is also currently the City Attorney for the cities of Coachella and Colton and also serves as assistant City Attorney for other Southern California cities.

Other principal members of the BB&K team that are providing interim City Attorney services to the City of Calexico are Robert Hargreaves, the current City Attorney for the City of Palm Desert, who also serves as assistant City Attorney for various cities and is general counsel to several public agencies. Joseph Ortiz, a labor and employment

attorney with the firm assists the City with employment and labor negotiations. Jill Tremblay is the other principal member of the BB&K team that has assisted the City on various legal matters. All these attorneys are based out of the firm's Indian Wells office.

Discussion & Analysis:

The Amended Agreement with Best Best and Krieger LLP includes two primary amendments:

1. The first primary amendment reduces the current interim rates charged by BB&K as follows:

a. General Counsel Rates

Through the use of a retainer, the Amended Agreement reduces the current interim rates from \$231 per hour for attorneys to \$210 per hour for the first 50 hours. After 50 hours, the rates are \$225 per hour for attorneys, which also is a reduction from the current interim rate of \$231 per hour.

b. Special Counsel Rates

The Amended Agreement also reduces the special counsel interim rates from the current rate of \$290 per hour for attorneys to \$285 per hour.

2. The second primary amendment re-designates BB&K, and Carlos Campos, as the permanent as opposed to interim City Attorney for the City of Calexico.

The other terms of Amended Agreement are essentially the same as the terms in the current agreement the City has already entered into with BB&K. A highlight of the terms are provided below:

Term of the Agreement

The term of the Amended Agreement shall be from January 10, 2018 until terminated as provided in this Agreement.

Termination of the Agreement

This Agreement and the Services rendered under the Amended Agreement may be terminated at any time upon thirty (30) days' prior written notice from either Party, with or without cause.

Fees and Payment

(1) General Counsel Legal Services. General counsel legal services include any office hours, city council meetings, preparing ordinances, resolutions, and agenda

reports, and providing legal advice on municipal matters such as the Brown Act, Public Records Act, general employment and land use matters. A retainer of \$10,500 per month for up to 50 hours of general counsel legal services. After 50 hours, the rates are \$225 per hour for Attorneys and \$145 per hour for Paralegals.

(2) Special Counsel Services. Special Legal Services shall include the following types of services, in the event such issues arise: litigation, complex labor and employment, complex public policy and ethics, public retirement systems, non-routine advice on taxes, assessments, fees, Proposition 218 and other financial matters, non-routine environmental law, water law, non-routine real estate services, telecommunications, and other matters mutually agreed upon. The revised rates are \$285 per hour for Attorneys and \$155 per hour for Paralegals.

(3) Third Party Reimbursable Legal Services. Third Party Reimbursable Legal Services shall include legal services provided to the City for which the City receives reimbursement from a developer or other third party. These reimbursable legal services include, but are not limited to, review of CC&Rs; establishment of financing districts (i.e., Community Facilities Districts; Assessment Districts; Landscape and Lighting Maintenance Districts); the processing of land use/environmental projects for which the City is entitled to reimbursement, as well as defending any challenges to project entitlements or any dispute or litigation related to such reimbursable legal services. Rates for these services are BB&K's then current published standard private client rates, minus 10%.

As noted, these rates represent a reduction from current interim rates which included annual cost of living adjustments each October. Beginning October 2019, the retainer and hourly rates are subject to the annual cost of living adjustment which shall be adjusted for the change in the cost of living for the twelve (12) month period published in August, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Diego area. However, such adjustment shall never be lower than zero percent (0%), nor more than four percent (4%).

Fiscal Impact:

The City has budgeted for the expenses of the City Attorney. The proposed rates represent a reduction from the current interim rates charged by BB&K to the City of Calexico.

Coordinated With:

Interim City Manager.

Attachments:

Amended Professional Services Agreement for Permanent City Attorney Services with Best Best & Krieger LLP' (highlighted to show all revisions).

Firm Information

Bios of BBK Attorneys (Carlos Campos and Robert Hargreaves)



**CITY OF CALEXICO
AMENDED PROFESSIONAL SERVICES AGREEMENT
FOR
CITY ATTORNEY SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this 10th day of January, 2018 (the "Effective Date"), by and between the City of Calexico, a general law municipal corporation organized under the laws of the State of California ("City"), and Best Best & Krieger LLP, a California Limited Liability Partnership ("BB&K"). City and BB&K are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 BB&K.

BB&K desires to perform and assume responsibility for the provision of permanent City Attorney services required by City on the terms and conditions set forth in this Agreement. BB&K represents that it is experienced in providing City Attorney services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage BB&K to render legal services as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. BB&K promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional legal services to City ("Services"). The Services are more particularly described in Section 3.3 below. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the Effective Date and shall continue in full force and effect unless terminated as provided in this Agreement. BB&K shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of BB&K.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by BB&K or under its supervision. BB&K will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains BB&K on an independent contractor basis and not as an employee. BB&K retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of BB&K shall also not be employees of City and shall at all times be under BB&K's exclusive direction and control. BB&K shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. BB&K shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. BB&K shall perform the Services expeditiously, within the term of this Agreement described in Section 3.1.2 above. BB&K represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions.

3.2.3 Conformance to Applicable Requirements. All work prepared by BB&K shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. BB&K has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, BB&K may substitute other personnel of at least equal competence upon written approval of City. In the event that City and BB&K cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the BB&K at the request of the City. The key personnel for performance of this Agreement are as follows: Carlos Campos and Robert Hargreaves shall serve as primary legal contacts.

3.2.5 City's Representative. The City hereby designates its City Manager, or his/her designee, to act as its representative for implementation of this Agreement ("City's Representative").

3.2.6 BB&K's Representative. BB&K hereby designates Carlos Campos, or his designee, to act as its representative for the performance of this Agreement ("BB&K's Representative"). BB&K's Representative shall have full authority to represent and act on behalf of the BB&K for all purposes under this Agreement. BB&K's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. BB&K agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. BB&K shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. BB&K represents and maintains that it is skilled in the professional calling necessary to perform the Services. BB&K warrants that all employees and sub-consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, BB&K represents that it, its employees and sub-consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, BB&K shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by BB&K's failure to comply with the standard of care provided for herein. Any employee of BB&K or its sub-consultants who is determined by the City Council to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to City, shall be promptly removed by BB&K and shall not be re-employed to perform any of the Services.

3.2.9 Laws and Regulations. BB&K shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. BB&K shall be liable for all violations of such laws and regulations in connection with Services. If BB&K performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, BB&K shall be solely responsible for all costs arising therefrom. BB&K shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. BB&K shall not commence work under this Agreement until it has provided evidence satisfactory to City that it has secured all insurance required under this section. In addition, BB&K shall not allow any sub-consultants to commence work until it has provided evidence satisfactory to City that the sub-consultant has secured all insurance required under this section or that City's Representative has determined that the insurance described herein is inappropriate to the sub-consultant's scope of work.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, BB&K shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing

policies do not meet the Insurance Requirements set forth herein, BB&K agrees to amend, supplement or endorse the policies to do so.

(a) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit.

(b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.

(c) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. - Covered professional services shall specifically include all work to be performed under the Agreement.

(d) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit BB&K from waiving the right of subrogation prior to a loss. BB&K shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. BB&K, concurrently with the execution of this Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with City. If such coverage is cancelled or reduced, BB&K shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. BB&K agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to City. City shall have the right to withhold any payment due BB&K until BB&K has fully complied with the insurance provisions of this Agreement. In the event BB&K's operations are suspended for failure to maintain required insurance coverage, the BB&K shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Sub-consultants. All sub-consultants shall be included as additional insureds under BB&K's policies, or BB&K shall be responsible for causing sub-consultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding City as an Additional Insured to the sub-consultant's policies, unless the City's Representative determines that the has determined that the insurance described herein is inappropriate to the sub-consultant's scope of work.

3.2.11 Safety. BB&K shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, BB&K shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Fees and Payments.

3.3.1 General Counsel Legal Services. General counsel legal services include any office hours, city council meetings, preparing ordinances, resolutions, and agenda reports, and providing legal advice on municipal matters such as the Brown Act, Public Records Act, general employment and land use matters. A retainer of \$10,500 per month for up to 50 hours of general counsel legal services. After 50 hours, the rates are \$225 per hour for Attorneys and \$145 per hour for Paralegals.

More specifically, the General Counsel legal services include the following services:

- Represent and advise the City Council and all City officers in all matters of law pertaining to their office. Give advice or opinion on the legality of all matters under consideration by the City Council or by any of the boards and commissions or officers of the City.
- Act as legal counsel to agencies the City Council serves as governing body to, including but not limited to, the Calexico Redevelopment Successor Agency, Calexico Financing Authority and other affiliated entities.
- Attend and represent the City's legal interests at all City Council meetings

(including Closed Sessions and Council Workshops), and other meetings on an as needed basis specified by the City.

- Provide legal opinions, advice, assistance, and consultation to the City Council, City Manager, and City staff related to municipal law issues, including, but not limited to, the Brown Act, the Public Records Act, election law, contracts and franchises, and pending and current state and federal legislation and court decisions.
- Review, approve, and/or prepare ordinances, resolutions, staff reports, contracts, deeds, leases, and other legal documents required by the City.
- Prepare legal opinions for City departments, the City Council, boards and commissions.
- Oversee services provided by outside legal specialists engaged by the City for special legal problems.
- Coordinate legal activities with other City departments, divisions, and outside agencies.
- Provide written updates to new state or federal legislation or judicial decisions and suggest action or procedures to ensure compliance.
- Perform such other legal duties as may be required by the City Council as may be necessary to complete the performance of the functions mentioned above.

3.3.2 Special Counsel Services. Special Legal Services shall include the following types of services, in the event such issues arise: litigation, complex labor and employment, complex public policy and ethics, public retirement systems, non-routine advice on taxes, assessments, fees, Proposition 218 and other financial matters, non-routine environmental law, water law, non-routine real estate services, telecommunications, and other matters mutually agreed upon. The rates are \$285 per hour for Attorneys and \$155 per hour for Paralegals.

Special Counsel work would include the following work:

- Provide legal opinions, advice, assistance, and consultation to the City Council, City Manager, and City staff related to non-routine municipal law issues, including, but not limited to real estate and property transactions, land use, environmental law/CEQA, public improvements/capital projects, code enforcement, tort liability and risk management, fees, taxes, assessments, Proposition 218, former Redevelopment Agency dissolution, refuse, recycling, green waste rates and other matters as directed.
- Prepare cases for trial and the investigation of claims or complaints by or against the City.

- Approve the form of all contracts made by and between the City of Calexico and all bonds given to the City, endorsing same.
- Complex litigation and other legal matters relating to water, the Voting Rights Act and districting, Zoning Code, development and Industrial Specific Plan matters, land use and infrastructure, RDA issues and transfers, personnel and employment issues, recycling and green initiatives, Proposition 218 and Proposition 26 matters, medical marijuana, and finance and revenue-sharing.

3.3.3 Third Party Reimbursables. Legal services for which the City receives reimbursement from a Developer or other Third Party would be billed at BB&K's current published standard private rates, less ten percent (10%).

3.3.4 Public Financing. Public financing will be provided at rates set by amendment to this Agreement.

3.3.5 Cost of Living Adjustments. Beginning October 2019, the retainer and hourly rates shall be adjusted for the change in the cost of living for the twelve (12) month period published in August, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Diego area. However, such adjustment shall never be lower than zero percent (0%), nor more than four percent (4%).

3.3.6 Reimbursement. City shall reimburse BB&K for actual costs advanced on behalf of City in addition to the amount billed for legal fees. These costs include travel on behalf of City, automobile mileage at the current approved IRS rate, actual expenses away from BB&K offices while on City business, long-distance telephone calls, copying and other expenses incurred on City's behalf.

3.3.7 Payment of Compensation. BB&K shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by BB&K. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay BB&K the compensation.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. BB&K shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. BB&K shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. BB&K shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. This Agreement and the Services rendered under it may be terminated at any time upon thirty (30) days' prior written notice from either Party, with or without cause. In the event of such termination, BB&K shall be paid for all Services authorized by City and performed up through and including the effective date of termination.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require BB&K to provide all finished or unfinished Documents and Data and other information of any kind prepared by BB&K in connection with the performance of Services under this Agreement. BB&K shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

BB&K: 74760 Highway 111,, Suite 200
Indian Wells, CA 92210
Attn: **Carlos Campos**

City: City Hall
608 Heber Avenue
Calexico, CA 92231
Attn: **City Manager**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents and Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by BB&K under this Agreement ("Documents and Data"). BB&K shall require all sub-consultants to agree in writing that City is granted a non-exclusive and perpetual license for any

Documents and Data the sub-consultant prepares under this Agreement. BB&K represents and warrants that BB&K has the legal right to license any and all Documents and Data. BB&K makes no such representation and warranty in regard to Documents and Data which were prepared by professionals other than BB&K or provided to BB&K by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to BB&K in connection with the performance of this Agreement shall be kept confidential by BB&K. Such materials shall not, without the prior written consent of City, be used by BB&K for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to BB&K which is otherwise known to BB&K or is generally known, or has become known, to the related industry shall be deemed confidential. BB&K shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. BB&K shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of BB&K, its officials, officers, employees, agents, subcontractors and sub-consultants arising out of or in connection with the performance of the Services or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. BB&K shall defend, at BB&K's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. BB&K shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. BB&K shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. BB&K's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors; officials, officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Imperial County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 Assignment or Transfer. BB&K shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.11 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to BB&K include all personnel, employees, agents, and sub-consultants of BB&K, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.12 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.14 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.15 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.16 Prohibited Interests. BB&K maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for BB&K, to solicit or secure this Agreement. Further, BB&K warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for BB&K, any fee, commission, percentage, brokerage fee, gift or other consideration contingent

upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.17 Equal Opportunity Employment. BB&K represents that it is an equal opportunity employer and it shall not discriminate against any sub-consultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. BB&K shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.18 Labor Certification. By its signature hereunder, BB&K certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.19 Authority to Enter Agreement. BB&K has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.21 Declaration of Political Contributions. BB&K shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the city council within the previous twelve-month period by the BB&K and all of BB&K's employees, including any employee(s) that BB&K intends to assign to perform the Services described in this Agreement.

3.6 Subcontracting.

Prior Approval Required. BB&K shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF CALEXICO

BEST BEST & KRIEGER LLP

By: _____
Maritza Hurtado, Mayor
Mayor

By: _____
Carlos Campos

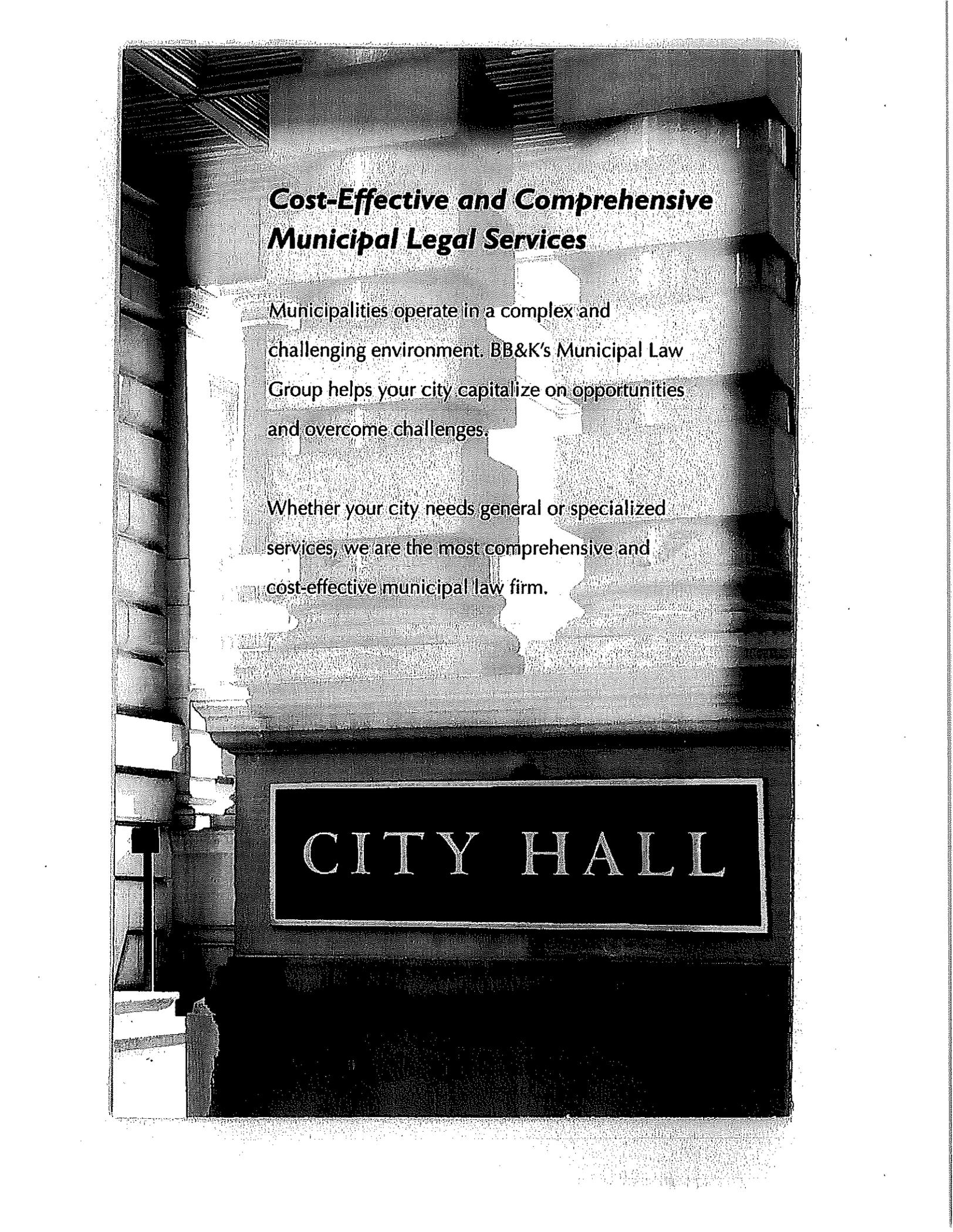
Full-Service • Industry Experts



Municipal Legal Services



BEST BEST & KRIEGER
ATTORNEYS AT LAW

A black and white photograph of a building entrance. The building has a classical architectural style with columns and a pediment. A large sign above the entrance reads "CITY HALL". The text of the advertisement is overlaid on the image.

Cost-Effective and Comprehensive Municipal Legal Services

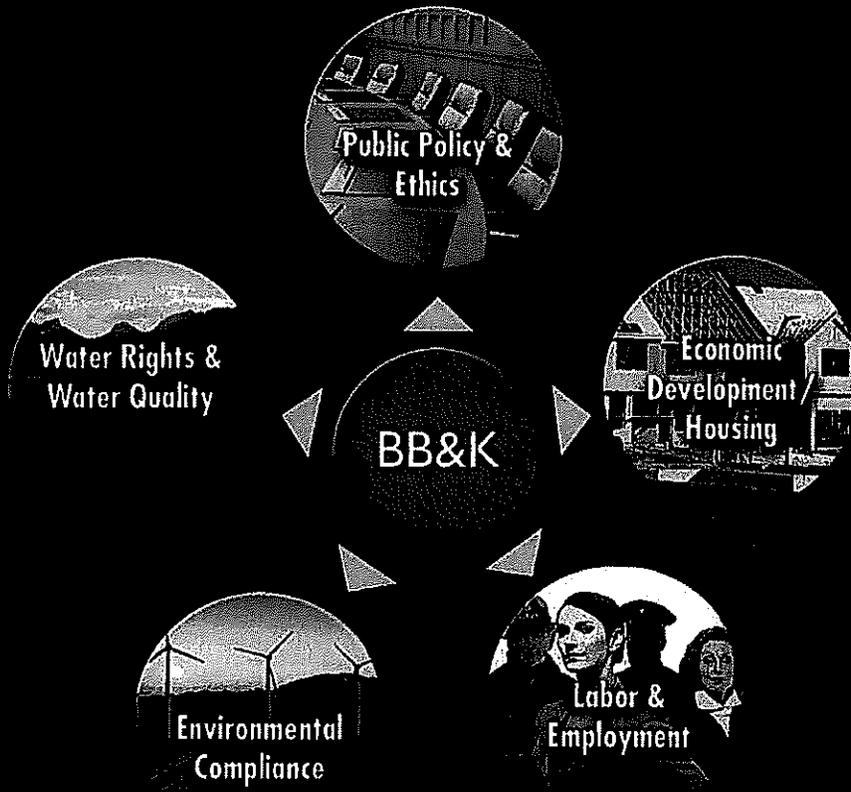
Municipalities operate in a complex and challenging environment. BB&K's Municipal Law Group helps your city capitalize on opportunities and overcome challenges.

Whether your city needs general or specialized services, we are the most comprehensive and cost-effective municipal law firm.

CITY HALL

Your **Best** Special Counsel Resource

Our Municipal lawyers are industry-leading experts who are highly skilled and efficient in many legal areas, including the following:





BEST BEST & KRIEGER

AFFORNEYS AT LAW

Best Best & Krieger is a full-service law firm with offices throughout California and Washington, DC. The firm delivers effective, timely and service-oriented solutions to complex issues facing cities.

*For more information about our municipal legal services please visit:
www.bbklaw.com*

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F: 619.233.6118

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Walnut Creek, CA 94596
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Learn more about Best Best & Krieger's legal solutions at

www.bbklaw.com



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Partner

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At a Glance

Carlos serves as city attorney for the cities of Coachella and Colton.

He often makes presentations on public agency topics.

Fluent in Spanish, Carlos was a research assistant at the Interlaw Foundation in Costa Rica.

Profile

Carlos L. Campos, who represents local public agencies including municipalities and special districts, is a partner in the Indian Wells office of Best Best & Krieger LLP.

Carlos serves as city attorney for the cities of Coachella and Colton and represents the cities of Ontario, Palm Desert and Indian Wells in various capacities. He is also general counsel to the Desert Healthcare District and the Coachella Valley Enterprise Zone. As a member of the firm's Municipal Law and Special District practice groups, his areas of focus include general public agency law, the Brown Act, conflict of interest, election law, land use and planning, initiatives and referenda, the Public Records Act, code enforcement and Native American law issues.

Carlos often makes presentations on public agency topics to elected officials and attorneys, and has spoken recently to groups in California, Michigan and Washington, D.C. He is serving an appointment to the League of California Cities Legal Advocacy Committee.

Areas of Focus

Practices

Comprehensive Code Enforcement

Fees, Taxes & Assessments

General & Special Counsel

Government Policy & Public Integrity

Labor & Employment

Local Agency Formation Commission (LAFCO)

Municipal Law

Public Agency Labor & Employment

Public Agency Litigation

Special Districts

Prior to joining BB&K, Carlos researched and prepared published articles and a book on international human rights law, worked with individuals seeking refugee status under the 1951 Geneva Convention at a non-governmental organization in The Hague, Netherlands, and co-taught legal seminars at the Catholic Superior School of Law in Jeremie, Haiti.

Carlos, who speaks fluent Spanish, was a research assistant at the Interlaw Foundation in San Jose, Costa Rica, where he worked on Central American legal and policy issues and on cases before the Organization of American States Inter-American Court of Human Rights. He was also a research assistant at the Tomas Rivera Policy Institute, now housed at the University of Southern California.

While attending law school, he was a founding member of the *Race and Poverty Law Journal*. During undergraduate school, he studied abroad in Mexico, England and Central America. Carlos is managing partner of BB&K's Indian Wells office. He is admitted to practice law in the State of California.

Education

- University of California, Hastings, J.D.
- Pitzer College, B.A., political and labor studies, *with honors*

Awards

- *Palm Springs Life* Top Lawyers, 2017
- Top 70 Lawyers in Coachella Valley, *Palm Springs Life*, 2014

Memberships

- Inland Empire Latino Lawyers Association
- Dr. Carreon Foundation, Board of Directors
- Imperial Valley Economic Development Corporation
- Desert Bar Association, Board of Trustees

Robert Hargreaves

Partner

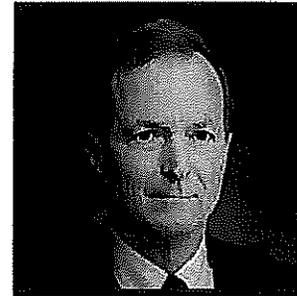
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At a Glance

Bob is the city attorney for the City of Palm Desert.

Palm Springs Life magazine named him a Top Lawyer in the Coachella Desert for 2016 and 2017.

Between undergraduate and law school, Bob served in the Peace Corps in Costa Rica.

Profile

Robert W. Hargreaves practices general municipal, land use and energy law. He is a partner in the Municipal Law practice group of Best Best & Krieger LLP. Bob is the city attorney for the City of Palm Desert and represents the cities of Indian Wells, Coachella, Needles, San Jacinto and Calexico in various capacities. He is general counsel to the Salton Sea Authority, the Valley Sanitary District, the Mt. San Jacinto Winter Park Authority and the Anza Electric Cooperative.

In addition to general representation of local governmental entities, Bob focuses on land use law. He has assisted both public and private clients in the entitlement process for large desert development projects. He has also represented public agencies in multi-party negotiations regarding use of Colorado River water and groundwater management. Bob has litigated land use, environmental, takings and Native American law issues before state and federal courts and administrative agencies, and has represented both Native American tribes and private individuals with respect to Native American law disputes.

Bob has represented municipal utilities on a variety of issues, including the

Areas of Focus

Practices

California Environmental Quality Act (CEQA)

Endangered Species

Environmental Law & Natural Resources

General & Special Counsel

Government Policy & Public Integrity

Municipal Law

Public Contracts & Construction

Renewable Energy

Special Districts

Water

Industries

Business

Municipal

Special Districts

negotiation of a power purchase agreement for a utility-scale thermal-solar project near Needles.

Bob is president of the Friends of the Desert Mountains and a former board member of the Coachella Valley Economic Partnership and the Palm Springs Air Museum. Bob previously served on the advisory boards of the University of California, Riverside's Southern California Research Institute for Solar Energy and Wilson Center for Sustainable Energy and Environmental Systems. He is past-president of the Family YMCA of the Desert, a charter member of the Coachella Valley Autism Society of America, and has been an assistant Boy Scout leader.

Between undergraduate and law school, Bob served in the Peace Corps in Costa Rica. His law studies focused on land use, environmental and water law. He is admitted to practice law in the State of California.

Education

- University of California, Berkeley, J.D.
- University of California, Berkeley, B.A., computer science, *with great distinction*

Awards

- *Palm Springs Life* Top Lawyers, 2016-2017
- Top 70 Lawyers in Coachella Valley, *Palm Springs Life*, 2014

Memberships

- Coachella Valley Economic Partnership, legislative committee
- Desert Valley Builders Association, legislative committee

Authorships

- "Phase I of Final Desert Renewable Energy Conservation Plan Now Publicly Available," *BBKnowledge*, Nov. 30, 2015
- "California's Record-Setting Solar Generation can be Furthered by Municipality Action," *BBKnowledge*, June 25, 2015
- "Gov. Brown Makes More Renewable Energy a State Goal," *BBKnowledge*, Jan. 20, 2015
- "Comments Sought on Draft Desert Renewable Energy Conservation Plan," *BBKnowledge*, Dec. 9, 2014
- "Congress Moves to Assist Renewable Development on Government Land," *BBKnowledge*, Aug. 1, 2014
- "SB 871 Bumps Back Repeal of Solar Energy Exclusion by Eight Years," *BB&K Legal Alert*, June 25, 2014
- "Clinton Health Matters Conference Discusses Private Sector Role in Salton Sea Restoration, Including Renewable Energy Industry," *BBKnowledge*, Jan. 21, 2014
- "Study Estimates Renewable Energy Could Generate \$4 Billion to Aid in Salton Sea Restoration," *BBKnowledge*, Jan. 15, 2014
- "Court Rules Voter Initiative Cannot Force Water District to Set Rates Below

Level Mandated by State Statute," *BB&K Legal Alert*, Aug. 13, 2013

- "Settlement Reached in Riverside County Solar Power Plant Policy Lawsuit," *BB&K Legal Alert*, May 20, 2013
- "Governor Brown Signs Bill Requiring 33 Percent of California's Electricity From Renewable Sources," *BB&K Legal Alert*, April 13, 2011

Joseph T. Ortiz

Partner

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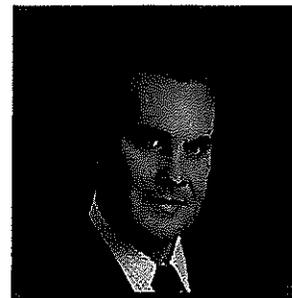
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At a Glance

Joseph represents private and municipal employers in employment matters.

He maintains a close working relationship with the human resource departments of the agencies and organizations he serves.

Joseph was management at UPS during the 1997 strike, giving him first-hand experience during a critical labor negotiation.

Areas of Focus

Practices

Labor & Employment

Labor Negotiations & Other Union Matters

Wage & Hour Law

Workplace Safety

Profile

An experienced trial lawyer and human resources attorney, Best Best & Krieger LLP Partner Joseph T. Ortiz has successfully tried employment matters before state and federal courts, administrative agencies, and arbitration tribunals on claims of all types.

Joseph's experience includes the representation of private and municipal employers in employment matters of all kinds, such as:

- Wrongful termination
- Discrimination and harassment,

- Fraud
- Negligent misrepresentation
- Wage-and-hour violation
- Leave law compliance
- Breach of implied employment contract
- Interference with prospective economic advantage
- Unfair competition
- Unfair labor practices
- Breach of contract
- ADA compliance
- OSHA citations
- Civil rights
- Various forms of unfair business practices

Human Resources Consultation

Joseph maintains a close working relationship with the human resource departments of the agencies and organizations he serves. By keeping in contact, he is able to seamlessly step in when called upon to address personnel issues. He also continually consults and provides employers with a variety of human resources services, including:

- Drafting critical employment policies, employment and severance agreements, consultant agreements, independent contractor agreements, and employment policies of all types
- Providing in-house training on sexual and other types of harassment avoidance
- Providing consultation on all types of employment discrimination, wage and hour issues, affirmative action, and sensitivity and diversity concerns

Labor Negotiations

Before going to law school, Joseph spent some time on the front lines of one of the country's most critical and costly union-led work stoppages. He was recently promoted to management at United Parcel Service when the drivers went on strike in 1997, halting operations for more than two weeks and costing UPS hundreds of millions of dollars. That experience gave Joseph the unique insider's perspective of labor negotiations and union operations. Joseph defends private and public employers from grievances filed by unions, and advises and represents employers in union representation proceedings and elections.

Administrative Hearings

Joseph has also represented management before federal and state administrative agencies, including the National Labor Relations Board, Public Employment Relations Board, Equal Employment Opportunity Commission, Department of Fair Employment and Housing, U.S. Department of Labor, Division of Labor Standards Enforcement, State Labor Commissioner, and, in limited instances, the Workers' Compensation Appeals Board.

He is well versed on the issues that correlate specifically to public employees, and has handled Skelly rights hearings on behalf of public employers when an employee elects to respond to allegations prior to imposition of any disciplinary action. Joseph also handles hearings for citations and appeals before the Occupational Health and Safety Administration, where the stakes are high for employers whose licenses can be compromised with a negative finding.

Litigation

While employers hope that personnel issues don't result in lawsuits, it inevitably happens. Because Joseph is usually involved in issues once they arise, he advises clients on the best ways to handle lawsuits. He has handled arbitrations, mediations, state court hearings and trials and appeals on behalf of employers. His experience working as mediator as a panelist for Riverside County Dispute Resolution Services gives him valuable insight when reviewing and analyzing a matter for a client.

Joseph taught employment law as an adjunct professor at the University of California, Riverside extension program. Joseph is a first generation immigrant in a Guatemalan family that loves music. His sister is a professional musician, he plays the blues and even the oldest of his three young children is already in on the act with piano lessons. He is admitted to practice law in the State of California.

Education

- University of Minnesota Law School, J.D., *cum laude*
- University of California, Los Angeles, B.A., *cum laude*

Awards

- AV® peer review rating from Martindale-Hubbell®
- Superb Rated Attorney from AVVO.com

Memberships

- Executive Committee for the Labor & Employment Law Section of the California State Bar
- Riverside Downtown Business Council, member and past president
- Greater Riverside Chambers of Commerce, executive board
- American Heart Association, HeartWalk executive leadership team
- Community Police Review Commission, City of Riverside, commissioner
- Greater Riverside PIHRA, vice chair
- Greater Riverside EAC, board member
- Greater Riverside Dollars for Scholars, president
- Riverside Sunrise Rotary, president 2016-2017
- Riverside Legal Aid, board member

- Big Brothers Big Sisters - Inland Empire, board member

Authorships

AUTHORED ARTICLES & PUBLICATIONS | DEC 26, 2017

Best in Law: Four Steps Employers Can Take to Avoid a #MeToo Situation

BB&K Attorneys Joseph Ortiz and Tristan Kirk Write for the Press-Enterprise

LEGAL ALERTS | DEC 5, 2017

Addressing Workplace Harassment in an Age of Heightened Awareness

Four Steps Employers Can Take Now

LEGAL ALERTS | OCT 23, 2017

Parental Leave Rights Expanded Under New California Law

Businesses and Agencies with 20 or More Employees Impacted

AUTHORED ARTICLES & PUBLICATIONS | JUL 10, 2017

Best in Law: What to do to Comply with Transgender Laws

New California Laws Took Effect July 1, Partner Joe Ortiz Writes in Press-Enterprise

AUTHORED ARTICLES & PUBLICATIONS | JAN 30, 2017

Best in Law: California Employers Have New Rules to Follow — Effective Now

Companies Should Be Aware of Numerous Bills Signed Last Year

AUTHORED ARTICLES & PUBLICATIONS | DEC 28, 2015

Best in Law: Dealing with Traumatized Workers

In the Wake of Tragedies, Like the Recent Shooting in San Bernardino, Employees May Be Greatly Impacted, BB&K Partner Joseph Ortiz Writes in The Press-Enterprise's Best in Law Column

AUTHORED ARTICLES & PUBLICATIONS | OCT 29, 2014

Trends, Developments, and Best Practices Relevant to Drafting Employment Agreements

LEGAL ALERTS | JUL 31, 2014

EEOC Releases Guidance on Pregnancy Discrimination Laws

Guidance Does Not Address State-specific Laws and Requirements

AUTHORED ARTICLES & PUBLICATIONS | NOV 4, 2013

The Impact of Recent Regulatory Developments in Employment Law Published by Aspatore Books

By Joseph T. Ortiz, et. al

- "Big Changes for California's Labor, Employment Laws" *PublicCEO*, Jan. 19, 2017 (via *BBKnowledge*)
- "EEOC Releases Guidance on Pregnancy Discrimination Laws," *BB&K Legal Alert*, July 31, 2014
- "Private-Sector Employers: Updating Your Social Media Policies," *Riverside Press-Enterprise*, June 17, 2013
- "Exhaustion of Pregnancy Leave Does Not Insulate Employer from Potential Liability for Subsequent Termination," *BB&K Legal Alert*, Feb. 26, 2013



Jill Tremblay

Associate

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At a Glance

Jill focuses on estate planning, including the preparation of revocable and irrevocable trusts.

She advises municipal and special district clients on issues such as land use law, code enforcement, First Amendment concerns, CEQA and medical cannabis regulations.

She obtained a bachelor's degree Conservation and Resource Studies from the University of California, Berkeley.

Profile

Jill Tremblay's practice focuses on estate planning, including the preparation of revocable and irrevocable trusts, wills, powers of attorney, and advance health care directives. She handles a variety of probate and trust administration matters. She also advises municipal and special district clients on a variety of issues, including land use law, code enforcement, First Amendment concerns, California Environmental Quality Act, Public Records Act, Brown Act compliance, and medical cannabis regulations. She is an associate in the Business and Municipal Law practice groups in Best Best & Krieger's Indian Wells office.

In 2017, she was named a Southern California Super Lawyers Rising Star and was recognized as a Top Lawyer by *Palm Springs Life* magazine. Jill is chairman of the Greater Coachella Valley Chamber of Commerce Board of Directors, and a past Board chair of the Indio Chamber of Commerce. While attending Pepperdine University School of Law, Jill was editor-in-chief of the

Areas of Focus

Practices

Business

Comprehensive Code
Enforcement

Economic Development, Real
Estate & Affordable Housing

Government Policy & Public
Integrity

Municipal Law

Public Agency Litigation

Public Safety

Special Districts

Trusts & Estates

Journal of the National Association of Administrative Law Judges. She obtained a bachelor's degree with high honors in Conservation and Resource Studies from the University of California, Berkeley. She is admitted to practice law in the State of California.

Education

- Pepperdine University, J.D.
- University of California, Berkeley, B.S., *high honors*, Conservation and Resource Studies

Awards

- *Palm Springs Life Top Lawyers*, 2017
- Southern California Super Lawyers Rising Stars List, Estate and Probate, 2017

Memberships

- Coachella Valley Economic Partnership, Board member
- Desert Bar Association
- Riverside County Bar Association
- Trusts & Estates and Public Law Sections of the State Bar of California
- Greater Coachella Valley Chamber of Commerce, chairman

Authorships

- "LAO Report: Maximizing State Benefits From Public-Private Partnerships," *BB&K Legal Alert*, Nov. 9, 2012