

14. Legal Services Agreement with Best Best & Krieger LLP for Bond Counsel and Disclosure Counsel for Potential Water Enterprise Revenue Bond Issuance (Non-General Fund)

**Department(s):**

**Recommended Action:** Authorize the City Manager to execute an agreement with Best Best & Krieger LLP for bond counsel and disclosure counsel services related to a potential water enterprise revenue bond issuance for a not-to-exceed amount of \$88,000 for a term expiring September 30, 2025 (Agreement No. A-2024-XXX).



**City of Santa Ana**  
**20 Civic Center Plaza, Santa Ana, CA 92701**  
**Staff Report**  
**April 2, 2024**

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**TOPIC:** Bond Counsel and Disclosure Counsel Related to Water Revenue Bonds

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**AGENDA TITLE**

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**RECOMMENDED ACTION**

Authorize the City Manager to execute an agreement with Best Best & Krieger LLP for bond counsel and disclosure counsel services related to a potential water enterprise revenue bond issuance for a not-to-exceed amount of \$88,000 for a term expiring September 30, 2025 (Agreement No. A-2024-XXX).

**GOVERNMENT CODE §84308 APPLIES:** Yes

**DISCUSSION**

The City's 2019 Water Enterprise rate study indicated the future need to issue debt and raise capital for improvements to the City's water delivery system. Over the last several years, the Water Enterprise has been making progress on improvements, such as well rehabilitation, pump stations, and the Advanced Metering Infrastructure (AMI) project. Following an updated analysis by the water rate study consultant, it has been determined that at least \$30 million in additional capital is needed to maintain the delivery of vital water projects.

The water enterprise has existing revenue bonds issued in 2014, which refunded 2004 bonds and provided additional capital for improvement projects. The potential 2024 revenue bonds would likely refund the 2014 bonds and provide the additional capital.

In preparation of funding future improvements via a bond, the City is gathering a bond team. Best Best & Krieger LLP (BBK)'s attorneys are experienced to provide the services and have worked on past City bond issuances. The City's Financial Advisor, Urban Futures, Inc., has compared the proposed fees to recent bond issuances for other agencies and found them to be competitive. If bonds are issued, BBK's fees will be paid from bond proceeds. If bonds are not issued, the Water Enterprise will be

obligated to pay BBK \$25,000 plus up to \$3,000 of out-of-pocket expenses for services rendered.

Staff expects to bring a bond issuance proposal to the City Council over the next several months. Bonds cannot be issued without City Council approval.

**FISCAL IMPACT**

If bonds are issued, bond counsel and disclosure counsel will be paid from bond proceeds. If no bonds are issued, the Water Enterprise will pay up to \$28,000 from account 06017645-62300 (Water Admin & Engineering, Contract Services-Professional).

**EXHIBIT(S)**

1. Agreement

Submitted By: Kathryn Downs, FMSA Executive Director

Approved By: Tom Hatch, Interim City Manager

**LEGAL SERVICES AGREEMENT WITH  
BEST BEST & KRIEGER LLP**

This AGREEMENT, made and entered into this 2<sup>nd</sup> day of April, 2024, by and between Best Best & Krieger LLP (“Bond Counsel”), and the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the constitution and laws of the State of California (“City”).

**RECITALS**

- A. The City of Santa Ana desires to employ Bond Counsel to provide legal services described as Disclosure and Bond Counsel Services related to a proposed issuance for Water Revenue Bonds (the “Bonds”) issued with the participation of the Santa Ana Financing Authority, as further detailed below.
- B. Bond Counsel represents that they are licensed to practice law in the State of California, have special experience and knowledge related to administrative and litigation matters concerning the above services, and desire to undertake such services.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. **RETENTION OF BOND COUNSEL** On an as-needed basis, and at the sole discretion of the City, City hereby agrees to and does retain Bond Counsel, for the compensation hereinafter specified, to provide, and Bond Counsel agrees to provide, legal services in connection with the issuance of Bonds. Such services shall include the rendering of legal opinions (hereinafter called the “opinions”) pertaining to the issuance of the Bonds to the effect that

- The Bonds have been properly issued and are valid and binding obligations; and
- The essential sources of security for the Bonds have been legally provided; and
- Interest on the Bonds is exempt from federal gross income and California personal income taxation.

Bond Counsel’s services will also include:

- Researching applicable laws and ordinances relating to the proposed Bonds;
- Attending conferences and consulting with City staff and counsel regarding such laws, and the need for amendments thereto, or additional legislation;
- Participating in meetings, conferences or discussions with any financial advisors, underwriters or other experts retained by the City with respect to the issuance of the Bonds;
- Supervising and preparing documentation of the steps to be taken through the issuance of the Bonds, including: (city comment: because the agreement is already organized into numbered provisions, recommend that the points below be given alpha designation or other)

1. Drafting all resolutions, notices, rules and regulations and other legal documents required for the issuance of the Bonds, and all other documents relating to the security of the Bonds, in consultation with the City, the City's financial advisor, underwriter and other experts;
2. Preparing the record of proceedings for the authorization, sale and issuance of the Bonds;
3. Assisting in the preparation of the portions of the official statement for the sale of the Bonds which relate to the terms of the Bonds and the firm's legal opinion delivered with respect to the Bonds;
4. Reviewing the purchase contracts or the bidding documents relating to the sale of the Bonds and participating in the related negotiations;
5. Participating in meetings and other conferences scheduled by the City, the City's financial advisor or the underwriter;
6. Consulting with prospective purchasers, their legal counsel and rating agencies;
7. Consulting with the City concerning any legislation or litigation which may affect the Bonds, the security for the Bonds, or any other matter related to the issuance of the Bonds;
8. Consulting with any trustee or fiscal agent for the Bonds and their counsel;
9. Preparing the form of the Bonds, and supervising their production or printing, signing, authentication and delivery;
10. Rendering the final approving opinion as to the validity of the Bonds for use and distribution upon their issuance; and
11. Rendering a legal opinion to the underwriter or purchaser of the Bonds as to the applicability of the registration requirements of federal securities laws and a statement as to the fair and accurate nature of those portions of the Official Statement described in (d) above.

Bond Counsel further agrees to prepare the Official Statement and will provide a letter addressed to the underwriter or purchaser of the Bonds to the effect that, to the best knowledge of Bond Counsel, the offering document (exclusive of financial, statistical and certain other information therein) does not misstate a material fact or omit a material fact required to be stated therein.

Finally, in addition to bond counsel services, Bond Counsel will prepare the documents necessary to establish a new joint powers financing authority to act as the issuer of the bonds for the benefit of the City and any future issuances for the City.

Bond Counsel accepts said retention and agrees to perform, in a timely and efficient manner, all such services as may be requested by the City.

2. COMPENSATION FOR SERVICES RENDERED

- a. For services to be rendered as Bond Counsel and Disclosure Counsel to the City in connection with the issuance of the Bonds, Bond Counsel will be paid a flat fee of \$85,000.
- b. The fees referenced in this Section 2(a) and (b) shall be paid to Bond Counsel on the closing date and shall be payable solely from Bond proceeds; provided that, if the City does not elect to pursue the issuance of the Bonds, the City shall pay Bond Counsel the \$25,000 referenced above plus the expenses incurred as specified below.
- c. The fees referenced in this Section assume that the Bonds will be issued within eighteen months from the date of this Agreement. In the event the Bonds are not issued within that time, Bond Counsel reserves the right to make such modifications to the foregoing fees as the City and Bond Counsel agree, as justified by reason of increased cost to Bond Counsel and the then prevailing fees for disclosure counsel and bond counsel services for Bonds.
- d. The total sum to be expended under this Agreement, shall not exceed \$88,000, including any extension periods
- e. City agrees to reimburse Bond Counsel for out-of-pocket expenses, including but not limited to, mileage, copying costs, service of process, and mail services authorized by the City Attorney in connection with the performance of duties under this Agreement. In-house printing, copying, and reproduction charges will be reimbursed at the rate of 20 cents per page. Automobile travel will be reimbursed at the standard mileage rate in effect at the time of billing by the Internal Revenue Service. All expenses must have supporting documentation submitted with the invoice.

3. METHOD OF PAYMENT Bond Counsel shall submit a monthly statement specifying the services performed, dates and number of hours, and an itemization of expenses related thereto with supporting documentation (i.e. receipts, invoices, copy of check, etc.). City acknowledges that the fees incurred for work performed by Bond Counsel on its behalf are due and owing within 60 days of the work being performed. At Bond Counsel's discretion, they may choose to defer payment. Notwithstanding this, City agrees that it shall tender payment within 60 days of written demand by Bond Counsel for payment. Unless expressly stated thereon, monthly statements generated by Bond Counsel shall not constitute written demand, but shall simply be a written reflection of work performed and fees incurred.

4. CONTROL OF LEGAL MATTERS Bond Counsel agrees that each and every matter or proceeding in which they undertake to assist the City, as aforesaid, shall be and remain under, and subject to the control and direction of City at all stages, and that they shall at all times keep the City informed of all matters pertaining thereto. City will keep Bond Counsel informed of all significant developments in matters relating to any representation undertaken by Bond Counsel. Bond Counsel further agrees, if and when their retention hereunder is terminated by City, as hereinafter specified, they shall return to City any and all files then in their possession concerning each and every matter or proceeding in which they represented the City pursuant to this Agreement.

5. REPORTING REQUIREMENTS Bond Counsel agrees to keep the City, and any other person(s) designated by the City, informed of significant events in the Actions.

a. (a) and (b) probably not pertinent here

6. TERM The term of this Agreement shall commence on the date first written above and terminate on September 30, 2025, unless terminated earlier pursuant to Section 15 below. The term of this Agreement may be extended for up to one (1) year upon a writing executed by both parties, including the City Manager and the City Attorney.

7. INDEPENDENT CONTRACTORS It is mutually agreed by and between the parties that, in the performance of their covenants hereunder, Bond Counsel is and shall be independent contractors, and not officers or employees of City.

8. INSURANCE

Prior to undertaking performance of work under this Agreement, Bond Counsel shall maintain and shall require any subcontractors to obtain and maintain insurance as described below for the entire Term of this Agreement against claims for injuries to persons or damage to property which may arise from or in connection with services, products and materials supplied to City. Total cost of such insurance shall be borne by Bond Counsel.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

A. **Professional Liability Insurance:** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate.

If Bond Counsel maintains broader coverage and/or higher limits than the minimum requirements for each line of coverage shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Bond Counsel. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**Other Insurance Provisions**

The above required insurance policies are to contain or be endorsed to contain the following provisions:

A. Certificate Holder on each Evidence of Insurance certificate shall be: City of Santa Ana, 20 Civic Center Plaza, Santa Ana, CA 92701. The name and location of project must be included in the Description of Operations section of each certificate.

**Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. The City may require the Bond Counsel to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to City.

**Verification of Coverage.** Bond Counsel shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Bond Counsel's obligation to provide them.

City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

9. INDEMNIFICATION Bond Counsel agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, and representatives from liability for personal injury, damages, restitution, judicial or equitable relief to the extent caused by Bond Counsel's negligent or wrongful performance or conduct related to this Agreement.

10. CONFIDENTIALITY All information and documents shared with Bond Counsel as well as all work performed by Bond Counsel in connection with this Agreement should be treated as strictly confidential. Moreover, all communications between Bond Counsel and City shall be treated as protected by the attorney-client privilege and the attorney work product doctrine. Accordingly, information received by Bond Counsel from City should be kept in a secure place, and no information about this work may be disclosed to any third party without City's prior written approval. Bond Counsel shall provide materials directly to the City Attorney's Office or to the Finance and Management Services Agency. All such information and any written product in connection with Bond Counsel's retention under this Agreement, shall be marked as "PRIVILEGED AND CONFIDENTIAL / ATTORNEY-WORK PRODUCT" and shall be the property of the City, and shall be returned/provided to the City with all copies upon the request of the City. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Bond Counsel, disclosed in a publicly available source; (c) is in rightful possession of the Bond Counsel without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Bond Counsel without reference to information disclosed by the City.

11. CONFLICT OF INTEREST CLAUSE Bond Counsel covenants that it presently has no interests and shall not have interests, direct or indirect, that would conflict in any manner with performance of services specified under this Agreement. Bond Counsel represents many of the underwriting firms active in the issuance of Bonds of participation and other municipal financings. The City hereby provides its informed written consent to Bond Counsel's representation of such underwriting firms on matters unrelated to the Bonds, provided that, before Bond Counsel

undertakes such a matter, it has first reasonably concluded that it can represent both the City's and the underwriting firms' interests without compromising Bond Counsel's independent judgment or lessening its vigorous representation of either client and also takes timely and effective steps to protect all confidential information provided by and to each client.

12. NOTICE Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, California 92702-1988  
Facsimile (714) 647-6956

Courtesy Copy: City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)  
P.O. Box 1988  
Santa Ana, California 92702  
Facsimile (714) 647-6515

To Bond Counsel: Kim Byrens  
Best Best & Krieger LLP  
3390 University Avenue, 5<sup>th</sup> Floor  
Riverside, CA 92501

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

13. EXCLUSIVITY AND AMENDMENT This Agreement represents the complete and exclusive statement between the City and Bond Counsel, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Bond Counsel. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Bond Counsel or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or

otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not embodied herein.

14. ASSIGNMENT Inasmuch as this Agreement is intended to secure the specialized services of Bond Counsel, Bond Counsel may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject of this Agreement performed by City personnel or by other Bond Counsel retained by City.

15. TERMINATION This Agreement may be terminated by City at any time. In such event, Bond Counsel shall be entitled to receive and the City shall pay Bond Counsel compensation for all services performed by Bond Counsel prior to receipt of such notice of termination. As a condition of such payment, Bond Counsel shall deliver to the City all files and records generated under this Agreement as of such date.

Bond Counsel may terminate this agreement, subject to their obligation to provide written reasonable notice of at least thirty (30) days to arrange alternative representation. In such case, City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel.

16. DISCRIMINATION Bond Counsel shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Bond Counsel affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

17. JURISDICTION – VENUE This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. MISCELLANEOUS PROVISIONS Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

19. COUNTERPARTS; SIGNATURES This Agreement may be executed in counterparts, secured via facsimile transmission or otherwise, each of which shall be deemed to be an original. Photocopies of any executed counterpart shall have the same force and effect as an original. City further acknowledges that it has read and received a copy the full text Section 6148 of the California Business and Professions Code prior to signing this Agreement.

20. NO GUARANTEES City understands and acknowledges that there are certain risks and uncertainties in the pursuit of any matter for which Bond Counsel have been retained, that law is not an exact science, that Bond Counsel has made no representations or guarantees of success regarding the conclusion of any particular matter, and that all expressions relative thereto are matters of Bond Counsel's opinion only. In other words, Bond Counsel makes no representations or guarantees of success regarding any matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

CITY OF SANTA ANA

\_\_\_\_\_  
Jennifer L. Hall  
City Clerk

\_\_\_\_\_  
Thomas R. Hatch  
Interim City Manager

APPROVED AS TO FORM:  
SONIA R. CARVALHO  
City Attorney

BEST BEST & KRIEGER LLP

By:   
Kim Byrens  
Partner

By: \_\_\_\_\_  
Andrea Garcia-Miller  
Assistant City Attorney

RECOMMENDED FOR APPROVAL

  
Kathryn Downs (Mar 18, 2024 11:01 PDT)  
Kathryn Downs, CPA  
Finance and Management Services  
Agency

# Santa Ana - 2024 Legal Services Agreement-c1

Final Audit Report

2024-03-18

Created:	2024-03-18
By:	Kristin Andrade (kandrade@santa-ana.org)
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## "Santa Ana - 2024 Legal Services Agreement-c1" History

-  Document created by Kristin Andrade (kandrade@santa-ana.org)  
2024-03-18 - 5:43:46 PM GMT
-  Document emailed to Kathryn Downs (kdowns@santa-ana.org) for signature  
2024-03-18 - 5:44:09 PM GMT
-  Email viewed by Kathryn Downs (kdowns@santa-ana.org)  
2024-03-18 - 6:01:10 PM GMT
-  Document e-signed by Kathryn Downs (kdowns@santa-ana.org)  
Signature Date: 2024-03-18 - 6:01:27 PM GMT - Time Source: server
-  Agreement completed.  
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