

**CITY OF UPLAND  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of May 10, 2021 ("Effective Date") by and between the City of Upland, a public agency organized and operating under the laws of the State of California with its principal place of business at 460 N. Euclid Avenue, Upland, CA 91786 ("City"), and Best Best & Krieger LLP, a Limited Liability Partnership, with its principal place of business at 3390 University Avenue, 5th Floor, Riverside, CA 92502 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

A. City is a public agency of the State of California and is in need of professional services for the following project: validation counsel and bond counsel legal services (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$70,000. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or

the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term.

The term of this Agreement shall be from the Effective Date to December 31, 2023, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured

against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in

a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General

Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) 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 admitted to transact in the business of insurance 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.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

## 12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the 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 of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects

("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Reserved.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

17 Termination or Abandonment.

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization.

Consultant shall assign Kim Byrens as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

DISTRICT:

City of Upland  
460 N. Euclid Avenue  
Upland, CA 91786  
Attn: Stephen Parker, Acting City Manager

CONSULTANT:

Best Best & Krieger LLP  
3390 University Avenue, 5th Floor  
Riverside, CA 92502  
Attn: Kim Byrens

and shall be effective upon receipt thereof.

22. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. 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.

24. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence.

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

29. City's Right to Employ Other Consultants.

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests.

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, 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 director, official, 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.

31. Reserved.

**[SIGNATURES ON FOLLOWING PAGE]**


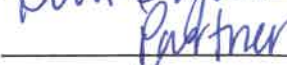
**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN CITY OF UPLAND  
AND BEST BEST & KRIEGER LLP**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF UPLAND

By:   
Stephen Parker  
Acting City Manager

BEST BEST & KRIEGER LLP

By:   
Its:   
Printed Name: Kim Byrens

ATTEST:


By:   
Keri Johnson  
City Clerk

EXHIBIT A  
Scope of Services



BEST BEST & KRIEGER  
ATTORNEYS AT LAW

[www.BBKlaw.com](http://www.BBKlaw.com)

INDIAN WELLS  
IRVINE  
LOS ANGELES  
MANHATTAN BEACH  
ONTARIO  
RIVERSIDE  
SACRAMENTO  
SAN DIEGO  
WALNUT CREEK  
WASHINGTON, D.C.

Proposal to Provide

## **Bond, Disclosure, and Validation Counsel Services for Pension Obligation Bonds**

Presented to:

**City of Upland**

April 5, 2021

Kim Byrens  
3390 University Avenue, 5th Floor  
Riverside, California 92502  
(951) 826-8201  
[Kim.Byrens@bbklaw.com](mailto:Kim.Byrens@bbklaw.com)

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**COVER LETTER**

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April 5, 2021

**DELIVERY METHOD**

Stephen Parker, CPA  
Assistant City Manager  
City of Upland  
sparker@ci.upland.ca.us

Re: Response to Request for Proposals (RFP No. 21-02 CM) for Bond, Disclosure and Validation Counsel Services for Pension Obligation Bonds

Dear Mr. Parker,

Best Best & Krieger LLP (BB&K) is pleased to present this proposal to the City of Upland (City) to provide bond, disclosure, and validation counsel services for pension obligation bonds (POBs). As I believe our submittal demonstrates, BB&K is the most qualified law firm to assist the City with these financing matters.

Our approach to providing validation, bond, and disclosure counsel services is results oriented. We take the time to consult with key staff on the overall goals of the financing issues present and continue to work with staff from the planning stages through completion of the financing. After bonds are issued, we remain available to discuss any issues arising during the administration of the bonds.

Effective communication is the cornerstone of BB&K's legal services. Our primary goals in working with the City will be to understand its expectations and needs, provide timely and accurate responses to its requests, anticipate and identify any potential legal pitfalls, and cultivate an effective and efficient working relationship. Our proposed team will always be available and accessible to accommodate the City's needs, and we understand that time-sensitive demands require special attention.

Neither BB&K, nor any of our principals, have been the subject of any investigation relating to the municipal industry by the U.S. Securities and Exchange Commission, SEC, National Association of Securities Dealers, New York Stock Exchange, or any other state or federal organization that oversees, regulates, licenses, or is otherwise responsible for the municipal industry.

BB&K has dealt with minimal litigation concerning the firm's legal work in the past five years: *Cynthia Burch v. BB&K* (dismissed 12/21/17), *Grant Roberts v. Patrick Monroe*; BB&K (dismissed on 11/03/2016), *Alexa Foster & Alison Bell Rainey v. BB&K* (dismissed pursuant to settlement on 11/11/17), *Paul & George Darafeev v. BB&K* (dismissed pursuant to waiver of fees owed to BB&K on 02/06/18), and *Corrective Education Company v. BB&K* – (dismissed on 01/29/21). None of these matters involve BB&K's Public Finance practice group. More information can be provided upon request.

With respect to conflicts, BB&K maintains a comprehensive database on client representation. Prior to accepting any representation, the database is accessed to determine whether there are any existing conflicts. BB&K has run a conflicts check for the City of Upland, and we have determined that we do not represent any entity whose interests may constitute a conflict of interest that would prevent us from providing the services described in the RFP for the City. BB&K currently serves as city attorney to the City.

Thank you in advance for considering this proposal. We look forward to the opportunity to discuss our qualifications with the City in more detail. In the interim, if there is any additional information or background material that you require, please do not hesitate to contact me.

Sincerely,



Kim Byrens  
of BEST BEST & KRIEGER LLP

## I. FIRM OVERVIEW

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BB&K is proud to trace the firm's success to the groundwork of professionalism and community service laid by its founders 130 years ago. With meaningful experience in virtually all practices of law that confront public agencies, we help our clients successfully maneuver through legal complexities and government mandates. Because BB&K has a history of extensive involvement in all aspects of municipal law, the firm is a pioneer in delivering legal services in a comprehensive, efficient, and cost-effective manner.

BB&K's nationally recognized Public Finance practice group has acted as bond, disclosure, and validation counsel in financings for public agencies throughout California, for more than 50 years. Municipalities, local government entities, and special districts throughout California depend upon BB&K's public finance department as bond counsel for the full variety of available public financing options.

We prepare and supervise all details relating to the authorization, validation, and sale and delivery of securities. In addition to our bond counsel practice, we offer issuers our disclosure counsel services, which enable us to accurately present the issuer's credit story, given our knowledge of federal and California securities laws. We advise our clients on exemptions from applicable statutes, disclosure requirements, and anti-fraud provisions of applicable securities regulations in the Securities Exchange Act of 1934 and the Securities Act of 1933.

BB&K distinguishes itself from other bond and disclosure counsel firms by (i) showing a strong commitment to representing public agencies as opposed to other commercial enterprises, (ii) providing experienced attorneys to work on all transactions, and (iii) being deeply committed to California. We truly believe that our job is to help you accomplish your goals. BB&K has a wealth of experience dealing with a wide variety of public finance and public law issues. We approach each financing with the understanding that each agency's needs and philosophy are unique.

Additionally, we are your city attorney. Thus, this is not a "one and done" transaction for BB&K. Our relationship and loyalty to the City is paramount. Our bond, disclosure, and validation counsel and advice will be geared toward ensuring that the City maintains good public policy and legality when taking actions in financings for the long term. We will also be involved with the City over the life of the bonds to help with any issues in their administration and payment and the City's compliance with continuing disclosure requirements.

Further, while the team is fully qualified to handle all anticipated work, they benefit from the extensive professional resources of the Public Finance practice group, the firm's over 220 attorneys, and a talented roster of paralegals and support staff. As a result, BB&K is amply staffed to perform each of the tasks in the RFP's scope of work as bond, disclosure, and validation counsel.

## II. PENSION EXPERIENCE

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### A. Firm Experience on Pension Obligation Bonds or Refinancing Pension Liabilities

#### Bond and Disclosure Counsel Experience

BB&K's Public Finance practice group has acted as bond counsel and disclosure counsel for many pension obligations over 20 years. As cities in California have experienced varying degrees of financial instability, pension obligations have gone in and out of favor with investors. In the early 2000s, BB&K acted as validation, bond, and disclosure counsel for the City of Azusa for a small POB. We served as bond and disclosure counsel for the City of Riverside pension obligation notes in 2009, 2010, and 2011. In 2015, we were bond counsel and city attorney for a small private placement for the City of San Jacinto. After the Great Recession and as a result of bankruptcies in the cities of Vallejo, Stockton, and San Bernardino, investors were concerned that the risks involved in owning pension obligations was extremely high. POB investors concluded that they were more subject to a loss in a bankruptcy than PERS would have been had no bonds been issued.

However, in the past two years, there is renewed comfort with pension obligations. As a result, cities and counties with very good or improving credit are undertaking to issue them. The change has occurred partly to control cash flow and partly to accelerate the rate of payment of the unfunded liability by taking the savings in interest rate otherwise payable to PERS and using the delta to pay the principal component.

In the last twelve months we have seen a renewed interest in POBs from our clients. Consequently, we have participated as bond counsel, disclosure counsel or validation counsel in the following transactions:

- \$719,995,000 County of Riverside Taxable Pension Obligation Bonds, Series 2020 – special counsel to the Riverside County Office of County Counsel
- \$19,850,000 City of San Bernardino Taxable Pension Obligation Bonds, 2020 Series A – bond counsel, disclosure counsel, and city attorney
- \$70,075,000 City of Azusa Taxable Pension Obligation Bonds, Series 2020 – validation counsel, bond counsel, disclosure counsel, and city attorney
- Pending \$300,000,000 City of Corona Taxable Pension Obligation Bonds, Series 2021 – validation and bond counsel

#### Validation Counsel Experience

As stated in his resume, proposed attorney Scott Ditfurth provides validation counsel services to cities and other public agencies. Scott's work includes preparing validation complaints, handling the publication of summons, coordinating the posting of summons for service, obtaining defaults (where appropriate), and preparing default judgment packages. In the last two years, Scott has worked on two separate validation actions for pension obligation bonds; both actions resulted in default judgments. Typically, the validation process — filing, publication of service of summons, default, and default judgment — takes anywhere from 3 to 6 months. However, timing depends on the courts' responses to requests for orders for publication, defaults and default judgments.

Due to the COVID-19 pandemic, some of the response times from courts have been delayed. Courts also have discretion to amend judgments, even if the judgment is taken by default. Amendments are courtroom specific and dependent upon the judge. We will work with the court to obtain the necessary information in the judgment in order to complete the validation action and ensure that the public entity issues the necessary bonds as anticipated.

### Our Process

BB&K's process is to work with the City and the financing team to set the goals and prepare the approving resolution and trust document for review by the entire team. Upon establishing the basic terms of the bonds and the not-to-exceed parameters of the borrowing, we will present items to the Council for approval and direction to proceed with the validation action. Deliverable items during this stage of the process will include the trust agreement/indenture, approving resolution of the city council, bond purchase agreement, and a description of the proposed validation action.

After receiving authorization from the Council to proceed, Scott Ditfurth will prepare and file the complaint and set litigation in motion that matches up with the timing needed to issue the bonds. During the course of the litigation, as disclosure counsel, we will assemble the information required by the underwriter to tell the City's credit story and the terms of the bonds. As part of our disclosure counsel services, we will provide training to the City's finance and administration staff for initial and continuing disclosure compliance.

Upon receipt of the validation judgement, we will bring the preliminary official statement and continuing disclosure certificate to the Council to obtain final approval and report on the validation. When the time to appeal the final judgment of validation has lapsed, we will print the preliminary official statement and proceed with the sale and delivery of the bonds.

Prior to the second Council approval, we will work with the City and the municipal advisor to determine a payment date for the UAAL and help the City contact PERS to obtain the calculated amount for payment. Deliverable items for the second Council meeting will be a resolution approving a preliminary official statement, continuing disclosure certificate, and description of action and judgement of validation.

Upon the successful sale of the securities by the underwriter, we will finalize the bond terms in the trust agreement; prepare and circulate the closing certificates and opinions to be delivered by the various participants in the transaction; and prepare and circulate the final official statement for review. After comments have been received by the participants, we will print the final official statement and circulate all documents and certificates for signature by the relevant parties. We will assist the City and the municipal advisor in contacting PERS to make the final payments for the UAAL.

We will conduct a pre-closing meeting the day prior to the delivery of the bonds at our offices, and we will deliver the pre-closing materials virtually to all participants in the transaction. We will also deliver our final opinion as bond counsel, any additional or supplemental opinions requested by the underwriter, and our opinion as city attorney. Upon successful delivery of the bonds and payment to PERS, we will finalize the transcript and deliver it to the financing participant in a digital closing binder. Lastly, we will provide the City with additional transcripts in the format of its choice.

**B. Attorney Team**

BB&K proposes **Kim Byrens** to serve as the main contact for the City. Kim will oversee and have primary responsibility for all legal work as bond counsel and disclosure counsel. She will be assisted by **Nora O'Brien** for bond and disclosure counsel services, **John R. Rottschaef** for tax counsel services, and **Scott Ditfurth** for validation counsel services. All of these attorneys are licensed to practice law in California. If Kim is temporarily unavailable, other team members will directly communicate with the City.

Resumes for the proposed team are attached under **Appendix A**.

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**III. FEE PROPOSAL**

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We recognize the need to keep legal costs under control. BB&K has a longstanding commitment to the delivery of legal services to public agencies and special districts; the efficiencies we offer to public sector clients are unmatched by any other law firm. We strive to build long-term relationships with our clients through clear, consistent communication.

**A. Fees**

BB&K's fees will not be calculated on a scale; they are flat fees and are not contingent upon the sale or offering. If for any reason the transaction does not proceed as anticipated, BB&K and the City will negotiate an appropriate fee for the services provided based upon the hourly rates of the attorneys involved. Our not-to-exceed fees are set below.

**Bond and Disclosure Counsel Fee**

Assuming a bond issue of \$120 million, our fees for bond counsel will be \$45,000. This fee includes any fees for the delivery of our opinion as city attorney.

**Validation Counsel Fee**

Validation fees and expenses will be billed on an hourly, not a contingent, basis. The City will receive invoices monthly as fees and charges are incurred. We expect that the validation action will cost \$20,000 to achieve a default judgment.

Should any member of the public or interested organization file an answer to the complaint and the matter require further litigation, we will bring the matter to the City's attention. At that time, we will determine with the City whether to proceed and estimate a budget for litigation.

**B. Reimbursements**

Reimbursement of costs advanced by BB&K on behalf of the City, as well as other expenses, will be billed in addition to the amount billed for fees. Expenses currently include, but are not limited to, extraordinary photocopy charges at \$0.25 per page; producing or reproducing photographs, documents, and other items necessary for legal representation; and computer research. Additionally, costs advanced include the circulation of a virtual “deal room,” preparation of transcript books (if needed), and production of flash drives for each transaction. Reimbursable expenses do not include travel expenses relating to any rating trip or meeting with bond issuance companies. Publication costs are included in the costs of litigation. If the City plans travel, we will attend scheduled meetings and expect to be compensated for our travel-related expenses. Reimbursable costs relating to the litigation will not exceed \$3,500. Reimbursable costs relating to the delivery of the bonds will not exceed \$1,500.

**APPENDIX A – RESUMES**

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**Kim Byrens, Partner**



Phone (951) 826-8273

Email [kim.byrens@bbklaw.com](mailto:kim.byrens@bbklaw.com)

Location Riverside

Education University of San Diego School of Law, J.D.;  
University of California, Irvine, B.A.

CA Bar Number 149061 (1990)

Kim Byrens works on a broad variety of transactions as either bond, underwriter's, or disclosure counsel as a partner in BB&K's Public Finance practice group. Kim facilitates financings including pension obligation bonds, Marks-Roos Joint Financing Authority lease or enterprise revenue bonds, Mello-Roos bonds, assessment district bonds, revenue bonds, and certificates of participation.

Kim serves as bond counsel to municipal clients all over the State of California. With respect to pension obligation bonds, Kim served as special counsel to the County of Riverside Office of County Counsel in its \$700,000,000 pension obligation bond issue of 2020; the office was in transition and needed a skilled attorney to review the matter on behalf of the county. Kim also worked with private investors to restructure the existing pension obligation bonds of the City of San Bernardino into tradeable securities after the financial recovery of the city from its bankruptcy. Kim is the lead attorney on several other pension obligation bond financings that are in their beginning stages. She has worked on many structured financings, including variable rate demand obligations, commercial paper notes, and the restructuring of variable rate obligations.

Kim is a member of the National Association of Bond Lawyers and the Riverside County Bar Association. While attending the University of San Diego School of Law, she served as comments editor for the *San Diego Law Review* and won an *American Jurisprudence* award for contracts and torts.

**Nora O'Brien, Partner**



Phone (619) 525-1357

Email [nora.obrien@bbklaw.com](mailto:nora.obrien@bbklaw.com)

Location San Diego

Education University of San Diego School of Law, J.D.;  
University of Wisconsin - Madison, B.A.

CA Bar Number 304505 (2015)

Nora O'Brien serves as bond, special, and disclosure counsel for a variety of public finance transactions. Her practice concentrates on pension obligation bonds, Mello-Roos community facilities district bonds, Marks-Roos joint financing authority bonds, property assessed clean energy (PACE) bonds, assessment district bonds, certificates of participation, tax allocation bonds, revenue bonds, and general obligation bonds. She is a partner in BB&K's Public Finance practice group.

Prior to joining BB&K, Nora was associate general counsel at the Illinois Finance Authority, where she managed bond issues for more than 65 transactions in a par amount exceeding \$5 billion. She also served as compliance officer, Freedom of Information Act officer, and Open Meetings Act designee for the authority.

Nora is an active member of the National Association of Bond Lawyers and serves as treasurer on the board of Women in Public Finance. She is called upon by these and other associations to share her knowledge as a speaker.

**John R. Rottschaefer, Partner**



Phone (951) 826-8275

Email [john.rotttschaefer@bbklaw.com](mailto:john.rotttschaefer@bbklaw.com)

Location Riverside

Education University of California, Berkeley Law School,  
J.D. ; University of California, Riverside, B.A.

CA Bar Number 116496 (1984)

John Rottschaefer handles federal tax matters with respect to municipal bonds and enjoys a well-established reputation throughout California in this highly distinct field. He is a partner at BB&K and acts as the firm's Public Finance practice group leader.

John provides technical advice with respect to many derivative products, forward purchases, swaps, sales-of-call rights, and other unique financing methods. He also acts as bond counsel. He actively participates in structuring transactions and the various tax, legal, and policy considerations involved. John has acted as bond counsel on many different financing structures, including pension obligation bonds.

**Scott Ditfurth, Partner**



Phone (951) 826-8209

Email [scott.ditfurth@bbklaw.com](mailto:scott.ditfurth@bbklaw.com)

Location Riverside

Education Whittier Law School, J.D., *magna cum laude*;  
California State University, Fullerton, B.A.

CA Bar Number 238127 (2005)

Scott Ditfurth is a civil litigator with an emphasis on business, construction, and real property-related disputes for both private and public clients. A partner in BB&K's Riverside office, his practice encompasses all aspects and stages of litigation in a variety of settings. Scott practices in both state and federal court. Specifically, Scott's litigation practice encompasses contract claims, business disputes, and construction disputes as well as a variety of real property disputes, including land use and planning, writs, eminent domain, and inverse condemnation.

Scott has experience preparing validation complaints for municipalities that attempt to obtain pension obligation bonds. He prepares validation complaints, handles publication of summons, coordinates the posting of summons for service, obtains defaults (where appropriate), and prepares default judgment packages. In the last two years, Scott has worked on two separate validation actions for pension obligation bonds, both of which resulted in default judgments.

Scott has worked with a number of public clients, including the cities of Arcadia, Goleta, Hillsborough, Lafayette, Ontario, Palm Springs, Pomona, Redlands, Santa Ana, and San Buenaventura; the Riverside County Transportation Commission; the Western Municipal Water District; the San Geronio Pass Water Agency; the Western Riverside Council of Governments; the Western Riverside County Regional Wastewater Authority; and the Western Riverside County Regional Conservation Authority.

Scott is admitted to various districts of the U.S. District Court in California and the U.S. Ninth Circuit Court of Appeals.

## EXHIBIT B

### Schedule of Charges/Payments

Validation Counsel Fee. Validation fees and expenses will be billed on an hourly, not a contingent, basis. The Consultant will provide invoices monthly as fees and charges are incurred. The fee for validation counsel services shall be in the amount not exceed \$20,000.

Bond Counsel Fee. There will be no retainer for bond disclosure legal services for pension-related bond transactions. Fees for legal advisory services on bond issuances payable upon the closing of the bond issuance and will be invoiced at the end of the transaction. Such fees may either be payable from bond proceeds or other funds of the City, at its option. If the bond transaction does not close for any reason, fees for bond counsel services will be charged in an amount mutually agreed to by the City and BBK based upon the hourly rates of the attorneys involved. The fee for bond counsel legal services shall be in the amount not to exceed \$45,000.

Out-of-Pocket Expenses. Out-of-pocket expenses include the following items: travel, meals, data recovery, business, third party data fees, business licenses, applications, internal compliance requirements, and other City fees. Out-of-pocket expenses shall not exceed \$5,000.