

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2018 AGENDA**

Subject:	Type:	Submitted By:
PROCUREMENT & PURCHASE — PROFESSIONAL SERVICES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared authorizing the procurement and purchase of professional services in an amount not to exceed \$5,000.

FISCAL IMPACT

Funding for professional services is available in the FY19 & FY20 Biennial Budget.

RECOMMENDATION

Approval.

BACKGROUND

The Federal Communications Commission recently released an order regarding Small Cell Deployment that will have a significant impact on municipalities. In response, cities and counties of all sizes and parts of the country have formed a coalition and have engaged Best Best & Krieger, Washington, DC to represent the coalition in the appeals of two orders. It is in La Vista's best interest to participate in the coalition.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA AUTHORIZING THE PROCUREMENT AND PURCHASE OF PROFESSIONAL SERVICES IN AN AMOUNT NOT TO EXCEED \$5,000.

WHEREAS, the Mayor and City Council of the City of La Vista Nebraska have determined that it is in the best interest of La Vista to participate in the coalition in the appeals of two orders from the Federal Communications Commission regarding Small Cell Deployment; and

WHEREAS, the FY 19/20 Biennial Budget includes funding for the proposed procurement and purchase; and

WHEREAS, the coalition has engaged Best Best & Krieger, Washington DC to represent the coalition in the appeals of two orders; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure Council approval prior to authorizing any expenditure over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, do hereby authorize the procurement and purchase of professional services in an amount not to exceed \$5,000.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER, 2018.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

BBK

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November 14, 2018

Ms. Brenda Gunn
City Administrator
City of La Vista
8116 Park View Blvd.
La Vista NE 68128

Re: Retention of BBK In Appeal of Federal Communications Commission's Orders
on Small Cell Deployment and Moratoria

Dear Ms. Gunn:

ABOUT OUR REPRESENTATION

Best Best & Krieger, LLP ("BBK") is pleased that the City of La Vista, Nebraska has retained BBK and is participating as part of a coalition of communities in appeals of two orders in the dockets, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (FCC WT Docket No. 17-79) and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WC Docket No. 17-84), specifically the Third Report and Order and Declaratory Ruling (issued August 3, 2018) (the "Moratorium Order") and the Declaratory Ruling and Third Report and Order (adopted on September 26, 2018) (the "Small Cell Order"). This letter outlines the terms of BBK representation of your community as part of the Coalition.

FEES

You have agreed that we may bill you up to Five Thousand Dollars (\$5,000) for work performed in connection with the appeals and related advocacy. The billing rates for this matter are \$355 per hour for Partners, Of Counsel and Contract Attorneys, \$285 per hour for Associates, and \$175 per hour for Paralegals, Clerks and Legislative Administrative Assistants. You are being billed for a share of total fees and expenses based on your commitment to the work. Your cumulative billings will not exceed the amount of your capped commitment, unless you have authorized an increase in your commitment level. The fees assume that any appeal of the orders will be consolidated into a single appeal in one U.S. Circuit Court of Appeals, and are not intended to cover costs associated with reconsideration or rehearing, or for a petition to the Supreme Court.



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COALITION RULES

As has been the case throughout these and other FCC proceedings, cable companies, wireline and wireless voice, video and data providers such Comcast, Charter, Verizon, Verizon Wireless, AT&T, Sprint, T-Mobile and wireless infrastructure providers such as Crown Castle, ExteNet and American Tower, in addition to each of the industry national associations (e.g., U.S. Telecom Association, NCTA, Wireless Infrastructure Association, and CTIA) have been and will continue to be adverse to the interests of members of the Coalition. Please inform us immediately if you become aware of any additional adverse parties. Because the work will be for a coalition, there are some unique elements to our representation to which we ask that you agree and would represent that all the other members of the Coalition already have.

First, the filings we make must be acceptable to all the members of the Coalition, and this may affect what issues are addressed and what positions we take. By signing this engagement letter you agree to this arrangement and agree that we may represent you and other participants as a part of the Coalition. We will consult with you and other members of the Coalition as the filings are prepared. You waive any objections that you may have to this joint representation; agree that we may represent each member of the Coalition individually and jointly; and agree that you have joint interests with the other Coalition members that will permit us to communicate information about this matter to you and other members of the Coalition without waiving privileges that may apply.

Second, the Coalition is not a fixed group, but is instead an evolving group: communities or organizations may join or leave the Coalition during the course of our representation. It may be that your community is adverse to one or more of the other members of the Coalition in another, unrelated matter. By signing this engagement letter, you agree that we may represent these additional members as part of the Coalition. Likewise, except to the extent there is a conflict that is not waivable, you agree that our representation of you as part of the Coalition will not disqualify the Firm or any of its members from representing another client in an unrelated proceeding where the client's interest is adverse to yours. We will keep you apprised of the Coalition members and we ask that you advise us immediately if you believe that there is a conflict that is not waivable.

Third, we will not represent any entity in this matter that takes a position adverse to yours. We may be asked by some clients to make individual filings in this proceeding in addition to the Coalition's. You and each entity of the Coalition may decide at any time to withdraw from participation in the matter or the Coalition. Should you do so, you also agree that we may continue to represent the other members of the Coalition in this matter.



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We will tailor our efforts based on the total commitments we receive from all coalition members and obviously will let you know if we believe that the budget will not allow us to address issues of importance to you.

INSURANCE

We are also pleased to let you know that Best Best & Krieger LLP carries errors and omissions insurance with Lloyd's of London.

NEW MATTERS

When we are engaged by a new client on a particular matter, we are often later asked to work on additional matters. You should know that such new matters will be the subject of a new signed supplement to this retention letter. Similarly, this retention letter does not cover and is not a commitment by either of us that we will undertake any petitions for rehearing or rehearing en banc, petitions for a writ of certiorari, appeals other than the appeal described above, or any collection procedures. Any such future work would also have to be agreed upon in a signed supplement.

CIVILITY IN LITIGATION

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

HOW THIS AGREEMENT MAY BE TERMINATED

You, of course, have the right to end our services at any time. If you do so, you will be responsible for the payment of fees and costs accrued but not yet paid up to the capped amount, plus reasonable fees and costs in transferring the case to you or your new counsel. By the same token, we reserve the right to terminate our services to you upon written notice, order of the court, or in accordance with our attached memorandum. This could happen if you fail to pay our fees and costs as agreed, fail to cooperate with us in this matter, or if we determine we cannot continue to represent you for ethical or practical concerns.



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CLIENT FILE

If you do not request the return of your file, we will retain your file for five years. After five years, we may have your file destroyed. If you would like your file maintained for more than five years or returned, you must make separate arrangements with us.

THANK YOU

On a personal note, we are pleased that you have retained Best Best & Krieger LLP to represent you, and are participating as part of a Coalition in these appeals. If you have any questions at any time about our services or billings, please do not hesitate to call me. Please countersign this letter and return it to us.

Sincerely,

A handwritten signature in blue ink that reads "Gerard Lavery Lederer".

Gerard Lavery Lederer
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: _____

Dated: _____

BEST BEST & KRIEGER LLP'S BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to our Accounts Receivable Department. Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

Fees for Professional Services

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. Time is accrued on an incremental basis for such matters as telephone calls (minimum .3 hour) and letters (minimum .5 hour), and on an actual basis for all other work. Our attorneys are currently billed at rates from \$245 to \$750 per hour, and our administrative assistants, law clerks, litigation analysts, research analysts, and paralegals are billed at rates from \$160 to \$290 per hour. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

Non-Attorney Personnel

BBK may employ the services of non-attorney personnel under the supervision of a BBK attorney in order to perform services called for in the legal services agreement. The most common non-attorney personnel utilized are paralegals. Other types of non-attorney personnel include, but are not limited to, case clerks, IT analysts, and specialty consultants. The client agrees

that BBK may use such non-attorney personnel to perform its services when it is reasonably necessary in the judgment of the responsible BBK attorney. Hourly fees for non-attorney personnel will be charged at the rate then in effect for such personnel. A copy of BBK's current rates and titles for non-attorney personnel will be provided upon request. Except for paralegals, BBK will not incur more than \$525 in fees for a non-attorney's work on a client matter without first confirming by email or written correspondence with the client the intended use of the non-attorney and the hourly rate for that person.

Fees For Other Services, Costs and Expenses

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

ESI: BBK provides Electronically Stored Information (ESI') services for matters requiring ESI support – typically litigation or threatened litigation matters. BBK shall receive payment for ESI support, if needed, at BBK's then current rates. A copy of BBK's current rates for such services will be provided upon request. BBK shall not incur costs for ESI support on a particular matter without first confirming by email or written correspondence with the client that the client agrees such services are necessary for the matter at hand.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

Advance Deposit Toward Fees And Costs

Because new client matters involve both a substantial undertaking by our firm and the establishment of client credit with our accounting office, we require an advance payment from clients. The amount of this advance deposit is determined on a case-by-case basis discussed first with the client, and is specified in our engagement letter.

Upon receipt, the advance deposit will be deposited into the firm's client trust account. Our monthly billings will reflect such applications of the advance deposit to costs and not to attorney's fees (unless otherwise noted in our accompanying engagement letter). At the end of engagement, we will apply any remaining balance first to costs and then to fees. We also reserve the right to require increases or renewals of these advanced deposits.

By signing the initial engagement letter, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, when we issue our invoice to the client. If we succeed in resolving your matter before the amounts deposited are used, any balance will be promptly refunded.

Monthly Invoices and Payment

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice shall be added to the balance owed, commencing with the next statement and continuing until paid.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client

does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We reserve the right to terminate our engagement and withdraw as attorney of record whenever our invoices are not paid. If an invoice is 60 days late, however, we may advise the client by letter that the client must pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

Changes in Fee Arrangements and Budgets

It may be necessary under certain circumstances for a client to increase the size of required advances for fees after the commencement of our engagement and depending upon the scope of the work. For example, prior to a protracted trial or hearing, the firm may require a further advance payment to the firm's trust account sufficient to cover expected fees. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing.

Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP

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