



OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENEFFEE

April 15, 2021

Members of the Commissioners Court
1001 Preston, 9th Floor
Houston, Texas 77002

Re: Order Authorizing Execution of an Agreement between Harris County and Best Best & Krieger, L.L.P.

Dear Members of the Court,

This is to request the following topic be placed on the Commissioners Court Agenda for April 27th, 2021, under the County Attorney's portion of the agenda:

Order authorizing execution of an agreement between Harris County and Best Best & Krieger, L.L.P. for the provision of legal services for all issues related to the preparation and development of a design-build contract for the Clear Creek Federal Project for the Harris County Flood Control District.

A copy of the agreement is attached for the Court's approval.

An order authorizing the execution of the agreement is attached for the Court's consideration.

Thank you for your consideration of this request.

Sincerely,

CHRISTIAN D. MENEFFEE
County Attorney

DeAnne A. Lin

DeAnne A. Lin
Assistant County Attorney

Approved By:

Jay Aiyer
First Assistant County Attorney

PROFESSIONAL SERVICES AGREEMENT
(Special Counsel)

1. The effective date of this Agreement is February 9, 2021.
2. Client and Special Counsel agree as follows:
3. The Client is **Harris County, Texas (Client)**
Address: Harris County Attorney's Office
Attention: Jay Aiyer, First Assistant
1019 Congress 15th Floor
Houston TX 77002-1799
Fax: 713-274-5103
Email: jay.aiyer@cao.hctx.net
4. The Special Counsel is Best Best & Krieger, L.L.P. (BBK Law) (**Special Counsel**).
655 W. Broadway, 15th Floor, San Diego, CA 92101
MaryBeth.Coburn@bbklaw.com
619-525-1369
5. **Special Counsel** will represent **Client** in the following matter (Representation):
All issues related to the preparation and development of a design-build contract for the Clear Creek Federal Project (Project) for the Harris County Flood Control District and other matters related to the Representation, including, but not limited to:
 - a) Development of the Request for Qualifications (RFQ)/ Request for Proposal (RFP) for the design builder.
 - b) Provide legal advice during the RFQ and RFP process.
 - c) Development of the design-build contract documents, and compliance with all federal requirements.
 - d) Development of a Self-certification memo and negotiation with the United States Army Corps of Engineers (USACE) on issues surrounding the use of a design-build procurement, including potential self-performance by the selected design-build firm and selection of trade contractors based on best value versus low bid to the extent permissible under the Code of Federal Regulations.
 - e) Legal assistance in negotiating a final contract with the selected design-build firm.
 - f) Respond to questions from the selected design-build firm during Phase 1 of the Project.
 - g) Participate in discussions with the USACE regarding Project administration.
 - h) On-call services.
6. Special Counsel will work primarily with Senior Assistant County Attorney, Laura Fiorentino Cahill (**the assigned Assistant County Attorney(s)**) and such other person(s) within the Office of the County Attorney as may be necessary.

7. Client has allocated and certified the total maximum sum of **\$ 250,000.00 (amount certified available)** to pay its obligations under this Agreement.
8. For and in consideration of the services rendered by **Special Counsel**, **Client** agrees to pay in accordance with the following schedule:

TITLE	RATE/HOUR
OF COUNSEL	\$ 330.00
PARTNER	\$ 330.00
ASSOCIATE	\$ 305.00
ASSOCIATE 2	\$ 305.00
ADMIN. ASST.	\$ 170.00
CLERK	\$ 170.00
LIT ANALYST	\$ 170.00
MUNI ANALYST	\$ 170.00
PARALEGAL	\$ 170.00
RESEARCH ANALYST	\$ 170.00

Other attorneys and paralegals within the firm may perform services under this Agreement with the approval of the Office of the County Attorney. The rates for such services are subject to the approval of the Office of the County Attorney and may not exceed the hourly rates stated in this Agreement.

Harris County has determined pursuant to Local Government Code §262.024(a)(4) that this Agreement is for *professional services*, requiring work that is predominantly mental or intellectual, rather than physical or manual, requiring special knowledge or attainment and a high order of learning, skill, and academic intelligence, or the services are being retained pursuant to Local Government Code §89.001.

9. **Special Counsel** agrees to perform necessary legal work with reference to the Representation.
10. To enable **Special Counsel** to provide effective representation, **Client** agrees to do the following:
 - (1) disclose to **Special Counsel**, fully and accurately and on a timely basis, all facts and documents within **Client**'s knowledge that are or might be material or that **Special Counsel** may request,
 - (2) keep **Special Counsel** apprised on a timely basis of all developments relating to the Representation that are or might be material,
 - (3) attend meetings, conferences, and other proceedings when it is reasonable to do so, and
 - (4) otherwise cooperate fully with **Special Counsel**.
11. Neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement, without the express written permission of the other parties, unless otherwise authorized in this Agreement.
12. The person or entity that **Special Counsel** represents is **Client**, and **Special Counsel**'s attorney-client relationship does not include any related persons or entities. If any potential conflict arises with respect to the Representation, **Special Counsel** will make full disclosure

of the possible effects of such representation on the professional judgment of each individual associated with **Special Counsel** working on Representation. In the event a potential conflict occurs during the course of the Representation, **Special Counsel** will make full, written disclosure of such to **Client**.

13. **Special Counsel**'s engagement is limited to the Representation. **Special Counsel** is not being retained as general counsel, and **Special Counsel**'s acceptance of this Agreement does not imply any undertaking to provide legal services other than those set forth in this letter.
14. The attorney-client relationship terminates upon **Special Counsel**'s completion of the services for which **Special Counsel** has been retained in the Representation. After completion of the Representation, changes may occur in the applicable laws or regulations that could affect **Client**'s future rights and liabilities in regard to the Representation. Unless **Special Counsel** is actually engaged after the completion of the Representation to provide additional advice on such issues, **Special Counsel** has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Representation.
15. Any expressions on **Special Counsel**'s part concerning the outcome of the Representation, or any other legal matters, are based on **Special Counsel**'s professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by **Special Counsel**'s knowledge of the facts and are based on **Special Counsel**'s views of the state of the law at the time they are expressed. **Special Counsel** has made no promises or guarantees to **Client** about the outcome of the Representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee. Payment of **Special Counsel**'s fees and charges is in no way contingent on the ultimate outcome of the Representation.
16. All other sections notwithstanding, and consistent with Government Code §2254.003, **Client** shall pay no more than the recommended practices and fees published by the applicable professional associations nor more than any maximum provided by law.
17. Legal fees and costs are difficult to estimate. Accordingly, **Special Counsel** has made no commitment concerning the maximum fees and charges that will be necessary to resolve or complete the Representation.
18. **Special Counsel** understands that the **Client** has available the **amount certified available** to pay its obligations under this Agreement and to discharge any and all liabilities that the **Client** may incur, arising out of this Agreement, and **Client** shall not be liable to pay **Special Counsel** any greater amount under this Agreement. When and if the services and charges provided for herein become equal to or exceed the **amount certified available**, **Special Counsel** may terminate all its services hereunder unless additional funds are certified. In that event, **Special Counsel** agrees to continue to provide the services herein specified to the extent funds are available.
19. The hourly rate compensates the attorney for all overhead costs and expenses and includes, but is not limited to, all costs for secretarial work, including overtime, travel within Harris County, computer time, meals, clerical filing, and proofreading. No travel expenses are authorized outside of Harris County, *unless pre-approved in writing by the Office of the County Attorney*. **Special Counsel** agrees that it is neither authorized to seek reimbursement nor is **Client** obligated to pay for mileage within Harris County, parking fees, local facsimile (fax) transmissions, use of law library, or other costs or expenses (similar or dissimilar) except for

those for which reimbursement is specifically provided for as follows: **Client** agrees to reimburse **Special Counsel** for its actual, reasonable and necessary expenses for long distance telephone calls, including long distance telex or facsimile transmissions. **Client** agrees to reimburse **Special Counsel** for necessary photocopies at the rate of ten cents per page for 8 ½ x 11 or 8 ½ x 14 photographic reproductions. **Special Counsel** will be reimbursed for its direct costs for delivery and messenger services and direct cost for postage on any item or group of items which cost \$1.00 or more.

20. **Client** shall reimburse **Special Counsel** for all actual, reasonable and necessary expenses for expert witness fees, mediation fees, expenses associated with depositions (such as costs of the transcript, and court reporter or videographer fees), investigator fees, and expenses associated with creating demonstrative exhibits or other means of evidence for presentation for or during trial (such as trial graphics) which shall constitute the reimbursable expenses (“the reimbursable expenses”). Other expenses not outlined may be authorized as Reimbursable Expenses by the Harris County Attorney if agreed upon in writing by the Harris County Attorney. All Reimbursable Expenses above \$500.00 must be pre-approved by the County Attorney. In addition, **Special Counsel** and the County Attorney shall jointly choose any experts and mediators that will be hired.
21. **Special Counsel** may upon agreement of the County Attorney send to **Client** for direct payment any invoices delivered to **Special Counsel** by others, including experts and any vendors. Such invoices must be in a form acceptable to the County Auditor. **Client** reserves the right to audit **Special Counsel**’s billing and billing practices with respect to **Client**’s files at any time.
22. Before a legal research project is undertaken, **Special Counsel** must confer with the **Assigned Assistant County Attorney** to determine whether the County Attorney has already performed the research. Before providing such a service, **Special Counsel** must submit a budget and identify the work to be performed, the identity and billing rate of each attorney involved and the estimated amount of time expected to complete the task(s). Any database research authorized, such as Lexis and Westlaw, will be recharged at direct cost.
23. All time billed must be in increments of 6 minutes (1/10th of an hour) and must state the task(s) performed. Tasks must be described with sufficient specificity to allow the Office of the County Attorney to determine the reasonableness and appropriateness of the services rendered.
24. Conferences between or among attorneys in the employ of Special Counsel may not be billed by more than one attorney who participates in such conference, unless the County Attorney approves participation by more than one attorney in advance of the meeting. Attendance at court hearings, mediations, or other meetings may be billed by only one attorney in the employ of Special Counsel, unless the County Attorney approves participation by more than one attorney in advance of the meeting.
25. After each calendar month, **Special Counsel** must submit an itemized statement to the Office of the County Attorney, in a form acceptable to the County Auditor, setting forth in detail the services provided and the compensation and expense reimbursement claimed. Each statement must show the name and classification of each person performing services, the date or dates that he or she performed services, and must include such other details of the work, hours, and

identities of the persons providing services and the expenses claimed as may be requested by the County Auditor for verification purposes. The County Attorney will review each such statement and approve it with any modifications deemed appropriate, and will submit it to the County Auditor within 14 days from receipt. **Client** agrees to pay each statement within thirty (30) days after the County Auditor approves it.

26. Invoices should be emailed to CAOInvoices@cao.hctx.net.
27. The **Client** acknowledges that **Special Counsel** has a claim for *quantum meruit* for the reasonable value of services provided prior to the Effective Date of this Agreement. In addition, in consideration for **Special Counsel**'s entering into this Agreement and agreeing to continue to provide services to the **Client**, the **Client** agrees to pay from available funds the amounts owing to **Special Counsel** pursuant to the terms of the written agreements with the **Client** and **Special Counsel**, and in return, **Special Counsel** will not pursue any *quantum meruit* claim.
28. Any party may terminate with or without cause this Agreement at any time by giving the other party at least 30 days advance written notice of its intention to do so, specifying therein the effective date of such termination. Upon receipt of such notice, **Special Counsel** must discontinue all services in connection with the performance of this Agreement, and must proceed to cancel promptly all existing orders and Agreements insofar as such orders and Agreements are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, **Special Counsel** must submit a statement showing in detail the services performed under this Agreement to the date of termination. Within thirty days of the receipt of said statement, the County Attorney will review this statement and approve it with any modifications that he deems necessary. Copies of all completed or partially completed documents prepared under this Agreement must be delivered to the County Attorney when and if this Agreement is terminated. In the event of such termination, **Client** will take all steps necessary to release **Special Counsel** of any further obligations in the Representation, including without limitation, the execution of any documents necessary to effectuate the withdrawal from the Representation. Any such termination of services will not affect the obligation to pay for legal services rendered and expenses and charges incurred before termination, as well as additional services and charges incurred in connection with an orderly transition of the Representation.
29. At the conclusion of the Representation, **Special Counsel** will return to **Client** any documents that **Special Counsel** is specifically requested to return. As to any documents so returned, **Special Counsel** may elect to keep a copy of the documents in **Special Counsel**'s stored files. **Client** owns all final work product generated from the Representation.
30. Any notice required or permitted to be given by the **Client** to **Special Counsel** hereunder may be given by hand delivery, facsimile, or certified United States Mail, postage prepaid, return receipt requested to the address indicated on page one or such other address as **Special Counsel** may designate in writing.
31. Any notice required or permitted to be given by **Special Counsel** to the **Client** hereunder may be given by hand delivery, facsimile, email, or certified United States Mail, postage or fee prepaid, return receipt requested, addressed to the address indicated on page one or such other address as **Client** may designate in writing.

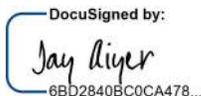
- 32. Such notices shall be considered given and complete upon successful transmission or upon deposit in the United States Mail.
- 33. **Special Counsel** affirmatively consents to the disclosure of its e-mail addresses that are provided to **Client** or the County Attorney’s Office. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV’T CODE ANN. § 552.137, *et seq.*, as amended, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by **Special Counsel** and agents acting on **Special Counsel**’s behalf and shall apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.
- 34. **Special Counsel** has no authority to settle or otherwise compromise the position of **Client** or any of its officers. Any settlement involving the expenditure of **Client**’s funds is subject to the approval of the **Client**’s governing body.
- 35. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of **Client**.
- 36. This Agreement is not effective unless it has been approved by the Office of the County Attorney.

Approved by:

Agreed:

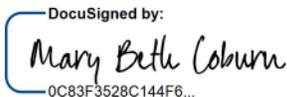
CHRISTIAN D. MENEFEE
Harris County Attorney

HARRIS COUNTY, TEXAS

By: 
 Jay Aiyer
 First Assistant County Attorney

 Lina Hidalgo
 County Judge

BEST BEST & KRIEGER, L.L.P. (BBK LAW)

By: 
 Mary Beth Coburn
 Partner

Date Signed: 3/18/2021

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN HARRIS COUNTY AND BEST BEST & KRIEGER, L.L.P.

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Agreement between Harris County and Best Best & Krieger, L.L.P. for the purpose of allowing the Harris County Attorney’s Office to utilize Best Best & Krieger, L.L.P. as special counsel for all issues related to the preparation and development of a design-build contract for the Clear Creek Federal Project for the Harris County Flood Control District.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.