

# Orange Countywide Oversight Board

Date: 9/17/2024

Agenda Item No. 10

From: Staff to the Orange Countywide Oversight Board

Subject: Contract for Legal Services with Bobko Law APC

Recommended Action:

Authorize and direct Board Chairman to sign agreement with Bobko Law APC and direct staff to terminate agreement with Aleshire & Wynder, LLP

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Health and Safety Code §34179(j) specifies that the Auditor-Controller's office is to provide staff support to the Oversight Board, and as such, when the Board was being formed in 2018, then-Auditor-Controller Eric Woolery authorized a request for proposal (RFP) for legal counsel for the Oversight Board.

Ring Bender LLP won the RFP on the basis of a proposal submitted by Partner Patrick "Kit" Bobko and commenced services on January 10, 2019, with Mr. Bobko serving as Counsel to the Oversight Board. The initial term of the contract was 2 years (January 10, 2019-January 9, 2021) with a 1-year renewal option (January 10, 2021-January 9, 2022). The Auditor-Controller's office exercised that renewal option.

Upon the expiration of that contract, the Auditor-Controller commenced a new 2-year contract (January 10, 2022-January 9, 2024) with a 1-year renewal option (January 10, 2024-January 9, 2025). At its July 23, 2024, meeting, the Oversight Board directed the termination of the Auditor-Controller's contract with Ring Bender for legal services for the Oversight Board. At that same meeting, the Oversight Board approved its own contract for legal services with Aleshire & Wynder, LLP for a term concluding December 31, 2028. Subsequently, on August 1, 2024, Mr. Bobko transitioned from Aleshire & Wynder to Bobko Law.

Health and Safety Code §34179(o) specifies that the Oversight Board may contract with any public or private entity for additional support of its functions.

Staff recommends that the Oversight Board approve a contract with Bobko Law APC for legal services, commencing August 1, 2024, and concluding December 31, 2028. The provisions of the proposed contract with Bobko Law are consistent with the provisions of the contract with Aleshire & Wynder.

It is also recommended that the Oversight Board direct staff, including Mr. Bobko, to determine the appropriate steps to terminate the contract with Aleshire & Wynder while ensuring sufficient time to smoothly transition the Oversight Board's legal services from Aleshire & Wynder to Bobko Law. Ring Bender's final invoices were paid through June 2024, Aleshire & Wynder will receive payment for the month of July 2024, and Bobko Law will begin receiving payment from August 2024. In no month did more than one law firm receive payment for providing legal services to the Oversight Board.

In the Auditor-Controller's contract with Ring Bender, the Oversight Board's contract with Aleshire & Wynder, and the proposed Oversight Board contract with Bobko Law, the terms specify that any of the firm's attorneys, paralegals, and staff may assist in representing the Oversight Board, but that Mr. Bobko shall be the attorney assigned to represent the Countywide Oversight Board as its general counsel.

As with the Auditor-Controller's contract with Ring Bender and the Oversight Board's contract with Aleshire & Wynder, the proposed Oversight Board contract with Bobko Law authorizes the hiring of consultants and other outside experts at the Board's expense. As with the Oversight Board's contract with Aleshire & Wynder, the proposed contract authorizes Bobko Law to bill the Board for litigation costs and travel costs incurred.

At any time, if the Oversight Board wishes to terminate the contract, it may do so without cause, subject to reasonable notice. Similarly, Bobko Law may terminate the contract without cause, subject to reasonable notice.

Attachment

- Proposed Agreement Between the Orange Countywide Oversight Board and Bobko Law APC



September 4, 2024

**VIA E-MAIL**

Orange Countywide Oversight Board  
Attn: Kathy Tavoularis  
Office of the Auditor-Controller  
1770 North Broadway  
Santa Ana, California 92706  
E-mail: Kathy.Tavoularis@ac.ocgov.com

Re: Engagement for Legal Services

Chairman Probolsky and Honorable Members of the Board:

This letter agreement (“Agreement”) is written to set out and confirm the retention of Bobko Law APC (the “Firm”) to provide the Orange Countywide Oversight Board with legal representation (“Client” or “you”) related to the matters identified herein.

In this regard, please know that *California Business and Professions Code* § 6148 requires a written fee contract between attorneys and their clients to set forth the scope of the legal services which the attorneys have been retained to perform, and the fees which the attorneys will charge to perform those services.

**1. Scope of Services**

The Firm will provide legal assistance to the Client related to its obligations to comply with directing and dissolution of Orange County Successor Agencies and the disposition of their assets as required by the Dissolution Act. The Firm will advise the Board on its obligations under the Brown Act, assist with the conduct of its public meetings, preparation of Staff reports and meeting agendas, and provide other opinions and assistance as the Client may require. The Firm will interact with various State and local agencies in accomplishing the Board’s tasks and goals.

If necessary, the Firm will defend the Board in litigation, or initiate litigation on its behalf.

**2. Attorneys Providing Services**

While any or all of the Firm's attorneys, paralegals and staff are available to assist in Client's representation, the attorneys assigned to the Client's representation shall continue to be Patrick K. Bobko. The services of other attorneys and paralegals in the Firm also may be used as is necessary and appropriate as the undersigned determines to provide the Client with the most effective legal service.

**3. Compensation, Costs, and Expenses**

The rates for services provided to Client shall be as set forth in Exhibit A attached hereto and made a part hereof. These rates may be reviewed and adjusted by an addendum or amendment to this Agreement, approved by the Firm and the Client.

The Firm also might incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for those costs and expenses in addition to the hourly fees. Expenses will be reimbursed at the cost thereof in accordance with the billing and reimbursement practices set forth in Exhibit A attached hereto and by this reference incorporated herein.

The Firm's fees are charged on an hourly basis and are billed monthly with payment due thirty (30) days after the date of the bill. Client agrees to pay for all hourly services when billed on a monthly basis. The Firm shall be entitled to include interest at the rate of one percent (1%) per month on the outstanding balances when an amount is outstanding for more than thirty (30) days after the billing date.

**4. Retainer**

The Firm has not requested a retainer in connection with the representation of Client.

**5. Prohibition of Subcontracting or Assignment**

The Firm shall not contract with any other person or entity to perform the services required hereunder without Client's prior approval, nor shall any interest herein be transferred, assigned or conveyed without Client's approval.

**6. Termination**

Both the Firm and the Client shall have the right to terminate this engagement at any time, subject to reasonable notice. The Client has the right to terminate our representation at any time. The Firm has the same right, subject to our obligation to provide the Client with reasonable notice to arrange alternative representation in the event that it determines to terminate this relationship due to non-payment of fees, lack of necessary communication and cooperation on the project, or for other reasons. In either circumstance, the Firm agrees to assist you in securing new counsel to

represent it as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any litigation in which it may be involved. If the Client elects to terminate the firm, Bobko Law APC will be paid all fees and costs incurred prior to the termination within 30 days after delivery of a final bill for services.

## 7. **Disputes**

We rarely have fee disputes with clients. Nevertheless, should any dispute arise concerning the services provided to you or the statements forwarded to you, as well as any alleged claims for legal malpractice, breach of fiduciary duty, breach of contract or other claim against the Firm for any alleged inadequacy of such services, the dispute will be settled by arbitration. The arbitration shall be heard in through the offices of the Orange County Bar Association pursuant to its rules regarding the arbitration of disputes over fees or costs. A copy of the Orange County Bar Association's current rules regarding arbitration of such disputes is available at: <https://bit.ly/3wjz6Z9> (www.OCBar.org). The arbitrators may establish such additional rules for the conduct of the arbitration as they may choose, except that there shall be no discovery, and any proceedings conducted shall be private and confidential and shall not be disclosed to the public by either the arbitrators or the parties to the arbitration. The award of the arbitrators must be by a majority vote and shall be final and binding, not subject to challenge by either party in any court of law. Each party shall bear its own costs of the arbitration and shall pay one-half of the costs of the proceeding.

This binding arbitration is expressly *in lieu* of any right by either Client or Firm to a jury trial to determine the amount and validity of any claimed fees or disputes with said fees. The Client understands and expressly waives the rights to a jury trial.

You are urged to discuss the advisability of arbitration with your independent counsel or any of your other advisors and to ask any questions which you may have. Your execution and delivery of the engagement letter will confirm that you have either obtained independent legal advice with respect to the binding arbitration clause, or you have decided to enter into this fee engagement without seeking such advice.

## 8. **Insurance**

In accordance with *California Business and Professions Code*, the Firm hereby informs Client that it maintains errors and omissions insurance coverage in an amount applicable to the services to be rendered.

**9. Conflicts**

The Firm is not aware of any conflict of interest in this representation. Client agrees to inform the Firm of any conflicts which may arise after execution of this Agreement which Client believes would affect the representation of Client.

The Firm may have current or future clients which may have interests adverse to Client or Client's related entities, and the Firm reserves the right to represent such clients in matters not connected to the representation described herein. If a potential conflict of interest arises in the Firm's representation of two clients, if such conflict is only speculative or minor, the Firm may seek waivers from each client with regards to such representation.

**10. Integration**

By signing below, Client acknowledges that no oral representations, statements, or inducements, apart from this written agreement, have been made. If any portion of this Agreement is declared invalid by a court, the remainder shall continue in full force and effect.

**11. Execution and Authority**

This Agreement may be executed in counterparts and by electronic signature. In executing this Agreement, you warrant that (i) Client is a duly organized and existing entity, (ii) you are duly authorized to execute and deliver this Agreement on behalf of the Client, (iii) by so executing this Agreement, the Client is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Client is bound. This Agreement supersedes any other agreement between the Firm and the Client.

**12. Holding of Retainer and Other Amounts in Trust – IOLTA Notice**

Please be advised that any funds that you may deposit in a trust account with the firm will be held in an account established at a financial institution selected by the firm. Unless you make special arrangements in advance with the firm, all interest or dividends earned (net of service charges or fees, if any) will be paid to the State Bar of California to be used for providing legal assistance to indigent persons pursuant to the California Business and Professions Code.

**13. Communication Representatives, Electronic Communications, and Cloud-based Storage Systems**

We may communicate with you and others *via* email and such emails can be intercepted read, disclosed, or otherwise used or communicated by an unintended third party. We cannot guarantee or warrant that emails from us will not be improperly delivered or read by parties other than the addressee, possibly resulting in a waiver of the attorney-client privilege. We specifically disclaim any liability or responsibility whatsoever for such interception or unintentional disclosure

and you agree we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions.

If the Client has information that is particularly sensitive under environmental, securities, corporate law, or otherwise, then please notify us promptly of that sensitive type of information. The Firm will then undertake to take additional steps such as sending password protected emails or documents to you to further limit the potential interception of such electronic communications.

The Firm uses a cloud-based system maintained by a third-party vendor for all electronically stored information. This vendor has provided to the Firm with assurances that the cloud-based computer storage system is maintained under security standards acceptable to the industry.

Nonetheless, the Client understands and agrees that some or all of its electronic data may be stored in a cloud-based system. Again, if you have special concerns about your electronic data being stored, please notify us and we will work with you to have such data encrypted or otherwise secured with additional protections.

#### **14. Additional Items**

Our legal relationship and the terms of this agreement will be governed by the substantive laws of the State of California.

You also agree that our legal advice and opinions are solely for the benefit of the Client in relation to this matter. Any opinion provided to the Client cannot be relied on by any third party without the specific agreement of the Firm. The Client is prohibited from assigning claims to third parties.

In order to begin work on this matter, the enclosed duplicate original of this letter must be signed and returned. You may send us an executed copy signifying your agreement *via* PDF in an email addressed to: [Patrick@BobkoLaw.com](mailto:Patrick@BobkoLaw.com).

Bobko Law APC is passionate about the law and our clients. Each client and each matter is very important to us. We are looking forward to working on this matter with you.

September 4, 2024

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We appreciate your confidence in selecting Bobko Law APC as legal counsel and we look forward to working with you.

Very truly yours,

BOBKO LAW APC



Patrick K. Bobko  
Attorney

I HAVE RECEIVED THE ORIGINAL OF THIS LETTER AGREEMENT AND UNDERSTAND THE FOREGOING TERMS AND CONDITIONS AND AGREE TO THEM. I HAVE THE AUTHORITY TO SIGN ON BEHALF OF AND BIND CLIENT.

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_

Brian Probolsky  
Chairman, Orange County Oversight Board



**EXHIBIT "A"**

**LEGAL FEES AND BILLING AND REIMBURSEMENT OF COSTS**

The Firm will provide legal services to the Client at a fee of \$10,000 per month, starting on August 1, 2024, and continuing until December 31, 2028. The total amount the Client will pay the Firm for General Counsel services is \$120,000 for each year from 2025 through 2028. The total amount of the fees for General Counsel services shall not exceed \$530,000.

Separately, the Firm shall bill its time for litigation matters on an hourly basis. The "blended" rate for attorney litigation services is \$395 per hour. Paralegals will bill their time at \$185 per hour.

Costs and expenses are separately billed to the client and include fees fixed by law or assessed by public agencies, litigation costs including deposition, reporter fees, and transcript fees, long distance telephone calls, messenger and other delivery fees, postage, photocopying (charge of twenty-five cents (\$.25) per page) and other reproduction costs, staff overtime when necessitated and authorized by the client, and computer-assisted research fees when authorized by the client, all based on the actual and reasonable cost (mileage, reproduction and other costs are periodically adjusted in accordance with the Firm's actual costs).

Travel costs including mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals are charged at actual costs. Travel time at the rates set forth above may also be charged in connection with such proceedings. In addition, you will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the client.

The monthly billing statements for fees and costs shall indicate the basis of the fees, including a detailed and auditable breakdown of the hours worked, the billable rates charged, and description of the work performed. All bills are expected to be paid within thirty (30) days of the date of the billing statement.