

**SB-331 Audit Review –  
Keller/Anderle Attorney Agreement**

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**COSTA MESA, CALIFORNIA**

**matrix**   
consulting group

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## 1. INTRODUCTION AND OVERVIEW

This section summarizes the key provisions of the agreement entered into between the law firm of Keller/Anderle LLP and the City of Costa Mesa for legal services.

This report presents the results and findings of the SB-331 review conducted regarding the procurement of attorney services from Keller/Anderle contemplated by the City of Costa Mesa. This review was conducted to ensure the City was in compliance with the provision of the state statutes *et seq.* regarding the review of contracts that was imposed by the passage of SB-331 and codified at Public Contract Code sections 22175 . In part, the relevant sections of the legislation impose the following requirements on certain contracts to be entered into by municipalities that are subject to the requirements (i.e. – those that have adopted certain legislation commonly referred to as COIN legislation).

22178. (a) This chapter shall apply to any contracts with a value of at least two hundred fifty thousand dollars (\$250,000), and to any contracts with a person or entity, or related person or entity, with a cumulative value of at least two hundred fifty thousand dollars (\$250,000) within the fiscal year of the city, county, city and county, or special district, being negotiated between the city, county, city and county, or special district, and any person or entity that seeks to provide services or goods to the city, county, city and county, or special district, in the following areas: accounting, financing, hardware and software maintenance, health care, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal.

(b) The city, county, city and county, or special district shall designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

(1) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.

(2) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met.

(c) The city, county, city and county, or special district shall disclose all offers

and counteroffers to the public within 24 hours on its Internet Web site.

- (d) Before approving any contract, the city, county, city and county, or special district shall release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date of the session, the length of the session, the location where the session took place, and any pertinent facts regarding the negotiations that occurred in that session.
- (e) Representatives of the governing body shall advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city, county, city and county, or special district representatives participating in negotiations regarding any contract.
- (f) Each governing body member and staff members of governing body offices shall disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.
- (g) A final governing body determination regarding approval of any contract shall be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.

The Matrix Consulting Group was requested pursuant to its agreement with the City of Costa Mesa to serve as an unbiased independent auditor to review the cost of the proposed contract, prepare a report on the cost of the contract and provide a report to the City. The report was to include the following:

- A recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to the terms and conditions of the contract.

The following section summarizes the key findings of the overall assessment of this RFP and the response received. Documents utilized in conducting this review include the following:

- Engagement of Services Letter dated March 26, 2018 from Keller/Anderle LLP to Tom Hatch, the Costa Mesa City Manager.
- Costa Mesa bidding exception ordinance,

Additionally, independent research was conducted, as needed, to issue this report.

## **2. SUMMARY OF PROPOSED ATTORNEY CONTRACT AND EXPENDITURES FOR LEGAL SERVICES**

This section summarizes the key provisions of the executed agreement between the City of Costa Mesa and Keller/Anderle LLP to provide legal services related to the *Yellowstone Women’s First Step House, Inc., et al. v. City of Costa Mesa*.

## 1. SUMMARY OF AGREEMENT.

The City of Costa Mesa has requested that Keller/Anderle LLP provide legal counsel to the City on the case known as *Yellowstone Women’s First Step House, Inc. et al. v. City of Costa Mesa*. The engagement letter indicates that services may be either to assist the City’s Attorney (Jones & Mayer) in the defense of this case or to take over the defense completely. The engagement letter was fully executed by all parties in March 2018.

The key points outlined in the engagement letter include:

- The City has requested Keller/Anderle LLP, and Jennifer Keller to serve as lead counsel to defend the City in the lawsuit, up to and through a final resolution, that may include a jury trial.
- The calendar term for services to be provided in defending the City is unknown and cannot be determined due to the nature of legal proceedings.
- Rates are established at the following levels:
  - Jennifer L. Keller - \$925 / hour;
  - Attorneys with 20+ years’ of experience - \$775 / hour;
  - Attorneys with 10+ years’ of experience - \$675 / hour;
  - Attorneys with 5 – 9 years’ of experience - \$475 / hour;
  - Attorneys with 0 to 4 years’ of experience - \$400 / hour;
  - Certified Legal Assistants and Paralegals - \$250 / hour.
- Rates are subject to change on 30 days’ written notice to the City. If the City does not agree to the rate increase, Keller/Anderle LLP has the right to withdraw as counsel.
- The contract is open-ended with no set timeframe or contract expenditure limitations. A prior engagement letter, entered into earlier in March, limited expenditures to \$50,000 inclusive of expenses with the City taking action to modify the cap.
- The City agrees to pay all expenses incurred on the City’s behalf and for certain in-house administrative services provided by Keller/Anderle LLP. Expenses

include but are not limited to: court filing fees, filing and recording fees, experts retained on the City's behalf, and other general litigation costs.

- Either party may terminate the engagement at any time and any fees for services or expenses incurred through the date of termination will be paid by the City.

### 3. COST ANALYSIS OF THE KELLER/ANDERLE LLP AGREEMENT.

The engagement letter was developed without having gone through a formal bidding process. This is allowable as attorney services are excluded from the requirement for bidding by the City of Costa Mesa Code of Ordinances, as outlined in Section 2-165 which in section 2-165 (b) (4) exempts from the bidding requirement the following services: "Professional services contracts for accountants, **attorneys**, architects, engineers, surveyors, and construction managers subject to section 4526 through 4529.5 and 37103 of the Government Code." (emphasis added). Section 37103 of the Government Code states that a "a legislative body may contract with any specially trained and experience person, firm, or corporation for special services and advice in financial, economic, accounting, engineering, **legal**, or administrative matters. It may pay such compensation to these experts as it deems proper." (emphasis added). Since no formal bidding process was conducted, no data was available to evaluate reasonableness of the proposed rates based upon competitive market conditions.

#### 1. ESTIMATED COST IMPACT OF EXECUTED CONTRACT.

The engagement letter dated March 26, 2018 is open-ended and has no limitation on total expenditures. Billing will be entirely dependent upon the services provided to the City and expenses incurred in defending the City in the specific legal matter. The prior engagement letter specifically limited expenditures to a maximum of \$50,000 inclusive of expenses unless the City lifts the cap. This limit is outlined in Section 2 of the March 21 engagement letter. Therefore, the direct cost impact of this contract is limited to \$50,000 without further action of the City. The cap was lifted by the City on May 1, 2018 to \$249,000.

However, it is anticipated that the engagement costs will significantly exceed this level and may fall in the \$1.2 to \$1.4 million range covering all fees and expenses up to and through a trial on this matter.

### 4. FINDINGS AND CONCLUSIONS.

The following findings and conclusions were developed regarding the fiscal impact of the open-ended engagement letter reviewed.

- The specific expenditure levels to be incurred under this agreement cannot be determined. They will be entirely dependent upon the course the legal matter takes, the level and types of services provide and actual expenses incurred.
- The engagement letter provides for increases of hourly rates with 30 days' notice. This provision would have a direct impact on expenditure levels if exercised but cannot a specific cost cannot be calculated.
- The proposed rates for attorneys are clearly delineated in the agreement. No judgement can be made on the appropriateness of these fees as legal services are procured based upon the desire to retain specific experience and skill sets and no standard market rate exists.
- All expense costs, including expert witnesses, recording and court fees, and other administrative expenses, will be borne by the City. No estimate can be made of the total expected cost of expenses under this contract.
- The current estimate provided by the City for the defense of this lawsuit under this agreement is a range of approximately \$1.2 to \$1.4 million.