



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: September 4, 2018

Agenda Item 9-D
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Finance and Administration
Prepared By: Erik Sund, Assistant City Manager

Subject: *CITY ATTORNEY SERVICES AMENDED RETAINER FEE*

Fiscal Impact: Yes. Adequate funds are provided in the FY 2018-19 budget. Funds for subsequent fiscal years will be subject to approval through the annual budgeting process.

Summary: Staff recommends that the City Council approve a retainer fee amendment to the agreement with Best Best & Krieger for City Attorney Services.

**Background/
Discussion:**

At the City Council's February 17, 2015 meeting, the City Council approved a contract for Best Best & Krieger for City Attorney Services.

The City in 2014 conducted a RFP and received twenty (20) proposals on October 8, 2014. Subsequently, at the October 21, 2014 City Council meeting, the City Council appointed two Council members to serve on a proposal review committee. After this committee conducted extensive proposal evaluations and interviews, the committee recommended three (3) firms to be interviewed by the entire City Council at its January 20, 2014 meeting.

The City has been with Best Best & Krieger for over three years and have had an opportunity to review costs, services and work flow on all facets of legal services. When the original contract was awarded the compensation structure for general counsel services, Best Best & Krieger proposed a retainer of \$10,000 per month for up to 55 hours. Beyond the 55 hours per month, Best Best & Krieger proposed a rate of \$250 per hour for all attorneys and \$130 for paralegals. It is important to note, pursuant to the executed contract a cost of living adjustment is applied to the hourly fees. On July 1, 2017 and each July 1st thereafter, all hourly rates and amounts charged hereunder will be increased for the change in the cost of living for the prior calendar year, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the Los Angeles-Riverside-Orange Counties area. As of July 1, 2018, the current hourly rates have been updated based on the cost of living clause, reference Attachment II.

For the last three fiscal years the City has incurred the following in retainer and general counsel fees:

Fiscal Year 2015-16	Fiscal Year 2016-17	Fiscal Year 2017-18
\$ 752,166.23	\$ 566,049.91	\$ 666,784.59

As an on-going process, the City reviews costs and looks at opportunities to save money without forgoing required services. In the case of legal services, Best Best and Krieger has proposed the following fixed fee retainer rate of \$37,500 per month for a total of \$450,000 per fiscal year for work by all professionals. Some of the specific terms are as follows:

- A fixed fee retainer at a number that is 66% of the three-year average¹ of core general counsel² fees in the interest of greater budgetary predictability and an overall reduction in legal costs;
- A set-aside, discounted budget of hours for PRA work (25 hours per month)³;
- An non-retainer general counsel hourly rate on matters with more erratic coverage that are only periodic or seasonal (e.g., non-template contract review, General Plan and Housing Element Updates, non-litigation TCA, LUP work, etc.);
- Special counsel hourly fees as proposed for special services;⁴
- Applicant-reimbursable fees as proposed (published private rate schedule);
- Continued Annual CPI adjustment of compensation amounts (except applicant-initiated, reimbursable work tied to our published private rate schedule); and
- Contingent fee agreement for the TCA litigation work remains intact.⁵

Recommended Action:

STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute the attached amendment to the contract effective July 1, 2018 with the law firm of Best Best & Krieger for City Attorney services.

- Attachments:**
1. City Attorney Amended Contract
 2. 2017-18 CPI Rate Increase

Notifications: None.

¹ FY 2015-16 through FY 2017-18.
² Traditional general counsel work performed under our general (.1100) matters.
³ With a re-opener for PRA work at the end of 2018-19.
⁴ Litigation, CEQA and environmental law, labor and employment, public finance, etc. as before.
⁵ Currently BB&K carries approximately \$300,000 in fees in that matter.

SECOND AMENDED AND RESTATED PROFESSIONAL SERVICES
AGREEMENT FOR CITY ATTORNEY SERVICES

This SECOND AMENDED AND RESTATED LEGAL SERVICES AGREEMENT (the "Second Amendment") is made and entered into by and between the City of San Clemente, a municipal corporation (hereinafter "CITY"), and the law firm of Best Best & Krieger LLP (hereinafter "BB&K") and shall be dated as of July 1, 2018 (the "Effective Date").

RECITALS:

A. Agreement. On March 1, 2015, CITY and BB&K entered into a Professional Services Agreement for City Attorney Services ("Agreement") under which BB&K serves as City Attorney of the City of San Clemente.

B. First Amendment. On February 20, 2018 CITY and BBK entered into a First Amendment to the Agreement in order to set forth the terms of BB&K's representation of the City on a contingent fee basis in Case No. 30-2017-00934703-CU-PT-CXC (related with Case No. 30-2017-00934717 (the "TCA Matter").

C. Second Amendment. CITY and BB&K now desire to amend and restate the Agreement to include additional language relating to contingent fee work and to revise terms related to compensation to provide greater efficiency and greater budgetary predictability for legal services.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and BB&K agree as follows:

ARTICLE 1
RESPONSIBILITIES OF BB&K

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect on a month to month basis, unless terminated by either party hereto pursuant to Article 6 of this Agreement.

1.2 Scope of Services.

BB&K shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, BB&K warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. BB&K acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and

BB&K shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, BB&K shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to BB&K of a fully executed copy hereof, BB&K shall promptly commence performance of the work. Until such time, BB&K is not authorized to perform and will not be paid for performing any work under this Agreement. BB&K shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY in a timely fashion.

1.4 Identity of Persons Performing Work.

BB&K represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Scott C. Smith shall serve as the City Attorney of CITY. Matthew "Mal" Richardson is designated as the Assistant City Attorney who shall provide services to the City in the absence of the City Attorney as well as provide legal advice and counsel to the Planning Commission. BB&K shall not replace any of these principal members of the Project team, or any successors to any of such persons, without City Council prior written approval; however, such approval shall not require amendment to this Agreement.

BB&K represents that the tasks and services required hereunder will be performed by BB&K or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, BB&K shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of BB&K and BB&K's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of BB&K and BB&K's employees. Neither this Agreement nor any interest therein may be assigned by BB&K, except upon written consent of CITY.

Furthermore, BB&K shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY. Nothing herein contained is intended to or shall be construed as preventing BB&K from employing or hiring as many employees as BB&K may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work with CITY.

BB&K shall work closely with CITY's City Council in coordination with the CITY's City Manager who shall have the principal responsibility for liaison with BB&K.

1.6 Compliance With Laws.

BB&K shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. BB&K shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to BB&K in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. BB&K shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, BB&K has furnished to CITY proof that BB&K and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

BB&K acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, BB&K's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. BB&K represents to CITY that BB&K holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. BB&K shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with BB&K to review BB&K's work and resolve matters of concern; and/or (ii) require BB&K to repeat unsatisfactory work at no additional charge until it is satisfactory.

During the third quarter of each fiscal year, beginning in FY 2015-16, BB&K shall prepare for the City Council's consideration (1) a summary of work performed by BB&K in furtherance of that year's goals and initiatives for the City Attorney, (2) a summary and narrative of proposed City Attorney's goals and initiatives for the coming fiscal year, (3) a written evaluation form substantially in the form attached hereto as Exhibit "B" tailored for that year's activities for Council's use to evaluate the City Attorney's performance for that fiscal year, and (4) a closed session description for Council to employ, in its discretion, for an oral evaluation of the City Attorney's services, including input and approval for the City Attorney's goals and initiatives.

1.8 BB&K Ethics.

BB&K represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. BB&K shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to BB&K pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) BB&K shall not possess or maintain any business relationship with the applicant or any other person or entity which BB&K knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this

Agreement BB&K shall not advocate either for or against said project and/or application, and (iii) BB&K shall immediately notify CITY in the event BB&K determines that BB&K has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of BB&K's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Conflict of Interest.

BB&K certifies by executing this Agreement that, on the Effective Date and for the duration of this Agreement, neither BB&K nor its employees assigned to perform services hereunder shall have any conflict of interest, as defined under the California Rules of Professional Conduct, between the interests of the CITY covered hereunder and the interests of any other BB&K client, except as waived by the informed written consent of the CITY.

1.10 Hiring of Illegal Aliens Prohibited.

BB&K shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to BB&K, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by BB&K of the tasks and services set forth herein.

2.2 Cooperation With BB&K.

CITY shall cooperate with BB&K in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by BB&K, shall consult with BB&K regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
COMPENSATION

3.1 Compensation.

CITY shall compensate BB&K for the performance of services under this Agreement at the hourly rates designated in Exhibit "C" to this Agreement. BB&K shall be entitled to reimbursement for all reasonable and necessary expenses incurred by BB&K in the performance of legal services in accordance with Exhibit "C".

3.2 Payment Schedule: Maximum Payment Amount.

Prior to the twentieth (20th) day of the month, BB&K shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from BB&K, CITY shall determine whether and to what extent BB&K has adequately performed the services for which payment is sought. If CITY determines that BB&K has not adequately performed such services, CITY shall inform BB&K of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the CITY to withhold payment in the event BB&K's insurance expires during the term of this Agreement, CITY shall cause payment to be made to BB&K within fifteen (15) working days from CITY's determination that BB&K has adequately performed those services for which CITY has been invoiced.

ARTICLE 4 INDEPENDENT CONTRACTOR

BB&K is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the BB&K or any of BB&K's employees, except as herein set forth, and BB&K expressly warrants not to, at any time or in any manner, represent that BB&K, or any of BB&K's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that BB&K is and shall at all times remain as to the CITY a wholly independent contractor and that BB&K's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5 INDEMNITY AND INSURANCE

5.1 Indemnification.

BB&K shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of BB&K or BB&K's officers, agents, employees, representatives, or subcontractors (collectively, the "BB&K ENTITIES"), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) that are caused by the negligent act or failure to act of BB&K, any of the BB&K ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

5.2 Insurance.

Prior to the CITY's execution of this Agreement, and as a condition to the effectiveness hereof, BB&K has submitted certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and BB&K shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover BB&K's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by

CITY, BB&K shall file with CITY the attached signed Worker's Compensation Insurance Certification. BB&K shall require all subcontractors similarly to provide such compensation insurance for the respective employees. Neither the CITY, the San Clemente Redevelopment Agency, nor any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of BB&K to comply with this paragraph.

B. Commercial General Liability, personal injury and property damage liability, contractual liability and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. (\$2,000,000 Aggregate does not apply to automobile liability.) Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of CITY's Risk Manager. Each such policy of insurance shall be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety;

C. Professional Liability: Professional Liability insurance with minimum limits of \$1,000,000 from and insurance company admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A.VIII by A.M. Best Company. Covered professional services shall specifically include all work to be performed under the Agreement.

All insurance provided hereunder shall:

A. Name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming including such additional insureds;

B. Specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;

C. Contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation";

D. Cover the operations of BB&K pursuant to the terms of this Agreement; and (this might pertain more accurately to the professional liability coverage); and

E. Be written on an occurrence and not a claims made basis.

Notwithstanding anything herein to the contrary, in the event any of BB&K's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY may withhold any payment due to BB&K hereunder until such time as BB&K obtains replacement

insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

BB&K shall require all of its subcontractors to procure and maintain during the course of their subcontract work with BB&K insurance that complies with the foregoing minimum insurance requirements. BB&K shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6 TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to BB&K. In such event, BB&K shall be compensated for all services performed and costs incurred up to the date of notification for which BB&K has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for. Upon receipt of notice of termination from CITY, BB&K shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by BB&K in the performance of this Agreement, whether completed or in process.

ARTICLE 7 MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by BB&K or furnished to BB&K in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by BB&K, but shall not be made available by BB&K to any individual or organization without the prior written approval of CITY. Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from BB&K will be at CITY's sole risk and without liability or legal exposure to BB&K.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed as follows:

CITY:

City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
Attention: City Manager

BB&K:

55452.0110030673027.6

9-4-18 / 9D-9

Best Best & Krieger LLP
18101 Von Karman
Suite 1000
Irvine, California 92612
Attention: Scott C. Smith, Partner

7.3 Covenant Against Contingent Fees.

BB&K warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement without written authorization from CITY. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and BB&K agrees to submit to the personal jurisdiction of such court.

7.5 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.6 Retention of Funds.

CITY may withhold from any monies payable to BB&K sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of BB&K in the performance of the services required by this Agreement.

7.7 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by BB&K shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by BB&K. Any waiver by either party of any default must be in writing.

7.8 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.9 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.10 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.11 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives as follows:

CITY OF SAN CLEMENTE

By: _____
Tim Brown, Mayor

ATTEST:

BEST BEST & KRIEGER LLP

By: _____
Scott C. Smith, Partner

EXHIBIT "A"
SCOPE OF SERVICES

BB&K shall perform the legal services necessary to serve CITY which shall include, but are not limited to, the following:

Retainer General Counsel Services, which include:

- Advise the City Council, City Boards and Commissions, and all City officials on legal matters pertaining to municipal government, including the Brown Act and parliamentary procedures for running meetings.
- Attendance at all regular City Council and Planning Commission meetings (unless excused) and other meetings as requested.
- Coordinate and manage the services and costs of all outside legal counsel within budgetary limits as approved by the City Council.
- On a monthly basis, provide a written status report of assigned projects, requests, and litigation in order to keep the City Council informed of important legal issues and to facilitate the City Council's periodic evaluation of the City Attorney.
- Provide legal advice to staff upon request of the City Manager.
- Prepare and/or review all ordinances, resolutions, municipal contracts, joint powers agreements, and other agreements and contracts entered into by the City.
- Research and submit legal opinions on municipal or other legal matters as requested by the City Council or City Manager.
- Alert the City in a timely manner on new State or Federal legislation or judicial decisions that may impact the City and propose appropriate action(s) to assure compliance.
- Provide legal work pertaining to land use issues including but not limited to property acquisitions, property disposals, public improvements, easements, dedications and right-of-way vacations.
- Enforce City codes, zoning regulations, and building standards through administrative and judicial actions.
- Attend staff meetings at the request of the City Manager (currently held bi-monthly).
- Provide designated office hours or times of availability at City Hall as requested by the City.
- Communicate with the press, when authorized to do so, regarding City legal matters.
- Promptly response to calls, e-mails, and correspondence from the City Council and staff.
- Review current documents, policies, and forms to ensure compliance to current laws.
- Prepare agenda reports originating with the City Attorney's Office and up to two hours review of reports originating in other departments.

Non-Retainer General Counsel Services, which include:

- Attendance at special meetings of the City Council and Planning Commission meetings and meetings of other Boards, Committees, and Commissions as requested
- Review of agenda reports originating in other departments in excess of two hours (upon notification to City Manager's office or department head)
- Review and assistance with Public Records Act requests
- General Plan and Housing Element Updates and Local Coastal Program
- Non-litigation work involving the Transportation Corridor Agencies, Orange County Fire Authority, and other multi-jurisdictional agencies

Special Counsel Services, which include:

- Litigation and formal administrative or other adjudicatory hearing matters falling under the Ralph M. Brown Act's definition of "pending litigation"
- Labor relations and employment matters, which include providing guidance on personnel matters, including policy and procedures affecting employees
- Non-routine real estate matters
- Land acquisition and disposal matters
- Successor Agency and housing matters
- Taxes, fees and charges matters
- Public construction disputes
- Non-routine contract negotiation matters
- Non-routine land use and development matters
- Environmental matters, which include assisting in the preparation of Environmental Impact Reports and compliance with the California Environmental Quality Act (CEQA)
- Water law matters
- Tax and ERISA related matters
- Toxic substances matters
- Complex public utility matters
- Advocacy matters
- Other matters mutually agreed upon.

EXHIBIT "B"
SAMPLE EVALUATION FORM

City of San Clemente

CITY ATTORNEY EVALUATION QUESTIONNAIRE

I. Please evaluate our performance in the following areas on a scale of 1 (unsatisfactory) to 10 (very satisfactory) as they relate to our provision of legal services (n/o for not observed) for the contract period of March 1, 2017 to February 28, 2018.

		<u>Unsatisfactory</u>					<u>Very Satisfactory</u>					
A.	Overall Quality	n/o	1	2	3	4	5	6	7	8	9	10
B.	Responsiveness	n/o	1	2	3	4	5	6	7	8	9	10
C.	Written Communication	n/o	1	2	3	4	5	6	7	8	9	10
D.	Returning Phone Calls	n/o	1	2	3	4	5	6	7	8	9	10
E.	Professional Objectivity	n/o	1	2	3	4	5	6	7	8	9	10
F.	Specialists	n/o	1	2	3	4	5	6	7	8	9	10
G.	Closed Session Presentation	n/o	1	2	3	4	5	6	7	8	9	10
H.	Partner/Associate Ratio	n/o	1	2	3	4	5	6	7	8	9	10
I.	Overall Fees	n/o	1	2	3	4	5	6	7	8	9	10
J.	Billing Rates	n/o	1	2	3	4	5	6	7	8	9	10
K.	Experience	n/o	1	2	3	4	5	6	7	8	9	10
L.	Integrity/Ethical Standards	n/o	1	2	3	4	5	6	7	8	9	10
M.	Dept. Support/Teamwork	n/o	1	2	3	4	5	6	7	8	9	10
N.	E-bulletins and legal updates	n/o	1	2	3	4	5	6	7	8	9	10
O.	Participation in community	n/o	1	2	3	4	5	6	7	8	9	10
P.	Interface with stakeholders	n/o	1	2	3	4	5	6	7	8	9	10

Comments on General Services:

II. Please rate the City Attorney's provision of legal services in the following areas on a scale of 1 (unsatisfactory) to 10 (very satisfactory) as they relate to our services in the City (n/o for not observed):¹

		<u>Unsatisfactory</u>					<u>Very Satisfactory</u>					
A.	General Services/overall	n/o	1	2	3	4	5	6	7	8	9	10
	1. General Counsel	n/o	1	2	3	4	5	6	7	8	9	10
	2. Public Records Act	n/o	1	2	3	4	5	6	7	8	9	10
	3. Political Reform Act	n/o	1	2	3	4	5	6	7	8	9	10
	4. Meeting Coverage	n/o	1	2	3	4	5	6	7	8	9	10
	5. Litigation	n/o	1	2	3	4	5	6	7	8	9	10
	6. Code Enforcement	n/o	1	2	3	4	5	6	7	8	9	10
B.	Employment Law	n/o	1	2	3	4	5	6	7	8	9	10
C.	Planning Services/overall	n/o	1	2	3	4	5	6	7	8	9	10
	1. General Plan	n/o	1	2	3	4	5	6	7	8	9	10
	2. Local Coastal Plan	n/o	1	2	3	4	5	6	7	8	9	10
	3. Sober Living Enmnts.	n/o	1	2	3	4	5	6	7	8	9	10
	4. Short-Term Lodging Units	n/o	1	2	3	4	5	6	7	8	9	10
	5. Housing Element	n/o	1	2	3	4	5	6	7	8	9	10
	6. Camping Ordinance	n/o	1	2	3	4	5	6	7	8	9	10
D.	Environmental/Water Quality	n/o	1	2	3	4	5	6	7	8	9	10
	1. Water Rates	n/o	1	2	3	4	5	6	7	8	9	10
	2. CEQA	n/o	1	2	3	4	5	6	7	8	9	10
E.	Litigation	n/o	1	2	3	4	5	6	7	8	9	10
	1. Memorial Health Services	n/o	1	2	3	4	5	6	7	8	9	10
	2. Dual Diagnosis/Sovereign	n/o	1	2	3	4	5	6	7	8	9	10
	3. Capo Shores	n/o	1	2	3	4	5	6	7	8	9	10
	4. Emergency Shelter Coalition (SB2)	n/o	1	2	3	4	5	6	7	8	9	10

¹ The test here is obviously not re the quality of the experience, but how we service the City in connection with these matters.

5. Vacation Rental Alliance n/o 1 2 3 4 5 6 7 8 9 10
6. TCA Related n/o 1 2 3 4 5 6 7 8 9 10

Comments on Specific Services:

III. Best Best & Krieger's legal fees for general services are:

- Reasonable, About As Expected
- High In Comparison to Expectations
- Low In Comparison to Expectations
- No Opinion

IV. Best Best & Krieger's legal fees for litigation are:

- Reasonable, About As Expected
- High In Comparison to Expectations
- Low In Comparison to Expectations
- No Opinion

IV. Has the delegation of tasks to attorneys other than Scott Smith for purposes of efficiency been consistent with your expectation?

- Yes
- No (too much delegation to specialists)
- No (you'd prefer more direct contact with specialists)

V. Generally, how effectively does Best Best & Krieger staff your matters?

- Too Little Time or Attention
- Too Much Time or Attention
- Appropriately Staffed

VI. Where feasible, are there responsibilities you would like to see shifted from Best Best & Krieger attorneys to City staff?

- Yes (Please Describe) _____
- No

VII. Would you recommend using Best Best & Krieger to others?

_____ Yes _____ For Only Certain Matters
(Please Comment) _____

_____ No _____

VIII. Have you recommended using Best Best & Krieger to others?

_____ Yes _____ No

IX. Please list matters where you would like to be provided more information or communication about strategies, risks, and pros/cons, or costs of services:

X. Of the litigation measures mentioned above, list anywhere BB&K could do a better job of offering the Council more options for settlement or negotiation:

XI. In addition to the criteria within this evaluation is there anything in particular you would like the City Attorney to focus on during this year, to become 2017-2018 initiative?

EXHIBIT "C"
COMPENSATION

CITY shall pay BB&K for the services described in Exhibit "A" in accordance with the following schedule, subject to the City's Guidelines for Billing attached hereto as Attachment "C-2":

For **General Counsel Services**, as defined in Exhibit "A", CITY shall pay BB&K a fixed rate of \$37,500 per month for a total of \$450,000 per fiscal year for work by all professionals.

For **Non-Retainer General Counsel Services as defined in Exhibit "A"** CITY shall pay BB&K \$250 per hour for all attorneys and \$150 per hour for municipal analysts (individuals with university degrees supportive of municipal law representation), paralegals, and law clerks, except that the City shall pay \$5,000 monthly for the first 25 hours of all professionals providing review and assistance with Public Record Act requests. (This fixed amount shall be revisited on June 30, 2019.)

For **Special Counsel Services**, as defined in Exhibit "A", CITY shall pay BB&K \$315 per hour for all attorneys and \$160 per hour for municipal analysts, paralegals, and law clerks. Public Finance Legal Services may be provided at rates set by amendment to this Agreement.

Costs. BB&K will not charge for routine travel to or from the City to attend City Council meetings, office hours, planning commission, or staff meetings. BB&K will not charge separately for administrative, routine word processing, secretarial and office costs (including telephone and fax charges) associated with the provision of these services. 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 and current actual cost, including but are not limited to, automobile mileage at the authorized IRS rate, actual expenses away from our office on City business, photocopy charges at \$0.17/page, and any costs of producing or reproducing photographs, documents and other items necessary for legal representation.

Applicant-Initiated Reimbursable Services. Legal services provided to the City for which the City receives reimbursement (i.e., from a developer or other third party), would be billed at BB&K's then-current published standard private client rates.

Cost of Living Adjustment. On July 1, 2019 and each July 1st thereafter, all hourly rates and amounts charged hereunder will be increased for the change in the cost of living for the prior calendar year, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the Los Angeles-Riverside-Orange Counties area.

Contingent Fee Arrangements. As hourly rates for these matters, subject to certain provisions of California Law and adjustments specific to each matter, the services will be billed as Applicant-Initiated Reimbursable Services, at BB&K's then-current published standard private client rates. The City's attorney's fees for this matter will be billed monthly pursuant to Section 3.2 of this Agreement. However, payment of the City's fees will be deferred until the conclusion of the action or the termination of our attorney-client relationship, if our relationship is terminated before the action is concluded. Payment for all costs incurred in the receivership action will not be deferred and must be paid on a monthly basis as set forth in Section 3.2.

EXHIBIT "C-1"
CONTINGENT FEE ARRANGEMENT FOR TCA MATTER

The fee arrangement set forth in this Exhibit C-1 shall apply to Case No. 30-2017-00934703-CU-PT-CXC (related with Case No. 30-2017-00934717), a First Amended Petition for Peremptory Writ of Mandate and Complaint for declaratory and injunctive Relief (California Environmental Quality Act; Code of Civ. Proc. §§ 1060, 1085, and 1094.5; Pub. Res. Code §§ 21168 and 21168.5 (the "TCA Matter") which involves challenging the settlement agreement and related "protective agreement" executed by, among other parties, the Foothill/Eastern Transportation Corridor Agency ("TCA") and other respondents in the TCA Matter.

As hourly rates for this matter, and subject to the adjustments below, the services will be billed as Applicant-Initiated Reimbursable Services, at BB&K's then-current published standard private client rates. The City's attorney's fees for this matter will be billed monthly pursuant to Section 3.2 of this Agreement. However, payment of the City's fees will be deferred until the conclusion of the action or the termination of our attorney-client relationship, if our relationship is terminated before the action is concluded. Payment for all costs incurred in the receivership action will not be deferred and must be paid on a monthly basis as set forth in Section 3.2.

Some provisions of California law under which this action is brought provide for the recovery of the City's attorney's fees in prosecuting the action under a "private attorney general" theory. These fees are generally recovered at the end of the action in one of two ways: (1) through a motion for attorney's fees filed on behalf of the City; or (2) through a settlement negotiated with a defendant or defendants. This award may contain a "load star" premium awarded to reimburse attorneys who shouldered the risks of bringing the case.

Full recovery of attorney's fees can never be guaranteed. Accordingly, the City will pay BB&K for up to \$90,000 at the applicable City's discounted public agency Special Counsel Services rate (as provided in Exhibit "C") for fees billed to the City which are not recovered in this action (the "Guaranteed Fees"). The City will not be responsible for paying any amount in excess of the Guaranteed Fees.

In the event the City prevails in the TCA Matter, the City agrees that BB&K may seek recovery from the Court for time billed in connection with the litigation at the City's Applicant-Initiated Reimbursable Rate. Attorney's fees awarded by the Court shall be applied first to BB&K to defray the Guaranteed Fees otherwise payable by the City to BB&K, then to BB&K. Costs awarded by the Court shall be paid to the City.

ATTACHMENT "C-2"
GUIDELINES FOR BILLING

The following guidelines for billing apply to the provision of services under this Agreement:

1. The City expects each individual working on the Matter to have the necessary experience to perform the Services required to protect or pursue the City's interests in the Matter in a cost effective manner.
2. The City expects BB&K to select the individual most suitable for the task required and the specific needs of the Matter, and to use the maximum efficiencies available. Billings for services performed by the inappropriate level of personnel will be reduced by the City based on rate adjustments for the appropriate level of personnel.
3. The City will not pay for unnecessary review of texts, codes, rules of court, or other fundamental references. The City will pay the hourly rate for specific legal research which is unique to the Matter, assuming that BB&K has used maximum efficiencies and that BB&K has not already performed research in the same or similar areas of law.
4. The City acknowledges the benefit of communications between attorneys in the firm. The City does, however, expect that intra-office conferences will only be held as needed, and will be kept to a minimum. Intra-office conferences shall be for the purpose of discussing strategy and legal issues which directly further the Matter. The City will not pay for conferences which are supervisory or instructional (including conferences regarding case management). Any invoice which lists an intra-office conference that exceeds these guidelines must contain a full explanation and is subject to reduction by the City. The City will not pay for "team meetings," except for debriefing from City Council, Commission, and staff meetings and assignments made pursuant thereto, and the City will scrutinize all intra-office conferences for "value added" to the Matter by the intra-office conference, for the number of individuals attending the intra-office conference, the length of the conference, the subject(s) discussed at the conference and who participated in it and will, in the City's sole discretion, determine if such value was added.
5. The City will not pay for local telephone calls; incoming facsimiles; postage; time spent on filing, calendaring, indexing pleadings, and photocopying; conferences with Clerks of Court or court reporters; proofreading; re-drafting due to substandard work; time billed by summer associates, except as approved by the City Manager; time for more than one individual at a trial, hearing, court appearance, arbitration, mediation, deposition, third party meeting, conference call or similar event (unless approved in advance by the City); opening, closing or organizing files; or other similar tasks.
6. Vague billing which does not contain sufficient information to allow the City's reviewer of the invoice to determine the nature of the task, the reason for the task and the individual performing the task is subject to reduction by the City. Examples of vague billing include but are not limited to the following: Attention to Matter, Review cases and issues, Conference, Review correspondence, Arrangements, Telephone call, Discovery, Trial Preparation, Meeting, Update strategy, Motion work, Work on case or project, Pleadings, Work on file or discovery, Prepare for "xxx", Review documents, Legal Research or analysis.
7. All services billed by attorneys and paralegals must be actual legal services requiring the expertise of a legal provider. The City will not pay for more than eight (8) hours of Services per day

without a detailed explanation of the need for time over eight hours and may reduce the invoice if the explanation is unsatisfactory, in the City's sole discretion.

8. The City will reimburse for facsimiles sent but not received by BB&K and photocopies made at a rate not to exceed \$.17 per page, but not multiple copies for use by BB&K; the number of pages of facsimiles and to whom they were sent, and the number of pages or photocopies made must appear on the invoice. BB&K shall limit the making of photocopies and the sending of facsimiles. The City will reimburse actual costs for computerized legal research if it is reasonable and necessary; however, these charges are subject to review by the City.

9. The City will not reimburse for overtime, word processing (document production), supplies, anything identified on an invoice as "miscellaneous", or any other unidentified charges.

10. BB&K shall normally use the U.S. Mail and regular attorney services to send and to file papers and other materials. The City reserves the right to reduce excessive charges for messengers and Federal Express or other similar services which are not fully explained or which are not necessary, in the City's determination.



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April 11, 2018

City of San Clemente
Attn: City Manager
100 Avenida Presidio
San Clemente, CA 92672

Re: Annual Notice of Automatic Increase in Legal Services Rates based upon CPI

Dear Valued Best Best & Krieger LLP Client,

In accordance with our current agreement, the hourly rates are to adjust on July 1st of each year, in accordance with the All Urban Consumer Price Index, Los Angeles-Riverside-Orange County, CA, most recent 12-month period published. The Index has increased by 2.8%, therefore, the hourly rates will be:

Monthly Fee Retainer: \$10,475.00 (55 hours)

<u>General Counsel Services</u>	<u>Rate/Hr.</u>	<u>Special Counsel Services</u>	<u>Rate/Hr.</u>
All Attorneys	\$ 262.00	All Attorneys	\$ 315.00
Para-Professional	\$ 188.00	Para-Professional	\$ 230.00
Paralegal / Research Asst./ Clerk / Admin. Asst.	\$ 136.00	Paralegal / Research Asst./ Clerk / Admin. Asst.	\$ 152.00

These rates will adjust automatically on July 1, 2018.

Best Best & Krieger sincerely appreciates your continuing loyalty and the choice of our firm for your legal services. If you have any questions about this or any of our billing policies, please contact your BB&K attorney, Scott Smith.

Sincerely,

William Hendertilo
Assistant Billing Manager
for BEST BEST & KRIEGER LLP