



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 3/27/2023

Agenda Item: 2.

Department: City Manager
Prepared By Andy Hall, City Manager

Subject:
APPROVAL OF SPECIAL COUNSEL SERVICES AGREEMENT WITH BEST, BEST, AND KRIEGER (BB&K) FOR TRANSITIONAL CITY ATTORNEY SERVICES

Summary:

On March 21, 2023, City Council approved the appointment of Burke, Williams, and Sorensen to provide City Attorney Services for the City of San Clemente. Best, Best, and Krieger (BB&K) has expressed their willingness to work closely with Burke, Williams and Sorensen during the necessary transition period and has provided a proposal for special counsel services to the City during the transition.

Discussion:

The approval of a new City Attorney necessitates a transition period to allow BB&K to familiarize the incoming City Attorney about key legal issues in the City. At the March 21, 2023 City Council meeting, the City Manager was authorized to present a long term transition plan between Burke, Williams, and Sorensen and BB&K to address the more complex legal items.

The Special Counsel Services Agreement with BB&K will allow for a seamless transition of City Attorney services for the more complex legal items. The contract for transitional legal services is attached, and the compensation for the hourly services include:

Special Counsel Services hourly rates:

- Partners and Of Counsel \$380.00
- Associates, Directors of Govt. Affairs (if utilized) \$335.00
- Paralegals, Law Clerks, Analysts, Pension Consultants (if utilized) \$185.00

These costs will be monitored closely by the City Manager for cost containment purposes and reported to the City Council on a regular basis.

Council Options:

- Approve the Special Counsel Services Agreement with BB&K to provide special counsel services for the City of San Clemente effective March 27, 2023.
- Modify and approve the Special Counsel Services Agreement.
- Continue the Item with direction to staff to provide additional information.
- Deny the Special Counsel Services Agreement.

Fiscal Impact:

The costs associated with Legal Services are accounted for in the adopted municipal budget and no additional funding is anticipated.

Recommended Actions:

Staff Recommendation

Approve, and authorize the City Manager to execute, Contract No. C23-15, a Special Counsel Services Agreement, by and between the City of San Clemente and Best, Best & Krieger, providing for special counsel services for the City of San Clemente, effective March 27, 2023.

Attachment:

Special Counsel Services Agreement with Best, Best, and Krieger



Scott C. Smith
Partner
(949) 263-6561
scott.smith@bbklaw.com

March 22, 2023

Andy Hall
City Manager
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

Re: Engagement for Special Counsel Services

Dear Mr. Hall:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to make itself available to represent the City of San Clemente in providing transitional and specialized legal services on an as-needed basis. This letter constitutes our agreement setting the terms of our representation. If you want us to represent you and agree to the terms set forth in this letter, after you review the letter please sign it and return the signed copy to us.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing City of San Clemente. Similarly, City of San Clemente will remain in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to City of San Clemente.

YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

We provide a wide variety of specialized legal services which the City may call upon us to provide as the need arises and/or with regard to ongoing legal matters on which the City prefers our continued representation as Special Counsel. The Special Counsel areas of law currently available to the City are as follows:

- A. Litigation and formal administrative or other adjudicatory hearing matters
- B. Labor relations and employment matters

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- C. Non-routine real estate matters (e.g. CC&R's, deed or title work)
- D. Land acquisition and disposal matters (including pre-condemnation)
- E. Successor Agency and housing matters
- F. Taxes, fees and charges matters (e.g. Prop. 218 & Mitigation Fee Act)
- G. Public construction disputes
- H. Non-routine contract negotiation matters (including non-BB&K model agreements and franchise agreements)
- I. Non-routine land use and development matters (including general plan updates, Williamson Act issues, annexations and development agreements)
- J. Environmental matters (e.g. CEQA, NEPA, endangered species)
- K. Water law matters (e.g. water rights & quality)
- L. Tax and ERISA related matters
- M. Toxic substances matters (e.g. CERCLA, RCRA)
- N. Complex public utility matters (e.g. electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues)
- O. Renewable energy and energy efficiency project contracts and power purchase agreements
- P. Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level.
- Q. Non-routine election law matters, including election law litigation.
- R. PRA Policy drafting including reviewing, assessing, and updating records-related policies to reflect current legal standards and best practices.
- S. Other matters mutually agreed upon between BBK and the City Manager.

For Special Counsel Services, our hourly rates are as follows:

Partners and Of Counsel	\$380.00
Associates, Directors of Govt. Affairs (if utilized)	\$335.00
Paralegals, Law Clerks, Analysts, Pension Consultants (if utilized)	\$185.00

Beginning July 1, 2024, and every July thereafter, we will increase rates by the percentage change in the cost of living as indicated by the Bureau of Labor Consumer Price Index for the Los Angeles-Long Beach-Anaheim area, with prior written notice. In light of the volatility of the current economic climate, BB&K will agree to limit the increase to ensure it will not exceed 5%.

The billing policies are described in the memorandum attached to this letter, entitled "Best Best & Krieger LLP's Billing Policies." You should consider the Billing Policies memorandum part of this agreement as it binds both of us. For that reason, you should read it carefully.

INSURANCE

We understand that you are not now insured or have any insurance that may cover potential liability or attorneys' fees in this case. If you think you may have such insurance, please notify me immediately.

We are also pleased to let you know that Best Best & Krieger LLP carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California.

NEW MATTERS

When we are engaged by a new client on a particular matter, we are often later asked to work on additional matters. You should know that each matter will be the subject of a new signed supplement to this agreement with its individual scope. Similarly, this agreement does not cover and is not a commitment by either of us that we will undertake any appeals or collection procedures. Any such future work would also have to be agreed upon in a signed supplement.

CIVILITY IN LITIGATION

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

HOW THIS AGREEMENT MAY BE TERMINATED

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

CLIENT FILE

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

THANK YOU

On a personal note, we are pleased that you have again selected Best Best & Krieger LLP to represent you. We value our continuing relationship and appreciate the opportunity to service the City in this capacity. If you have any questions at any time about our services or billings, please do not hesitate to call me.

Andy Hall
March 22, 2023
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If this letter meets with your approval, please sign and date it, and return the original to us. Unless you sign, date and return the original by **April 15, 2023**, we will not represent you in any capacity, and we will assume that you have made other arrangements for legal representation. We have enclosed a separate signed copy of this letter for your records.

Sincerely,



Scott C. Smith
of BEST BEST & KRIEGER LLP

SCS:cg

AGREED AND ACCEPTED:

By: _____

Dated: _____

BEST BEST & KRIEGER LLP'S BILLING POLICIES

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

INVOICE AND PAYMENT OPTIONS

Best Best & Krieger strives to meet our clients' needs in terms of providing a wide variety of invoice types, delivery and payment options. Please indicate those needs including the preferred method of invoice delivery (Invoice via Email; or USPS). In addition, accounts.receivable@bbklaw.com can provide a W-9 upon request and discuss various accepted payment methods.

FEES FOR PROFESSIONAL SERVICES

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

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. All legal services are billed in one-tenth of an hour (0.10/hour) or six-minute increments. Our attorneys are currently billed at rates from \$235 to \$895 per hour, and our administrative assistants, research assistants, municipal analysts, litigation analysts, paralegals, paraprofessionals and law clerks are billed at rates from \$175 to \$300 per hour for new work. These rates reflect the ranges in both our public and our private rates. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

Non-Attorney Personnel: BBK may employ the services of non-attorney personnel under the supervision of 55452.0110041093458.3

a BBK attorney in order to perform services called for in the legal services agreement. The most common non-attorney personnel utilized are paralegals. Other types of non-attorney personnel include, but are not limited to, case clerks, litigation analysts, and specialty consultants. The client agrees that BBK may use such non-attorney personnel to perform its services when it is reasonably necessary in the judgment of the responsible BBK attorney. Hourly fees for non-attorney personnel will be charged at the rate then in effect for such personnel. A copy of BBK's current rates and titles for non-attorney personnel will be provided upon request.

FEES FOR ELECTRONICALLY STORED INFORMATION ("ESI") SUPPORT AND STORAGE

BBK provides Electronically Stored Information ("ESI") services for matters requiring ESI support – typically litigation or threatened litigation matters. BBK provides services for basic ESI processing and storage at the following rates per month based on the number of gigabytes of data ("GB") processed and stored:

1GB -250GB:	\$10 per GB
251GB - 550GB:	\$8 per GB
551GB - 750GB:	\$6 per GB
751GB - 1TB:	\$4 per GB

The amount BBK charges for basic processing and storage of ESI allows BBK to recover the costs of providing such services, plus a net profit for BBK. BBK believes that the rates it charges for processing and storage are lower than comparable services available from third party vendors in the market. If you wish to contract separately with a third party vendor for processing and storage costs, please notify BBK in writing. [OPTIONAL BBK also provides advanced ESI processing services at hourly rates for personnel in its Litigation Support Group. A copy of BBK's current rates for such services will be provided upon request.] BBK shall not incur costs for ESI support on a particular matter without first confirming by email or written correspondence with the client that the client agrees such services are necessary for the matter at hand.

FEES FOR OTHER SERVICES, COSTS AND EXPENSES

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate

per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

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

ADVANCE DEPOSIT TOWARD FEES AND COSTS

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

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

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

MONTHLY INVOICES AND PAYMENT

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

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

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account.

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

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

CHANGES IN FEE ARRANGEMENTS AND BUDGETS

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

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

BEST BEST & KRIEGER LLP