



CONSENT CALENDAR

Agenda Item # 2

AGENDA REPORT SUMMARY

Meeting Date: April 25, 2017

Subject: Approval of Contract for City Attorney Services

Prepared by: Chris Jordan, City Manager

Attachment(s):

1. Contract with Best, Best & Krieger for City Attorney Services

Initiated by:

City Council

Fiscal Impact:

Retainer of \$16,000/month, plus special counsel services at an hourly rate

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

Does the City Council want to approve the contract for new city attorney services?

Summary:

- In January, the City Council notified Berliner Cohen of termination of its contract for City Attorney services.
- The City Council has completed a recruitment process to identify candidate firms for the City Attorney position.
- On March 28, the City Council decided to engage the services of Best, Best & Krieger
- The attached proposed contract has been negotiated to fulfill the responsibilities described in the City's Request for Proposals for City Attorney services.

Staff Recommendation:

Based on the City Council's selection of Best, Best & Krieger for City Attorney services, the City Council should approve the attached contract.

**AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF LOS ALTOS
AND
BEST BEST & KRIEGER LLP**

1. PARTIES AND DATE.

This Agreement is made and entered into as of the ___ day of _____, 2017, by and between the City of Los Altos, a municipal corporation (“Client”) and Best Best & Krieger LLP, a limited liability partnership engaged in the practice of law (“BB&K”).

2. RECITALS.

2.1 Client wishes to engage the services of BB&K as its City Attorney to perform all necessary legal services for the Client on the terms set forth below

3. TERMS.

3.1 Term. The term of this Agreement shall commence on April 26, 2017, and shall continue in full force and effect until April 26, 2018, with the option for the Client to extend the term for one or more successive one year terms by providing written authorization to BB&K.

3.2 Scope of Services. BB&K shall serve as City Attorney and shall perform legal services (“Services”) as may be required from time to time by the Client as set forth by this Agreement, unless otherwise agreed to by the Client and BB&K. As part of the Services to be performed hereunder, BB&K shall be responsible for the following:

3.2.1 Preparation for, and attendance at, regular meetings of the Client;

3.2.2 Provision of legal counsel at such other meetings as directed by the Client;

3.2.3 Preparation or review of all Client ordinances and resolutions, together with such staff reports, orders, agreements, forms, notices, declarations, certificates, deeds, leases and other documents as requested by the Client;

3.2.4 Rendering to the officers and employees of the Client legal advice and opinions on all legal matters affecting the Client, including new legislation and court decisions, as directed by the Client;

3.2.5 Researching and interpreting laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Client on legal matters pertaining to Client operations, as directed by the Client;

3.2.6 Performing legal work pertaining to property acquisition, property disposal, public improvements, public rights-of-way and easements, as directed by the Client;

3.2.7 Responding to inquiries and review for legal sufficiency ordinances, resolutions, contracts, and administrative and personnel matters, as directed by the Client;

3.2.8 Representing and assisting on litigation matters, as directed by the Client. Such services shall include, but shall not be limited to, the preparation for and making of appearances, including preparing pleadings and petitions, making oral presentations, and preparing answers, briefs or other documents on behalf of the Client, and any officer or employee of the Client, in all federal and state courts of this State, and before any governmental board or commission, including reviewing, defending or assisting any insurer of the Client or its agents or attorneys with respect to any lawsuit filed against the Client or any officer or employee thereof, for money or damages.

3.2.9 BB&K's Public Policy and Ethics (PP&E) Program provides participants with memoranda on laws that directly affect public agencies, such as the Political Reform Act, Fair Political Practices Commission Regulations, the Brown Act, and the Public Records Act. The Program also provides participants with updates on new legislation and judicial decisions affecting local governments.

3.2.10 BB&K's Project 5 Program provides participants with memoranda summarizing new changes in case law under the California Environmental Quality Act ("CEQA"), an annually updated set of CEQA notices and forms to aid participants in meeting CEQA's requirements, an annually updated set of Local CEQA Guidelines and a draft Resolution for adopting Local CEQA Guidelines, memoranda summarizing pending and recently passed CEQA legislation, and other CEQA resources and materials. Memoranda, forms, and guidelines are provided to participating agencies via the CEQA Guidelines Client Portal, a secure website providing an on-demand and continually updating library of CEQA resources.

3.3 Designated City Attorney. Christopher J. Diaz shall be designated as City Attorney, and shall be responsible for the performance of all Services under this Agreement, including the supervision of Services performed by other members of BB&K. Janet Coleson shall be designated as Back-Up City Attorney, and shall attend such meetings as may be requested by the City Attorney. No change in these assignments shall be made without the consent of the Client.

3.4 Time of Performance. The Services of BB&K shall be performed expeditiously in the time frames and as directed by the Client.

3.5 Assistance. The Client agrees to provide all information and documents necessary for the attorneys at BB&K to perform their obligations under this Agreement.

3.6 Independent Contractor. BB&K shall perform all legal services required under this Agreement as an independent contractor of the Client and shall remain, at all times as to the Client, a wholly independent contractor with only such obligations as are required under this Agreement. Neither the Client, nor any of its employees, shall have any control over the manner, mode or means by which BB&K, its agents or employees, render the legal services required

under this Agreement, except as otherwise set forth. The Client shall have no voice in the selection, discharge, supervision or control of BB&K's employees, representatives or agents, or in fixing their number, compensation, or hours of service.

3.7 Fees and Costs. BB&K shall render and bill for legal services in the following categories and at rates set forth in Exhibit "A" and in accordance with the BB&K Billing Policies set forth in Exhibit "D", both of which are attached hereto and incorporated herein by reference. In addition, the Client shall reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the Services under this Agreement. Authorized reimbursable expenses shall include, but are not limited to, printing and copying expenses, mileage expenses at the rate allowed by the Internal Revenue Service, toll road expenses, long distance telephone and facsimile tolls, computerized research time (e.g. Lexis or Westlaw), research services performed by BB&K's library staff, extraordinary mail or delivery costs (e.g. courier, overnight and express delivery), court fees and similar costs relating to the Services that are generally chargeable to a client. However, no separate charge shall be made by BB&K for secretarial or word processing services.

3.8 Billing. BB&K shall submit monthly to the Client a detailed statement of account for Services. The Client shall review BB&K's monthly statements and pay BB&K for Services rendered and costs incurred, as provided for in this Agreement, on a monthly basis.

3.9 Annual Reviews. The Client and BB&K agree that a review of performance and the compensation amounts referenced in this Agreement should occur at least annually.

3.10 Insurance. BB&K 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. A separate schedule containing BB&K's insurance policies will be available for inspection upon Client's request.

3.11 Attorney-Client Privilege. Confidential communication between the Client and BB&K shall be covered by the attorney-client privilege. As used in this article, "confidential communication" means information transmitted between the Client and BB&K in the course of the relationship covered by this Agreement and in confidence by a means that, so far as the Client is aware, discloses the information to no third persons other than those who are present to further the interests of the Client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which BB&K is consulted, and includes any legal opinion formed and advice given by BB&K in the course of this relationship.

3.12 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon thirty (30) days' prior written notice from either party, with or without cause. In the event of such termination, BB&K shall be paid for all Services authorized by the Client and performed up through and including the effective date of termination. BB&K shall also be reimbursed for all costs associated with transitioning any files or other data or documents to a new law firm or returning them to the Client.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.14 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

3.15 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

3.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

3.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Delivery of Notices. All notices permitted or required under this Agreement notices shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Client: City of Los Altos
1 N. San Antonio Road
Los Altos, CA 94022
Attention: Christopher A. Jordan

BB&K: Best Best & Krieger LLP
2001 N. Main Street, Suite 390
Walnut Creek, CA 94596
Attention: Christopher J. Diaz

3.20 Indemnification.

(A) BB&K agrees to indemnify City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein

“claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of BB&K, its agents, employees, subcontractors, or invitees, provided for herein or arising from the acts or omissions of BB&K hereunder, or arising from BB&K’s performance of or failure to perform any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arise from the negligence or willful misconduct of City, its officers, agents or employees.

(B) City acknowledges BB&K is being appointed as City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees to undertake its statutory duty and indemnify BB&K, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of BB&K within the course and scope of its performance hereunder, but nothing herein shall require City to indemnify BB&K for liability arising from its own negligence or alleged negligence. In connection herewith:

(i) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder; and

(ii) In the event BB&K, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to BB&K, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys’ fees.

IN WITNESS WHEREOF, the Client and BB&K have executed this Agreement for City Attorney Legal Services as of the date first written above.

(signatures contained on following page)

SIGNATURE PAGE TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF LOS ALTOS
AND
BEST BEST & KRIEGER LLP

CITY OF LOS ALTOS

By: _____
[INSERT NAME]
[INSERT TITLE]

Date: _____

Attest:

[INSERT NAME]
[INSERT TITLE]

BEST BEST & KRIEGER LLP

By: _____
[INSERT NAME]
Partner

Date: _____

**EXHIBIT “A”
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF LOS ALTOS
AND
BEST BEST & KRIEGER LLP**

1. Basic Legal Services – Description and Rate. Basic Legal Services shall include all services provided to Client that are not otherwise specifically identified below as either Special Legal Services, Third Party Reimbursable Legal Services, or Public Finance Legal Services (“Basic Legal Services”). The Client shall pay for Basic Legal Services at the flat rate monthly retainer amount of Sixteen Thousand Dollars (\$16,000) for up to a maximum of 70 hours in a given month. The Client and BB&K agree to re-visit the retainer amount and maximum hours six months from the beginning term of this Agreement in order to determine if another mutually beneficial retainer arrangement may work for both the Client and BB&K.

The Client shall pay for Basic Legal Services in excess of such hours in a given month as the following rates:

Attorneys	\$225
Paralegals	\$150

Basic Legal Services shall include attending up to twelve meetings per year of commissions, public forums, or training sessions such as commission trainings on the Brown Act.

2. Special Legal Services - Description. Special Legal Services shall include the following types of services:

- A. Non-routine contract negotiation matters (including non-BB&K model agreements and franchise agreements)
- B. Complex acquisition, disposal, and resolution of real estate, easements, right-of-ways, leases, licenses, and other property transactions
- C. Non-routine land use, development and environmental law (CEQA) matters
- D. Non-routine public works/capital contracts and related requirements of the California Uniform Construction Cost Accounting Code
- E. Non-routine personnel and disability law matters
- F. Employee relations and labor negotiation matters
- G. Fee collection, cost recovery, and ratemaking governed by propositions 26, 218, AB1600 and other State and Federal requirements
- H. Complex Code enforcement matters
- I. Tort liability and risk management matters
- J. Fees, taxes, and assessments matters
- K. Redevelopment dissolution matters
- L. Litigation and formal administrative or other adjudicatory hearing matters

- M. Telecommunication matters
- N. Advocacy matters (e.g., legislative and regulatory)
- O. Other matters mutually agreed upon between BB&K and the City

3. Special Legal Services – Rates. The Client shall pay for Special Legal Services at the following rates:

Partner/Of Counsel	\$295
Associates	\$260
Paralegals	\$160

- A. Public Policy and Ethics Annual Subscription Fee. As described in Section 3.2.9 of the Agreement, Client has opted to become a member of BB&K’s Public Policy and Ethics Program which cost shall be included within the flat monthly retainer amount.
- B. Project 5 Program – Updates on the California Environmental Quality Act (“CEQA”). As described in Section 3.2.10 of the Agreement, Client has opted to become a member of the Project 5 Program at an annual cost of \$1200.

4. Agreement Regarding Rate Categories. If BB&K believes that a matter falls within the Special Legal Services, Third Party Reimbursable Legal Services, or Public Finance Legal Services rate categories, BB&K shall seek approval from the City Manager or his/her designee. The City Manager’s or her designee's approval of such a request from BB&K shall not be unreasonably withheld.

5. Annual Adjustments; Other Mutual Adjustments. The rates or amounts provided for shall be automatically increased as follows: Blended rates and retainer amounts will be adjusted annually using the cost of living index. At the start of the Client’s fiscal year, July 1, 2018 and every July thereafter during the term of this Agreement, rates and amounts shall be increased for the change in the cost of living for the twelve (12) month period published for the most recent calendar year end, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Francisco-Oakland-San Jose area, provided, however, that such adjustment shall never be lower than zero percent (0%) nor more than five percent (5%). Individual rates which are specific to individual attorneys and/or legal personnel are reviewed annually and may be increased from time to time with advanced written notice to the client. In addition to the automatic rate increases, either BB&K or the Client may initiate consideration of a rate increase at any time.

**EXHIBIT “B”
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF LOS ALTOS
AND
BEST BEST & KRIEGER LLP**

THIRD PARTY REIMBURSABLE BILLING POLICIES

1. Third Party Reimbursable Legal Services - Description. Third Party Reimbursable Legal Services shall include legal services provided to the City for which the City receives reimbursement from a developer or other third party. These reimbursable legal services typically include review of CC&Rs; establishment of financing districts (i.e., Community Facilities Districts; Assessment Districts; Landscape and Lighting Maintenance Districts); and land use/environmental projects for which the City is entitled to reimbursement.
2. Third Party Reimbursable Legal Services - Rates. The Client shall pay for Third Party Reimbursable Legal Services at BB&K's then current published standard private client rates. Upon execution of this Agreement, BB&K shall provide a copy of its published rate schedule to the Client. BB&K shall also provide annual written updates to the Client when changes are made to the published rate schedule.

**EXHIBIT “C”
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF LOS ALTOS
AND
BEST BEST & KRIEGER LLP**

PUBLIC FINANCE & BOND BILLING POLICIES

Public Finance & Bond Rates. BB&K will provide bond counsel, special counsel or disclosure counsel services at the request of the Client. Such bond counsel and special counsel services include the preparation of all legislative approvals and legal documentation relating to the appropriate sale and delivery of the bonds, notes or other obligations. BB&K will also prepare such closing certificates and legal opinions necessary for the delivery of the bonds. As disclosure counsel, we will prepare the disclosure documents for the Client and conduct the necessary due diligence related to the transaction. Our fees will be determined based upon the type of financing and the expected involvement of the attorneys involved. We will provide the Client with a detailed description of our services and our fees and reimbursable costs upon the Client's request. Notwithstanding the foregoing, in those cases where the fees are reimbursable by a third party, at BB&K's option it may proceed on an hourly basis and utilize the Third Party Reimbursable Legal Services category provided for in this Amendment, including with respect to services rendered for the formation of, or annexation to, a CFD (of either the City or other local public agency), as well as the negotiation and preparation of funding agreements and joint financing agreements. Legal services related to the Client's compliance with its continuing disclosure covenants and provide such necessary advice on the Client's compliance shall be billed as Special Legal Services, above.

EXHIBIT "D"
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF LOS ALTOS
AND
BEST BEST & KRIEGER LLP

BB&K 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 Judy Ismael of our Accounting Department. Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

Fees for Professional Services

Unless a flat fee is set forth in our engagement agreement 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. Time is accrued on an incremental basis for such matters as telephone calls (minimum .3 hour) and letters (minimum .5 hour), and on an actual basis for all other work. Our attorneys are currently billed at rates from \$245 to \$725 per hour, and our administrative assistants, research assistants, paralegals and law clerks are billed at rates from \$140 to \$275 per hour. 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.

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 agreement.

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. 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 agreement, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, after presentation 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. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice shall be added to the balance owed, commencing with the next statement and continuing until paid.

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 will then advise the client by letter that the client may 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