



AGENDA

SPECIAL JOINT MEETINGS

* * *

CLAYTON CITY COUNCIL and CLAYTON REDEVELOPMENT AGENCY and OAKHURST GEOLOGIC HAZARD ABATMENT DISTRICT

* * *

MONDAY, August 22, 2011

5:00 p.m.

*First Floor Conference Room, Clayton City Hall
6000 Heritage Trail, Clayton, CA 94517*

Mayor: David T. Shuey
Vice Mayor: Howard Geller

Council Members
Joseph A. Medrano
Julie K. Pierce
Hank Stratford

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail on Monday prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

*** CITY COUNCIL ***
August 22, 2011

5:00 P.M.

1. **CALL TO ORDER AND ROLL CALL** – Mayor Shuey.

2. **PUBLIC COMMENT PERIOD**

Citizens may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) by completing a speaker card available on the Lobby table and submitting it to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called by the Mayor, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

3. **ACTION ITEM**

- (a) Consideration of a Resolution authorizing and approving an Agreement for General and Special Legal Services with the law firm of Best Best & Krieger LLP and appointing Mala Subramanian as City Attorney and Melanie Donnelly as Assistant City Attorney.
(Mayor Shuey) ([View Here](#))

Staff recommendation: Following any discussion or public comment, a motion to adopt the Resolution.

4. **ADJOURNMENT** – the next regularly scheduled City Council meeting is September 20, 2011.

#

*** CLAYTON REDEVELOPMENT AGENCY ***

August 22, 2011

1. **CALL TO ORDER AND ROLL CALL** – Chairperson Pierce.

2. **PUBLIC COMMENT ON NON - AGENDA ITEMS**

Citizens may address the Redevelopment Agency on items within the Board's jurisdiction, (which are not on the agenda) by completing a speaker card available on the Lobby table and submitting it to the Secretary. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Chair's discretion. When one's name is called by the Chair, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. Board Members may respond to statements made or questions asked, or may request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the Board.

3. **ACTION ITEM**

- (a) Consideration of a Resolution authorizing and approving an Agreement for General and Special Legal Services with the law firm of Best Best & Krieger LLP and appointing Mala Subramanian as General Counsel and Melanie Donnelly as Assistant General Counsel. (Chairperson Pierce) ([View Here](#))

Staff recommendation: Following any discussion or public comment, a motion to adopt the Resolution.

4. **ADJOURNMENT** – the next regularly scheduled Clayton Redevelopment Agency meeting will be scheduled as needed.

#

*** OAKHURST GEOLOGIC HAZARD ABATEMENT DISTRICT ***
August 22, 2011

1. CALL TO ORDER AND ROLL CALL – Chairman Stratford.

2. PUBLIC COMMENTS

Citizens may address the Oakhurst Geological Hazard Abatement District (GHAD) Board on items within the Board's jurisdiction, (which are not on the agenda) by completing a speaker card and forwarding it to the Secretary. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Chairperson's discretion. When one's name is called by the Chair, the speaker shall advance to the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. Board Members may respond to statements made or questions asked, or may request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the Board.

3. ACTION ITEM

- (a) Consideration of a Resolution authorizing and approving an Agreement for General and Special Legal Services with the law firm of Best Best & Krieger LLP and appointing Mala Subramanian as General Counsel and Melanie Donnelly as Assistant General Counsel. (Chairman Stratford) ([View Here](#))

Staff recommendation: Following any discussion or public comment, a motion to adopt the Resolution.

4. ADJOURNMENT – the next regularly scheduled Oakhurst Geologic Hazard Abatement District meeting will be scheduled as needed.

#



**SPECIAL MEETING
CLAYTON CITY COUNCIL**

MONDAY, AUGUST 22, 2011

5:00 p.m.

*First Floor Conference Room, Clayton City Hall
6000 Heritage Trail, Clayton, CA 94517*

Mayor: David T. Shuey
Vice Mayor: Howard Geller

Council Members
Joseph A. Medrano
Julie K. Pierce
Hank Stratford

*Pursuant to CA Government Code Section 54956 and upon order of Mayor David T. Shuey,
a special meeting is called for **August 22, 2011 at 5:00 p.m.** for the purpose of retaining and
appointing new Legal Counsel for the City of Clayton.*

Signed: *David Shuey*
David T. Shuey, Mayor

Date: 8/16/11

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- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.

1. **CALL TO ORDER AND ROLL CALL** – Mayor Shuey.

2. **PUBLIC COMMENT PERIOD**

3. **ACTION ITEM**

- (a) Consideration of a Resolution authorizing and approving an Agreement for General Legal Services with the law firm of Best Best & Krieger LLP and appointing Mala Subramanian as City Attorney and Melanie Donnelly as Assistant City Attorney.
(Mayor Shuey)

Staff recommendation: Adopt the Resolution.

4. **ADJOURNMENT** – the next regularly scheduled City Council meeting is September 20, 2011.

#



Approved:

Gary A. Napper
City Manager/Executive Director

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 22 AUGUST 2011

SUBJECT: RETENTION OF NEW CITY ATTORNEY AND LEGAL SERVICES

RECOMMENDATION

It is recommended the City Council adopt the prepared Resolution approving an Agreement for contract General and Special Legal Services with the law firm of Best Best & Krieger LLP (office in Walnut Creek) and appointing Malathy "Mala" Subramanian as City Attorney and Melanie Donnelly as Assistant City Attorney.

BACKGROUND

After 47 years serving this City as its first and only city attorney, the law firm of Turner Huguet & Adams confirmed in March 2011 it will conclude its legacy of service to the City and the Clayton community. It has been my professional privilege for the last approximately 10 years to work beside Maurice Huguet, Jr. and J. Daniel Adams in assisting the Clayton City Council to achieve its goals and objectives to maintain and improve the quality of life expected and enjoyed by Clayton residents and businesses.

Mr. Adams and Mr. Huguet honorably continued its legal representation of the City during the last five (5) months since that notice while the City Council conducted a search for replacement legal services. By the filing date of 01 July 2011, the City had received twenty-one (21) proposals its consideration to be the next city and assistant city attorneys for the City.

Narrowing the impressive field of candidates down to a finalist pool of three (3), the City Council interviewed the finalists at a special meeting in closed session on Monday, 15 August 2011. The ultimate decision was challenging for the City Council as each of the three (3) finalist law firms were deeply experienced in municipal law and presented remarkable credentials for evaluation. However, the final determination of the City Council was the law firm of Best Best & Krieger LLP ("BB&K"), with Malathy "Mala" Subramanian as City Attorney and Melanie Donnelly as Assistant City Attorney, offered exceptional and ideally suited qualifications to serve the City in these public offices.

CONTRACT LEGAL SERVICES

The City Council hires and appoints its city attorney, and the city attorney serves the City and the City Council as a whole as its client. Most small cities contract for legal service representation in this regard as the amount of legal work necessary for the operations and decisions of the City typically does not warrant a full-time in-house employee. The law firm of Turner Huguet & Adams served in this capacity in a similar fashion for the last 47 years.

Attached to this Staff Report is a Resolution approving an Agreement for the retention of BB&K to provide contract general and special legal services to the City, and it appoints Mala Subramanian as our new City Attorney and Melanie Donnelly as our new Assistant City Attorney. The City Council appointments become effective immediately upon its adoption of the Resolution.

We bid fond farewell to Maury and Dan, thank them for their amazing legacy of service to this City, and wish them well in their new journeys.

Staff is pleased with the City Council's selection of its new City Attorney and Assistant City Attorney, and we look forward to working with Ms. Subramanian and Ms. Donnelly in being of service to the City Council and our great community.

FISCAL IMPACT

For the last three (3) years, the law firm of Turner Huguet & Adams volunteered to keep its base retainer for legal services at the same rate in recognition of the City's struggle to maintain revenues during the Great Recession and State takeaways. Their current monthly retainer for legal services is \$8,000 per month (\$96,000 annually).

The City's new legal counsel (BB&K) has agreed to provide all Basic Legal Services for the same retainer amount of \$8,000. Consequently, this arrangement does not present a financial increase to the City's tenuous General Fund budget. Under the Agreement with BB&K, Special Legal Services required of the law firm by the City (identified in Section 3.7.3 of the Agreement) will be billed at the hourly rate of \$275; the expiring arrangement with Turner Huguet & Adams for similar services was at \$185 per hour. While this monetary difference has fiscal impact, the historical trend for such legal services by the City has been limited and will be within management's jurisdiction to control without sacrificing any pressing need for legal advice.

Attachment: A. City Resolution with Legal Services Agreement [11 pp.]

CITY RESOLUTION NO. – 2011

**A RESOLUTION APPROVING AN AGREEMENT FOR CONTRACT
GENERAL AND SPECIAL LEGAL SERVICES WITH THE LAW FIRM OF
BEST BEST & KRIEGER LLP, AND APPOINTING MALATHY SUBRAMANIAN
AS CITY ATTORNEY AND MELANIE DONNELLY AS ASSISTANT
CITY ATTORNEY OF AND FOR THE CITY OF CLAYTON**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, Section 36505 of the California Government Code provides authority that a city council may appoint a city attorney; and

WHEREAS, since incorporation of the City of Clayton in March 1964, a member of the current law firm of Turner, Huguet and Adams located in Martinez, California has ably served the City as its city attorney for forty-seven (47) years; and

WHEREAS, Maurice (Maury) Huguet, Jr. was Clayton's City Attorney from incorporation until 01 July 2005 when the law firm's partner, Jonathan D. (Dan) Adams was appointed City Attorney and Maury Huguet became the Assistant City Attorney; and

WHEREAS, by way of letter to the City dated 24 March 2011, the law firm of Turner Huguet and Adams confirmed the time had arrived wherein it was necessary for the City to embark on a course to secure replacement city attorney services; and

WHEREAS, the City summarily prepared and advertised a Request for Proposals (RFP) encouraging interested law firms and qualified individuals to submit proposals to the City for its consideration in the selection of a new city attorney and assistant city attorney; and

WHEREAS, by the filing deadline date of 01 July 2011, the City received twenty-one (21) responses to its RFP, thereby requiring an ad-hoc committee of the City Council and its City Manager to review, evaluate and pre-screen respondents for final interview before the entire City Council; and

WHEREAS, on 15 August 2011 at a duly-noticed special meeting, all members of the City Council interviewed three (3) finalists for the provision of general and special legal services to the City as its city attorney; and

WHEREAS, by unanimous determination, the City Council has concluded it is in the best interests, benefit and general welfare of its citizens, community and municipal corporation that the law firm of Best Best & Krieger LLP is ideally suited and should be retained to provide contract services as the City's next city and assistant city attorneys.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby find, determine and approve as follows:

Section 1. That the above Recitals are true and correct facts pertaining to an important matter of public policy to the City.

Section 2. That an Agreement for General Counsel Legal Services ("Agreement") with the law firm of Best Best & Krieger LLP ("BB&K"), attached hereto as Attachment 1 and incorporated herein as if fully set forth in this Resolution, does hereby set forth the terms and conditions for the retention of BB&K to provide city attorney general and special legal counsel services for and to the City, and therefore said Agreement is hereby approved and adopted.

Section 3. That Malathy "Mala" Subramanian of BB&K is herewith appointed and designated as the City Attorney for the City of Clayton, California, and Melanie Donnelly of BB&K is hereby appointed and designated as the Assistant City Attorney for the City of Clayton, California, each named appointment and designation to become effective immediately upon the City Council's adoption of this Resolution; and

Section 4. The Mayor is hereby authorized and directed to execute the Agreement for and on behalf of the City, a true and correct copy of the Agreement being attached hereto as Attachment 1.

Section 5. This Resolution shall and does take immediate effect from and after its passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Clayton, California at a duly-noticed special public meeting thereof held on the 22nd day of August 2011 by the following recorded vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

David T. Shuey, Mayor

ATTEST:

Laci J. Jackson, City Clerk

**GENERAL COUNSEL LEGAL SERVICES BETWEEN
CITY OF CLAYTON/CLAYTON RDA/OAKHURST GEOLOGIC HAZARD ABATEMENT DISTRICT AND
BEST BEST & KRIEGER LLP**

1. PARTIES AND DATE.

This Agreement is made and entered into as of the ____ day of _____, 2011, by and amongst the City of Clayton ("City"), the Clayton Redevelopment Agency ("Agency"), the Oakhurst Geologic Hazard Abatement District ("GHAD") (collectively, the "Client") and Best Best & Krieger LLP, a limited liability partnership, engaged in the practice of law ("BB&K").

2. RECITALS.

Client wishes to engage the services of BB&K as its City Attorney/General Counsel 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 August 23, 2011, and shall continue in full force and effect until terminated in accordance with Section 3.13.

3.2 Scope of Services. BB&K shall serve as City Attorney/General Counsel 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, including closed sessions, special meetings and study sessions, as requested;

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 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.

3.3 Designated City Attorney/General Counsel. Malathy Subramanian shall be designated as City Attorney/General Counsel 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. Melanie Donnelly shall be designated as Assistant City Attorney/Assistant General Counsel. No change in this assignment shall be made without the consent or initiation 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. Except as it relates to services performed by BB&K for the Client, 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 Services and Compensation. BB&K shall render and bill for legal services in the following categories and at the following rates.

3.7.1 Basic Legal Services - Description. Basic legal services shall include all services provided to Client which are not otherwise specifically identified below as either Special Legal Services, Third Party Reimbursable Legal Services or Public Finance Legal Services.

3.7.2 Basic Legal Services – Retainer. The Client shall pay for Basic Legal Services at the fixed monthly retainer amount of Eight Thousand Dollars (\$8,000) per month (estimated at an average of 40 to 45 hours per month) for basic legal services, which shall include 3 hours per month of Code Enforcement special legal services.

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

- (a) Litigation and formal administrative hearing matters handled by BB&K;
- (b) Labor relations and employment matters;
- (c) Complex real estate or land acquisitions;
- (d) Redevelopment;
- (e) Natural resources (including CEQA, NEPA, and endangered species);
- (f) Tax and ERISA related matters;
- (g) Toxic substances matters (e.g., CERCLA, RCRA);
- (h) Complex Code Enforcement; and
- (i) Other matters mutually agreed upon.

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

Partners/Of Counsel/Associate Attorneys	\$275.00
Paralegals/Law Clerks	\$150.00

3.7.5 Third Party Reimbursable Legal Services - Description. Third Party Reimbursable Legal Services shall include legal services provided to the Client for which the Client receives reimbursement from a developer or other third party.

3.7.6 Third Party Reimbursable Legal Services - Rates. The Client shall pay for Third Party Reimbursable Legal Services on matters involving an existing single family dwelling property owner at Special Legal Services Rates, and for all other 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 updates to the Client when changes are made to the published rate schedule.

3.7.7 Public Finance Legal Services – Description & Rates. The Client shall pay for Public Finance Legal Services at the rates attached hereto as Exhibit "A" and incorporated herein by reference.

3.7.8 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 provide a scope and budget for the services and seek approval from the City Manager/Executive Director or his/her designee. The City Manager/Executive Director's or his/her designee's approval of such a request from BB&K shall not be unreasonably withheld.

3.7.9 Cost Reimbursement & Exceptions. The Client shall reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the Services under this Agreement associated with Special Legal Services, Third Party Reimbursable Legal Services, and Public Finance Legal Services. 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 for services provided outside of the retainer, 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 after obtaining approval from the City Manager/Executive Director (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 an initial review of performance and compensation should be conducted within six (6) months following the execution of this Agreement, with annual reviews of performance and the compensation amounts referenced in this Agreement 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. BB&K shall provide proof of insurance to Client on an annual basis in a form acceptable to Client. Required insurance policies shall not be canceled until a thirty day written notice of cancellation has been served upon the Client. If such insurance coverage is cancelled, BB&K shall within fifteen days after Client's receipt of written notice of such cancellation, file with Client evidence of insurance showing reinstatement or that it has been provided through another insurance company or companies. All policies shall include a waiver of subrogation provision acceptable to Client.

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 which, 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 Indemnification. BB&K shall indemnify and hold the Client free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, to the extent arising out of any omissions, negligence or willful misconduct of BB&K in connection with the performance of the Services under this Agreement. BB&K shall reimburse the Client for any and all legal expenses and costs incurred by the Client in connection therewith or in enforcing the indemnity herein provided.

3.13 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon sixty (60) 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.

3.14 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, whether written or oral.

3.15 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

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

3.17 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.

3.18 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.

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

3.20 Delivery of Notices. 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 Clayton
6000 Heritage Trail
Clayton, CA 94517
Attention: City Manager

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

Such 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.

3.21 Mutual Cooperation. BB&K has a public law practice on a regional basis. BB&K will not represent Client and one of BB&K's public agency clients interacting with Client in a matter in which the interest of the clients potentially or actually conflict unless both Client and the public agency client have consented to such dual representation. BB&K will provide the City Manager/Executive Director notice under California Rule of Professional Conduct Rule 3-310 as BB&K becomes aware of the matter. The City Manager/Executive Director will forward such notices to the Client. The City Manager/Executive Director may acknowledge disclosures and may waive conflicts under Rule 3-310, subject to revocation by the Client when such disclosures or requests for waivers can be reviewed by the Client.

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

CITY OF CLAYTON, CA

By: _____
David T. Shuey, Mayor

CLAYTON REDEVELOPMENT AGENCY

By: _____
Julie K. Pierce, Chair

**OAKHURST GEOLOGIC HAZARD ABATEMENT
DISTRICT**

By: _____
Hank Stratford, Chair

BEST BEST & KRIEGER LLP

By: _____
Malathy Subramanian, Partner

EXHIBIT "A"
BB&K SCHEDULE OF PUBLIC FINANCE FEES

For bond counsel and special counsel services in connection with the financing of public facilities, BB&K shall be compensated, depending upon the type of bonds, certificates of participation or other obligations which are to be issued, based on the following schedules. Unless otherwise mutually agreed, BB&K's fees as bond counsel on these financings will be payable from proceeds of each series of the bonds upon their issuance.

1. **Certificates of Participation and Revenue Bonds.** For services in connection with the issuance and sale of certificates of participation and revenue bonds, BB&K shall be paid a fee which will be the greater of (i) \$35,000 or (ii) an amount based on the total principal amount of the certificates of participation or bonds to be sold, computed as follows:

- .50% of the first \$10 million of the amount of the certificates or bonds issued, plus
- .25% of the next \$10 million of the amount thereof, plus
- .125% of the amount thereof, if any, over \$20 million.

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 Section 3.7 of the Agreement.

2. **Investment and Other Agreements.** For investment agreements, derivative transactions or interest rate swaps relating to of any bond issue, a separate fee will be charged depending on the type of derivative. Generally, BB&K's fee for a derivative transaction mirrors BB&K's bond counsel fee. Review of investment agreements will be charged at the hourly rates as provided above in Section 3.7 of the Agreement.

3. **Disclosure Counsel.** BB&K's disclosure counsel fees for financings of the Client in the range of \$10 million to \$30 million will be \$25,000. BB&K's disclosure counsel services will include preparation and delivery of a preliminary official statement, bond purchase contract, final official statement, and continuing disclosure undertaking. If the transaction exceeds \$30 million, BB&K will seek additional compensation based upon an arrangement with the Client.

The fees include disclosure counsel services described above together with travel expenses to two meetings at the Client offices. These fees do not include attendance at any ratings presentations of the Client or related expenses. If other services are requested by the Client which are not within the scope of those provided for above, they will be performed on an hourly basis as provided above in Section 3.7 of the Agreement.

Fees for bond and disclosure counsel will be payable from proceeds of each series of the bonds upon their issuance, and are not contingent on the bonds being sold.

4. **Issuer's Counsel Opinions.** For all Issuer's Counsel opinions provided by BB&K in connection with any bond financing, fees shall be the following: (1) for opinions on financings for which BB&K does not provide bond counsel and disclosure counsel services, \$10,000; (2) for opinions on financings for which BB&K provides bond counsel services only, \$5,000; (3) for opinions on financings for

which BB&K provides disclosure counsel services only, \$2,500; and (4) for opinions on financings for which BB&K provides both bond and disclosure counsel services, there will be no charge.

5. Other Public Finance Services. If other services are requested by the City which are not within the scope of those provided for above, they will be performed on an hourly basis as provided for in Section 3.7 of the Agreement.



**SPECIAL MEETING
CLAYTON REDEVELOPMENT AGENCY**

MONDAY, AUGUST 22, 2011

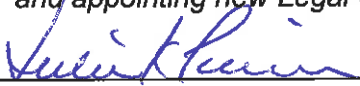
5:00 p.m.

*First Floor Conference Room, Clayton City Hall
6000 Heritage Trail, Clayton, CA 94517*

Chairperson: Julie K. Pierce
Vice Chairman: Howard Geller

Board Members
Joseph A. Medrano
David T. Shuey
Hank Stratford

*Pursuant to CA Government Code Section 54956 and upon order of Chairperson Julie K. Pierce, a special meeting is called for **August 22, 2011 at 5:00 p.m.** for the purpose of retaining and appointing new Legal Counsel for the Clayton Redevelopment Agency.*

Signed: 
Julie K. Pierce, Chairperson

Date: 8-16-11

- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) www.ci.clayton.ca.us.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.
- Any writings or documents provided to a majority of the Board after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.

1. **CALL TO ORDER AND ROLL CALL** – Chairperson Pierce.

2. **PUBLIC COMMENT PERIOD**

3. **ACTION ITEM**

- (a) Consideration of a Resolution authorizing and approving an Agreement for General Legal Services with the law firm of Best Best & Krieger LLP and appointing Mala Subramanian as General Counsel and Melanie Donnelly as Assistant General Counsel.
(Chairperson Pierce)

Staff recommendation: Adopt the Resolution.

4. **ADJOURNMENT** – the next regularly scheduled Clayton Redevelopment Agency meeting will be scheduled as needed.

#



Approved:

Gary A. Napper
City Manager/Executive Director

AGENDA REPORT

TO: HONORABLE CHAIR AND BOARD MEMBERS
FROM: EXECUTIVE DIRECTOR
DATE: 22 AUGUST 2011
SUBJECT: RETENTION OF NEW GENERAL COUNSEL AND LEGAL SERVICES

RECOMMENDATION

It is recommended the Board of Directors adopt the prepared Resolution approving an Agreement for contract General and Special Legal Services with the law firm of Best Best & Krieger LLP (office in Walnut Creek) and appointing Malathy "Mala" Subramanian as General Counsel and Melanie Donnelly as Assistant General Counsel.

BACKGROUND

With the Agency's formation in 1987, the Clayton Redevelopment Agency utilized the legal services of the City of Clayton's city attorney to be and provide general counsel services to and for the Agency. With the law firm of Turner Huguet & Adams moving on after serving the City for 47 years and our Agency since its formation 24 years ago, it becomes necessary for the Agency to procure a new general counsel.

At the conclusion of advertising and seeking proposals for general and special legal services, the Clayton City Council has decided to retain Best Best & Krieger LLP (with offices in Walnut Creek) to handle its city attorney services. Although our Agency has an existing Agreement with the law firm of Goldfarb & Lipman (Oakland) to provide us with specialty redevelopment law advice (Karen Tiedemann is Special Legal Counsel to the Agency), it is prudent and accepted practice for the City Attorney to also serve as General Counsel of the Agency to handle routine representation at the Agency's public meetings under the City's Basic Legal Services retainer. Consequently, it is necessary for the Board to approve the same General Legal Services contract with BB&K for this purpose.

CONTRACT LEGAL SERVICES

Attached to this Staff Report is a Resolution approving an Agreement for the retention of BB&K to provide contract general and special legal services to the Agency, and it appoints Mala Subramanian as our new General Counsel and Melanie Donnelly as our new Assistant General Counsel. The Board's appointments become effective immediately upon its adoption of the Resolution.

The Agency will continue to primarily utilize the legal services of Special Legal Counsel Karen Tiedemann during this crazy transition and disruption of redevelopment agency existence and operation in the state of California (ref. AB1x 26; AB1x 27; League of CA Cities and CA Redevelopment Association petition; CA Supreme Court partial stay and order). However, the new retention of the law firm of BB&K augments the Agency's access to legal advice with depth of experience in California redevelopment law.

FISCAL IMPACT

The Agency's new general counsel (BB&K) will provide the Board with basic legal representation at the Agency's public meetings and cursory review of Agency transactional business within the Basic Legal Services retainer of the City of Clayton. BB&K is available to the Agency to perform, at our request, special legal services in the redevelopment field with such services provided at its \$275 hourly rate. The current hourly billing rate of Special Legal Counsel is \$250-\$260 per hour.

Attachment: A. RDA Resolution with Legal Services Agreement [11 pp.]

RDA RESOLUTION NO. – 2011

**A RESOLUTION APPROVING AN AGREEMENT FOR CONTRACT
GENERAL AND SPECIAL LEGAL SERVICES WITH THE LAW FIRM OF
BEST BEST & KRIEGER LLP, AND APPOINTING MALATHY SUBRAMANIAN
AS GENERAL COUNSEL AND MELANIE DONNELLY AS ASSISTANT
GENERAL COUNSEL OF AND FOR THE CLAYTON REDEVELOPMENT AGENCY**

**THE BOARD OF DIRECTORS
Clayton Redevelopment Agency, Clayton, CA**

WHEREAS, pursuant to California Community Redevelopment Law, the City Council of Clayton, California did adopt Ordinance No. 243 on 20 July 1987 thereby forming the Clayton Redevelopment Agency and enacting its Redevelopment Plan within designated areas of the City of Clayton; and

WHEREAS, commencing with and ever since that time, members of the current law firm of Turner, Huguet and Adams located in Martinez, California have ably served the Agency and its Board of Directors as General Counsel and Assistant General Counsel; and

WHEREAS, by way of letter to the City dated 24 March 2011, the law firm of Turner Huguet and Adams confirmed the time had arrived wherein it was necessary for the City to embark on a course to secure replacement city attorney services, including by inference the services of general counsel to the Agency; and

WHEREAS, the City summarily prepared and advertised a Request for Proposals (RFP) encouraging interested law firms and qualified individuals to submit proposals to the City for its consideration in the selection of a new city attorney and assistant city attorney; and

WHEREAS, by the filing deadline date of 01 July 2011, the City received twenty-one (21) responses to its RFP, thereby requiring an ad-hoc committee of the City Council and its City Manager to review, evaluate and pre-screen respondents for final interview before the entire City Council; and

WHEREAS, on 15 August 2011 at a duly-noticed special meeting, all members of the City Council interviewed three (3) finalists for the provision of general and special legal services to the City as its city attorney; and

WHEREAS, by unanimous determination, the City Council has concluded it is in the best interests, benefit and general welfare of its citizens, community and municipal corporation that the law firm of Best Best & Krieger LLP is ideally suited and should be retained to provide contract services as the City's next city and assistant city attorneys; and

WHEREAS, the substitution of legal counsel for the City Council of Clayton necessitates the Agency Board of Directors find and retain new general legal counsel as well; and

WHEREAS, the Agency Board of Directors herein deems it entirely appropriate and efficient for the Agency to retain and effectively use the same qualified law firm as the City of Clayton to perform general legal counsel services to and for the Agency.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Clayton Redevelopment Agency does hereby find, determine and approve as follows:

Section 1. That the above Recitals are true and correct facts pertaining to an important matter of public policy to the Agency.

Section 2. That an Agreement for General Counsel Legal Services ("Agreement") with the law firm of Best Best & Krieger LLP ("BB&K"), attached hereto as Attachment 1 and incorporated herein as if fully set forth in this Resolution, does hereby set forth the terms and conditions for the retention of BB&K to provide general legal counsel services for and to the Agency, and therefore said Agreement is hereby approved and adopted.

Section 3. That Malathy "Mala" Subramanian of BB&K is herewith appointed and designated as the General Counsel for Clayton Redevelopment Agency, and Melanie Donnelly of BB&K is hereby appointed and designated as the Assistant General Counsel for the Clayton Redevelopment Agency, each named appointment and designation to become effective immediately upon the Board of Directors' adoption of this Resolution; and

Section 4. The Chair is hereby authorized and directed to execute the Agreement for and on behalf of the Agency, a true and correct copy of the Agreement being attached hereto as Attachment 1.

Section 5. This Resolution shall and does take immediate effect from and after its passage and adoption.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Clayton Redevelopment Agency at a duly-noticed special public meeting thereof held on the 22nd day of August 2011 by the following recorded vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE AGENCY BOARD OF DIRECTORS

Julie K. Pierce, Chair

ATTEST:

Laci J. Jackson, Secretary

**GENERAL COUNSEL LEGAL SERVICES BETWEEN
CITY OF CLAYTON/CLAYTON RDA/OAKHURST GEOLOGIC HAZARD ABATEMENT DISTRICT AND
BEST BEST & KRIEGER LLP**

1. PARTIES AND DATE.

This Agreement is made and entered into as of the ____ day of _____, 2011, by and amongst the City of Clayton ("City"), the Clayton Redevelopment Agency ("Agency"), the Oakhurst Geologic Hazard Abatement District ("GHAD") (collectively, the "Client") and Best Best & Krieger LLP, a limited liability partnership, engaged in the practice of law ("BB&K").

2. RECITALS.

Client wishes to engage the services of BB&K as its City Attorney/General Counsel 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 August 23, 2011, and shall continue in full force and effect until terminated in accordance with Section 3.13.

3.2 Scope of Services. BB&K shall serve as City Attorney/General Counsel 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, including closed sessions, special meetings and study sessions, as requested;

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 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.

3.3 Designated City Attorney/General Counsel. Malathy Subramanian shall be designated as City Attorney/General Counsel 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. Melanie Donnelly shall be designated as Assistant City Attorney/Assistant General Counsel. No change in this assignment shall be made without the consent or initiation 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. Except as it relates to services performed by BB&K for the Client, 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 Services and Compensation. BB&K shall render and bill for legal services in the following categories and at the following rates.

3.7.1 Basic Legal Services - Description. Basic legal services shall include all services provided to Client which are not otherwise specifically identified below as either Special Legal Services, Third Party Reimbursable Legal Services or Public Finance Legal Services.

3.7.2 Basic Legal Services – Retainer. The Client shall pay for Basic Legal Services at the fixed monthly retainer amount of Eight Thousand Dollars (\$8,000) per month (estimated at an average of 40 to 45 hours per month) for basic legal services, which shall include 3 hours per month of Code Enforcement special legal services.

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

- (a) Litigation and formal administrative hearing matters handled by BB&K;
- (b) Labor relations and employment matters;
- (c) Complex real estate or land acquisitions;
- (d) Redevelopment;
- (e) Natural resources (including CEQA, NEPA, and endangered species);
- (f) Tax and ERISA related matters;
- (g) Toxic substances matters (e.g., CERCLA, RCRA);
- (h) Complex Code Enforcement; and
- (i) Other matters mutually agreed upon.

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

Partners/Of Counsel/Associate Attorneys	\$275.00
Paralegals/Law Clerks	\$150.00

3.7.5 Third Party Reimbursable Legal Services - Description. Third Party Reimbursable Legal Services shall include legal services provided to the Client for which the Client receives reimbursement from a developer or other third party.

3.7.6 Third Party Reimbursable Legal Services - Rates. The Client shall pay for Third Party Reimbursable Legal Services on matters involving an existing single family dwelling property owner at Special Legal Services Rates, and for all other 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 updates to the Client when changes are made to the published rate schedule.

3.7.7 Public Finance Legal Services – Description & Rates. The Client shall pay for Public Finance Legal Services at the rates attached hereto as Exhibit "A" and incorporated herein by reference.

3.7.8 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 provide a scope and budget for the services and seek approval from the City Manager/Executive Director or his/her designee. The City Manager/Executive Director's or his/her designee's approval of such a request from BB&K shall not be unreasonably withheld.

3.7.9 Cost Reimbursement & Exceptions. The Client shall reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the Services under this Agreement associated with Special Legal Services, Third Party Reimbursable Legal Services, and Public Finance Legal Services. 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 for services provided outside of the retainer, 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 after obtaining approval from the City Manager/Executive Director (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 an initial review of performance and compensation should be conducted within six (6) months following the execution of this Agreement, with annual reviews of performance and the compensation amounts referenced in this Agreement 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. BB&K shall provide proof of insurance to Client on an annual basis in a form acceptable to Client. Required insurance policies shall not be canceled until a thirty day written notice of cancellation has been served upon the Client. If such insurance coverage is cancelled, BB&K shall within fifteen days after Client's receipt of written notice of such cancellation, file with Client evidence of insurance showing reinstatement or that it has been provided through another insurance company or companies. All policies shall include a waiver of subrogation provision acceptable to Client.

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 which, 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 Indemnification. BB&K shall indemnify and hold the Client free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, to the extent arising out of any omissions, negligence or willful misconduct of BB&K in connection with the performance of the Services under this Agreement. BB&K shall reimburse the Client for any and all legal expenses and costs incurred by the Client in connection therewith or in enforcing the indemnity herein provided.

3.13 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon sixty (60) 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.

3.14 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, whether written or oral.

3.15 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

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

3.17 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.

3.18 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.

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

3.20 Delivery of Notices. 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 Clayton
6000 Heritage Trail
Clayton, CA 94517
Attention: City Manager

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

Such 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.

3.21 Mutual Cooperation. BB&K has a public law practice on a regional basis. BB&K will not represent Client and one of BB&K's public agency clients interacting with Client in a matter in which the interest of the clients potentially or actually conflict unless both Client and the public agency client have consented to such dual representation. BB&K will provide the City Manager/Executive Director notice under California Rule of Professional Conduct Rule 3-310 as BB&K becomes aware of the matter. The City Manager/Executive Director will forward such notices to the Client. The City Manager/Executive Director may acknowledge disclosures and may waive conflicts under Rule 3-310, subject to revocation by the Client when such disclosures or requests for waivers can be reviewed by the Client.

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

CITY OF CLAYTON, CA

By: _____
David T. Shuey, Mayor

CLAYTON REDEVELOPMENT AGENCY

By: _____
Julie K. Pierce, Chair

**OAKHURST GEOLOGIC HAZARD ABATEMENT
DISTRICT**

By: _____
Hank Stratford, Chair

BEST BEST & KRIEGER LLP

By: _____
Malathy Subramanian, Partner

EXHIBIT "A"
BB&K SCHEDULE OF PUBLIC FINANCE FEES

For bond counsel and special counsel services in connection with the financing of public facilities, BB&K shall be compensated, depending upon the type of bonds, certificates of participation or other obligations which are to be issued, based on the following schedules. Unless otherwise mutually agreed, BB&K's fees as bond counsel on these financings will be payable from proceeds of each series of the bonds upon their issuance.

1. Certificates of Participation and Revenue Bonds. For services in connection with the issuance and sale of certificates of participation and revenue bonds, BB&K shall be paid a fee which will be the greater of (i) \$35,000 or (ii) an amount based on the total principal amount of the certificates of participation or bonds to be sold, computed as follows:

- .50% of the first \$10 million of the amount of the certificates or bonds issued, plus
- .25% of the next \$10 million of the amount thereof, plus
- .125% of the amount thereof, if any, over \$20 million.

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 Section 3.7 of the Agreement.

2. Investment and Other Agreements. For investment agreements, derivative transactions or interest rate swaps relating to of any bond issue, a separate fee will be charged depending on the type of derivative. Generally, BB&K's fee for a derivative transaction mirrors BB&K's bond counsel fee. Review of investment agreements will be charged at the hourly rates as provided above in Section 3.7 of the Agreement.

3. Disclosure Counsel. BB&K's disclosure counsel fees for financings of the Client in the range of \$10 million to \$30 million will be \$25,000. BB&K's disclosure counsel services will include preparation and delivery of a preliminary official statement, bond purchase contract, final official statement, and continuing disclosure undertaking. If the transaction exceeds \$30 million, BB&K will seek additional compensation based upon an arrangement with the Client.

The fees include disclosure counsel services described above together with travel expenses to two meetings at the Client offices. These fees do not include attendance at any ratings presentations of the Client or related expenses. If other services are requested by the Client which are not within the scope of those provided for above, they will be performed on an hourly basis as provided above in Section 3.7 of the Agreement.

Fees for bond and disclosure counsel will be payable from proceeds of each series of the bonds upon their issuance, and are not contingent on the bonds being sold.

4. Issuer's Counsel Opinions. For all Issuer's Counsel opinions provided by BB&K in connection with any bond financing, fees shall be the following: (1) for opinions on financings for which BB&K does not provide bond counsel and disclosure counsel services, \$10,000; (2) for opinions on financings for which BB&K provides bond counsel services only, \$5,000; (3) for opinions on financings for

which BB&K provides disclosure counsel services only, \$2,500; and (4) for opinions on financings for which BB&K provides both bond and disclosure counsel services, there will be no charge.

5. Other Public Finance Services. If other services are requested by the City which are not within the scope of those provided for above, they will be performed on an hourly basis as provided for in Section 3.7 of the Agreement.



**SPECIAL MEETING
OAKHURST GEOLOGIC HAZARD ABATEMENT DISTRICT**

MONDAY, AUGUST 22, 2011

5:00 p.m.

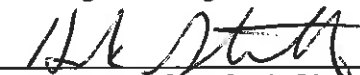
*First Floor Conference Room, Clayton City Hall
6000 Heritage Trail, Clayton, CA 94517*

Chairman: Hank Stratford
Vice Chairman: Joseph A. Medrano

Board Members

Howard Geller
Julie K. Pierce
David T. Shuey

*Pursuant to CA Government Code Section 54956 and upon order of Chairman Hank Stratford a special meeting is called for **August 22, 2011 at 5:00 p.m.** for the purpose of retaining and appointing new Legal Counsel for the Oakhurst Geologic Hazard Abatement District..*

Signed: 
Hank Stratford, Chairman

Date: 8-16-11

- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) www.ci.clayton.ca.us.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.
- Any writings or documents provided to a majority of the Board after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.

1. **CALL TO ORDER AND ROLL CALL** – Chairman Stratford.

2. **PUBLIC COMMENT PERIOD**

3. **ACTION ITEM**

- (a) Consideration of a Resolution authorizing and approving an Agreement for General Legal Services with the law firm of Best Best & Krieger LLP and appointing Mala Subramanian as General Counsel and Melanie Donnelly as Assistant General Counsel.
(Chairman Stratford)

Staff recommendation: Adopt the Resolution.

4. **ADJOURNMENT** – the next regularly scheduled Oakhurst Geologic Hazard Abatement District meeting will be scheduled as needed.

#####



Approved:

Gary A. Napper
City Manager/Executive Director

AGENDA REPORT

TO: HONORABLE CHAIR AND BOARD MEMBERS

FROM: RICK ANGRISANI, DISTRICT MANAGER

DATE: 22 AUGUST 2011

SUBJECT: RETENTION OF NEW GENERAL COUNSEL AND LEGAL SERVICES

RECOMMENDATION

It is recommended the Board of Directors adopt the prepared Resolution approving an Agreement for contract General and Special Legal Services with the law firm of Best Best & Krieger LLP (office in Walnut Creek) and appointing Malathy "Mala" Subramanian as General Counsel and Melanie Donnelly as Assistant General Counsel of the Oakhurst Geologic Hazard Abatement District (GHAD).

BACKGROUND

Since the District's formation in 1989, the GHAD utilized the legal services of the City of Clayton's city attorney to be and provide general counsel services to and for the District. With the law firm of Turner Huguett & Adams moving on after serving the City for 47 years and this District since its formation 22 years ago, it becomes necessary for the District to procure a new general counsel.

At the conclusion of advertising and seeking proposals for general and special legal services, the Clayton City Council decided to retain Best Best & Krieger LLP (with offices in Walnut Creek) to handle its city attorney services. The District does not have special legal counsel at this time. It has been accepted and past practice for the City Attorney to also serve as General Counsel of the District to handle routine representation at the Board's public meetings under the City's Basic Legal Services retainer. Consequently, it is necessary for the Board to approve the same General Legal Services contract with BB&K for this purpose.

CONTRACT LEGAL SERVICES

Attached to this Staff Report is a Resolution approving an Agreement for the retention of BB&K to provide contract general and special legal services to the District, and it appoints Mala Subramanian as our new General Counsel and Melanie Donnelly as our new Assistant General Counsel. The Board's appointments become effective immediately upon its adoption of the Resolution.

The law firm of BB&K does have specialty counsel and experience advising GHADs on the compendium of laws and complex challenges raised by the very nature of being a geological hazard district. It may be advisable for the Board in the near future to explore the retention of separate general and/or special legal counsel(s) to serve the GHAD in its distinct existence as public entity (special district). Naturally, the District's limited stream of tax assessment revenue and the constrained authority to raise revenues complicates the GHAD's ability to fully perform its potential.

FISCAL IMPACT

The District's new general counsel (BB&K) will provide the Board with basic legal representation at the Board's public meetings with cursory glance at District transactional business within the Basic Legal Services retainer of the City of Clayton. BB&K is available to the Agency to perform, at our request, special legal services in the GHAD discipline with such services provided at its \$275 hourly rate.

Attachment: A. GHAD Resolution with Legal Services Agreement [11 pp.]

GHAD RESOLUTION NO. – 2011

**A RESOLUTION APPROVING AN AGREEMENT FOR CONTRACT
GENERAL AND SPECIAL LEGAL SERVICES WITH THE LAW FIRM OF
BEST BEST & KRIEGER LLP, AND APPOINTING MALATHY SUBRAMANIAN
AS GENERAL COUNSEL AND MELANIE DONNELLY AS ASSISTANT
GENERAL COUNSEL OF AND FOR THE OAKHURST GEOLOGIC
HAZARD ABATEMENT DISTRICT**

**THE BOARD OF DIRECTORS
Oakhurst Geologic Hazard Abatement District, Clayton, CA**

WHEREAS, by City Resolution No. 5-89 adopted by the Clayton City Council on 01 February 1989, the Oakhurst Geologic Hazard Abatement District was duly formed and constituted as a separate legal public entity ; and

WHEREAS, commencing with and ever since that time, members of the current law firm of Turner, Huguet and Adams located in Martinez, California have ably served the District and its Board of Directors as General Counsel and Assistant General Counsel; and

WHEREAS, by way of letter to the City dated 24 March 2011, the law firm of Turner Huguet and Adams confirmed the time had arrived wherein it was necessary for the City to embark on a course to secure replacement city attorney services, including by inference the services of general counsel to the District; and

WHEREAS, the City summarily prepared and advertised a Request for Proposals (RFP) encouraging interested law firms and qualified individuals to submit proposals to the City for its consideration in the selection of a new city attorney and assistant city attorney; and

WHEREAS, by the filing deadline date of 01 July 2011, the City received twenty-one (21) responses to its RFP, thereby requiring an ad-hoc committee of the City Council and its City Manager to review, evaluate and pre-screen respondents for final interview before the entire City Council; and

WHEREAS, on 15 August 2011 at a duly-noticed special meeting, all members of the City Council interviewed three (3) finalists for the provision of general and special legal services to the City as its city attorney; and

WHEREAS, by unanimous determination, the City Council has concluded it is in the best interests, benefit and general welfare of its citizens, community and municipal corporation that the law firm of Best Best & Krieger LLP is ideally suited and should be retained to provide contract services as the City's next city and assistant city attorneys; and

WHEREAS, the substitution of legal counsel for the City Council of Clayton necessitates the District's Board of Directors find and retain new general legal counsel as well; and

WHEREAS, the District's Board of Directors herein deems it entirely appropriate and efficient for the District to retain and effectively use the same qualified law firm as the City of Clayton to perform general legal counsel services to and for the District.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Oakhurst Geologic Hazard Abatement District does hereby find, determine and approve as follows:

Section 1. That the above Recitals are true and correct facts pertaining to an important matter of public policy to the District.

Section 2. That an Agreement for General Counsel Legal Services ("Agreement") with the law firm of Best Best & Krieger LLP ("BB&K"), attached hereto as Attachment 1 and incorporated herein as if fully set forth in this Resolution, does hereby set forth the terms and conditions for the retention of BB&K to provide general legal counsel services for and to the District, and therefore said Agreement is hereby approved and adopted.

Section 3. That Malathy "Mala" Subramanian of BB&K is herewith appointed and designated as the General Counsel for the Oakhurst Geologic Hazard Abatement District, and Melanie Donnelly of BB&K is hereby appointed and designated as the Assistant General Counsel for the Oakhurst Geologic Hazard Abatement District, each named appointment and designation to become effective immediately upon the Board of Directors' adoption of this Resolution; and

Section 4. The Chair is hereby authorized and directed to execute the Agreement for and on behalf of the District, a true and correct copy of the Agreement being attached hereto as Attachment 1.

Section 5. This Resolution shall and does take immediate effect from and after its passage and adoption.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Oakhurst Geologic Hazard Abatement District at a duly-noticed special public meeting thereof held on the 22nd day of August 2011 by the following recorded vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE DISTRICT BOARD OF DIRECTORS

Hank Stratford, Chair

ATTEST:

Laci J. Jackson, Secretary

**GENERAL COUNSEL LEGAL SERVICES BETWEEN
CITY OF CLAYTON/CLAYTON RDA/OAKHURST GEOLOGIC HAZARD ABATEMENT DISTRICT AND
BEST BEST & KRIEGER LLP**

1. PARTIES AND DATE.

This Agreement is made and entered into as of the ____ day of _____, 2011, by and amongst the City of Clayton ("City"), the Clayton Redevelopment Agency ("Agency"), the Oakhurst Geologic Hazard Abatement District ("GHAD") (collectively, the "Client") and Best Best & Krieger LLP, a limited liability partnership, engaged in the practice of law ("BB&K").

2. RECITALS.

Client wishes to engage the services of BB&K as its City Attorney/General Counsel 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 August 23, 2011, and shall continue in full force and effect until terminated in accordance with Section 3.13.

3.2 Scope of Services. BB&K shall serve as City Attorney/General Counsel 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, including closed sessions, special meetings and study sessions, as requested;

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 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.

3.3 Designated City Attorney/General Counsel. Malathy Subramanian shall be designated as City Attorney/General Counsel 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. Melanie Donnelly shall be designated as Assistant City Attorney/Assistant General Counsel. No change in this assignment shall be made without the consent or initiation 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. Except as it relates to services performed by BB&K for the Client, 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 Services and Compensation. BB&K shall render and bill for legal services in the following categories and at the following rates.

3.7.1 Basic Legal Services - Description. Basic legal services shall include all services provided to Client which are not otherwise specifically identified below as either Special Legal Services, Third Party Reimbursable Legal Services or Public Finance Legal Services.

3.7.2 Basic Legal Services – Retainer. The Client shall pay for Basic Legal Services at the fixed monthly retainer amount of Eight Thousand Dollars (\$8,000) per month (estimated at an average of 40 to 45 hours per month) for basic legal services, which shall include 3 hours per month of Code Enforcement special legal services.

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

- (a) Litigation and formal administrative hearing matters handled by BB&K;
- (b) Labor relations and employment matters;
- (c) Complex real estate or land acquisitions;
- (d) Redevelopment;
- (e) Natural resources (including CEQA, NEPA, and endangered species);
- (f) Tax and ERISA related matters;
- (g) Toxic substances matters (e.g., CERCLA, RCRA);
- (h) Complex Code Enforcement; and
- (i) Other matters mutually agreed upon.

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

Partners/Of Counsel/Associate Attorneys	\$275.00
Paralegals/Law Clerks	\$150.00

3.7.5 Third Party Reimbursable Legal Services - Description. Third Party Reimbursable Legal Services shall include legal services provided to the Client for which the Client receives reimbursement from a developer or other third party.

3.7.6 Third Party Reimbursable Legal Services - Rates. The Client shall pay for Third Party Reimbursable Legal Services on matters involving an existing single family dwelling property owner at Special Legal Services Rates, and for all other 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 updates to the Client when changes are made to the published rate schedule.

3.7.7 Public Finance Legal Services – Description & Rates. The Client shall pay for Public Finance Legal Services at the rates attached hereto as Exhibit "A" and incorporated herein by reference.

3.7.8 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 provide a scope and budget for the services and seek approval from the City Manager/Executive Director or his/her designee. The City Manager/Executive Director's or his/her designee's approval of such a request from BB&K shall not be unreasonably withheld.

3.7.9 Cost Reimbursement & Exceptions. The Client shall reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the Services under this Agreement associated with Special Legal Services, Third Party Reimbursable Legal Services, and Public Finance Legal Services. 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 for services provided outside of the retainer, 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 after obtaining approval from the City Manager/Executive Director (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 an initial review of performance and compensation should be conducted within six (6) months following the execution of this Agreement, with annual reviews of performance and the compensation amounts referenced in this Agreement 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. BB&K shall provide proof of insurance to Client on an annual basis in a form acceptable to Client. Required insurance policies shall not be canceled until a thirty day written notice of cancellation has been served upon the Client. If such insurance coverage is cancelled, BB&K shall within fifteen days after Client's receipt of written notice of such cancellation, file with Client evidence of insurance showing reinstatement or that it has been provided through another insurance company or companies. All policies shall include a waiver of subrogation provision acceptable to Client.

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 which, 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 Indemnification. BB&K shall indemnify and hold the Client free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, to the extent arising out of any omissions, negligence or willful misconduct of BB&K in connection with the performance of the Services under this Agreement. BB&K shall reimburse the Client for any and all legal expenses and costs incurred by the Client in connection therewith or in enforcing the indemnity herein provided.

3.13 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon sixty (60) 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.

3.14 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, whether written or oral.

3.15 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

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

3.17 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.

3.18 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.

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

3.20 Delivery of Notices. 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 Clayton
6000 Heritage Trail
Clayton, CA 94517
Attention: City Manager

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

Such 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.

3.21 Mutual Cooperation. BB&K has a public law practice on a regional basis. BB&K will not represent Client and one of BB&K's public agency clients interacting with Client in a matter in which the interest of the clients potentially or actually conflict unless both Client and the public agency client have consented to such dual representation. BB&K will provide the City Manager/Executive Director notice under California Rule of Professional Conduct Rule 3-310 as BB&K becomes aware of the matter. The City Manager/Executive Director will forward such notices to the Client. The City Manager/Executive Director may acknowledge disclosures and may waive conflicts under Rule 3-310, subject to revocation by the Client when such disclosures or requests for waivers can be reviewed by the Client.

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

CITY OF CLAYTON, CA

By: _____
David T. Shuey, Mayor

CLAYTON REDEVELOPMENT AGENCY

By: _____
Julie K. Pierce, Chair

**OAKHURST GEOLOGIC HAZARD ABATEMENT
DISTRICT**

By: _____
Hank Stratford, Chair

BEST BEST & KRIEGER LLP

By: _____
Malathy Subramanian, Partner

EXHIBIT "A"
BB&K SCHEDULE OF PUBLIC FINANCE FEES

For bond counsel and special counsel services in connection with the financing of public facilities, BB&K shall be compensated, depending upon the type of bonds, certificates of participation or other obligations which are to be issued, based on the following schedules. Unless otherwise mutually agreed, BB&K's fees as bond counsel on these financings will be payable from proceeds of each series of the bonds upon their issuance.

1. Certificates of Participation and Revenue Bonds. For services in connection with the issuance and sale of certificates of participation and revenue bonds, BB&K shall be paid a fee which will be the greater of (i) \$35,000 or (ii) an amount based on the total principal amount of the certificates of participation or bonds to be sold, computed as follows:

- .50% of the first \$10 million of the amount of the certificates or bonds issued, plus
- .25% of the next \$10 million of the amount thereof, plus
- .125% of the amount thereof, if any, over \$20 million.

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 Section 3.7 of the Agreement.

2. Investment and Other Agreements. For investment agreements, derivative transactions or interest rate swaps relating to of any bond issue, a separate fee will be charged depending on the type of derivative. Generally, BB&K's fee for a derivative transaction mirrors BB&K's bond counsel fee. Review of investment agreements will be charged at the hourly rates as provided above in Section 3.7 of the Agreement.

3. Disclosure Counsel. BB&K's disclosure counsel fees for financings of the Client in the range of \$10 million to \$30 million will be \$25,000. BB&K's disclosure counsel services will include preparation and delivery of a preliminary official statement, bond purchase contract, final official statement, and continuing disclosure undertaking. If the transaction exceeds \$30 million, BB&K will seek additional compensation based upon an arrangement with the Client.

The fees include disclosure counsel services described above together with travel expenses to two meetings at the Client offices. These fees do not include attendance at any ratings presentations of the Client or related expenses. If other services are requested by the Client which are not within the scope of those provided for above, they will be performed on an hourly basis as provided above in Section 3.7 of the Agreement.

Fees for bond and disclosure counsel will be payable from proceeds of each series of the bonds upon their issuance, and are not contingent on the bonds being sold.

4. Issuer's Counsel Opinions. For all Issuer's Counsel opinions provided by BB&K in connection with any bond financing, fees shall be the following: (1) for opinions on financings for which BB&K does not provide bond counsel and disclosure counsel services, \$10,000; (2) for opinions on financings for which BB&K provides bond counsel services only, \$5,000; (3) for opinions on financings for

which BB&K provides disclosure counsel services only, \$2,500; and (4) for opinions on financings for which BB&K provides both bond and disclosure counsel services, there will be no charge.

5. Other Public Finance Services. If other services are requested by the City which are not within the scope of those provided for above, they will be performed on an hourly basis as provided for in Section 3.7 of the Agreement.