



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** May 08, 2018  
**From:** Douglas B. Robertson, Town Manager      **Item No:** 10  
**Subject:** SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE TOWN ATTORNEY LEGAL SERVICES TO THE TOWN OF APPLE VALLEY WITH BEST BEST & KRIEGER, LLP

**T.M. Approval:** \_\_\_\_\_      **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

Approve and authorize Town Manager to execute Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley.

### SUMMARY:

Best Best & Krieger, LLP (“BB&K”) has served as Town Attorney to the Town since 2008. Beginning July 1, 2018, the proposed Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley (“Second Amendment”) would do the following:

1. Reduce the current monthly capped retainer amount by ten percent (10%) from \$19,428 to \$17,485 per month;
2. Freeze the monthly retainer amount for fiscal years 2018/19 and 2019/20 with no cost of living adjustment;
3. Freeze the rates for specialized legal services for fiscal years 2018/19 and 2019/20 with no cost of living adjustment;
4. Provide additional detail on the type of work qualifying as specialized legal services, including to specifically reference telecommunications and employee benefits work consistent with current practice; and
5. Include an option for the Town to utilize BB&K’s services to assist with lengthy or complex Public Records Act (“PRA”) requests at a blended hourly rate for paralegals/clerks and attorneys.

Town staff recommends approval of the Second Amendment, which will assist with the Town's ongoing efforts to balance the budget.

**BACKGROUND:**

On July 15, 2008, the Town and BB&K entered into the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley ("Original Agreement"). The Original Agreement provided for a monthly capped retainer of \$20,000 subject to an annual cost of living adjustment. In addition, the Original Agreement enabled the provision of specialized legal services at rates ranging from \$150 to \$285 per hour subject to an annual cost of living adjustment. BB&K has served as Town Attorney for the Town since 2008.

On August 14, 2012, the Town and BB&K entered into the First Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley ("First Amendment"). The First Amendment reduced the monthly capped retainer amount to \$18,000 per month subject to an annual cost of living adjustment. In addition, the First Amendment enabled the provision of specialized legal services at rates ranging from \$156 to \$298 per hour subject to an annual cost of living adjustment.

For fiscal year 2017/18, based on the annual cost of living adjustments, the monthly retainer is \$19,428 per month and specialized legal services are offered at rates ranging from \$169 to \$321 per hour.

Beginning July 1, 2018, the proposed Second Amendment would reduce the monthly capped retainer by ten percent (10%) from \$19,428 to \$17,485 per month and will freeze that retainer amount for two fiscal years. In addition, the proposed Second Amendment would freeze the rates for specialized legal services for two fiscal years. At this time, the cost of living adjustment for fiscal year 2018/19 under the First Amendment has not been calculated. However, it is estimated that the cost of living adjustment for both the retainer and the rates for specialized legal services would be around 3.8% if the Second Amendment is not adopted. (Bureau of Labor Statistics, Consumer Price Index, Los Angeles area – March 2018). At this time, it is too early to speculate what the cost of living adjustment for fiscal year 2019/20 should the Second Amendment not be approved.

In addition to the foregoing, the proposed Second Amendment would revise the list of specialized legal services to expressly reference telecommunications and employee benefits work. While this work has historically been treated as specialized legal services, the amendment presented an opportunity to make this clear in the agreement. Furthermore, the proposed Second Amendment provides an option for the Town to

utilize BB&K's services to assist with lengthy or complex PRA requests at a blended hourly rate of \$185 for paralegals/clerks and attorneys. While day-to-day legal advice related to the PRA is covered under the retainer, the Town may wish to utilize BB&K on an 'as needed' basis to assist with responding to particularly challenging PRA requests.

**FISCAL IMPACT:**

For fiscal year 2018/19, the adoption of the proposed Second Amendment will reduce the Town's cost of legal services by a minimum of \$23,316. In addition, adoption of the proposed Second Amendment would prevent cost of living adjustments to both the retainer and the specialized services rates, which are estimated to be roughly 3.8% for fiscal year 2018/19 and are currently unknown for fiscal year 2019/20.

**ATTACHMENTS:**

1. Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley (Proposed)
2. Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley dated July 15, 2008.
3. First Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley dated August 14, 2012.

**SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE  
TOWN ATTORNEY LEGAL SERVICES  
TO THE TOWN OF APPLE VALLEY**

This Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley (“Second Amendment”) is entered into between the Town of Apple Valley (“Town”) and Best Best & Krieger LLP (“BB&K”). The Town and BB&K are collectively referred to herein as the “Parties.”

**RECITALS**

A. The Town and BB&K entered into that certain Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated July 15, 2008 (“Agreement”), setting forth the terms and conditions of BB&K’s legal representation of the Town as Town Attorney (“Services”).

B. The Town and BB&K entered into that certain Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated August 14, 2012 (“First Amendment”) relating to compensation for legal services.

C. The Parties desire to approve this Second Amendment to the Agreement to reduce the current monthly retainer balance by ten percent (10%) from \$19,428 per month to \$17,485 per month, to freeze the current rates for the monthly retainer and specialized legal services for fiscal years 2018/19 and 2019/20, to revise the list of specialized legal services to provide greater specificity in line with current practice, and to allow for the provision of ‘as needed’ Public Records Act assistance.

**NOW, THEREFORE**, the Parties agree as follows:

I. This Second Amendment shall take effect on July 1, 2018.

II. Section 3 of the Agreement, as amended by the First Amendment, is hereby revised to read in its entirety as follows:

**“3. TOWN ATTORNEY SERVICES AND COMPENSATION**

BB&K shall receive compensation for all Services rendered by BB&K attorneys and personnel providing Town Attorney Services under this Agreement at the rates set forth below, with the exception of bond counsel and third party reimbursable services, if applicable, as follows:

All General Legal Services will be compensated at the fully capped flat rate of \$17,485 per month and those General Legal Services will be fully covered by this payment.

Rates will be automatically adjusted annually on July 1<sup>st</sup> of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set forth for the Los Angeles-Anaheim-Riverside area. As part of the Town’s annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the

amount of such adjustment for the subsequent fiscal year. Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19 and 2019/20.”

III. Section 4 of the Agreement, as amended by the First Amendment, is hereby revised to read as follows:

**“4. SPECIALIZED LEGAL SERVICES AND COMPENSATION**

Specialized Legal Services, which BB&K and the Town Council or the Town Manager agree are outside the scope of General Legal Services, will be provided in addition to, and billed separately from, the General Legal Services. Specialized Legal Services, with the Town Council’s or Town Manager’s prior written approval, shall include the following:

- Litigation, including eminent domain;
- Complex legal review and analysis of development projects including environmental assessments under the California Environmental Quality Act or the National Environmental Policy Act;
- Water rights and transfers;
- Public employee benefits and public employee dismissal and release labor and employment services; and
- Telecommunications and cable franchise issues.

Specialized Legal Services will be provided at the hourly rates listed below:

- Partner \$321/hr
- Of Counsel \$311/hr
- Senior Associate \$282/hr
- Associate \$265/hr
- Paralegal/Clerk \$169/hr

Rates will also be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3. Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19 and 2019/20.

Fees for bond counsel services in connection with the financing of public facilities shall be contingent and based on the size of the issue. Unless otherwise agreed in writing by Town, BB&K shall be compensated for such services solely from the proceeds of the sale of the bonds, certificates of participation or other obligations issued at BB&K’s then current bond counsel rates, should the Town choose to engage the bond counsel services of BB&K.

While day-to-day legal advice related to the Public Records Act is addressed under General Legal Services, the Town may at its discretion utilize BB&K on an ‘as needed’ basis to assist the Town Clerk’s Office with responding to lengthy or complex Public Records Act requests. Such assistance may include the uploading of large numbers of documents to BB&K’s systems for collation, review, and production under the Public Records Act. Such services shall be provided at an hourly rate of \$185 for paralegals/clerks and attorneys. As above, rates will be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3.

Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19 and 2019/20.”

IV. Except as otherwise specifically set forth in this Second Amendment, all of the provisions of the Agreement, as amended by the First Amendment, shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE TO  
SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE  
TOWN ATTORNEY LEGAL SERVICES  
TO THE TOWN OF APPLE VALLEY**

Dated this \_\_\_\_ day of May, 2018.

TOWN OF APPLE VALLEY

BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
Douglas B. Robertson  
Town Manager

By: \_\_\_\_\_  
John E. Brown  
Partner

*Attest:*

By: \_\_\_\_\_  
La Vonda M-Pearson  
Town Clerk

28314

**AGREEMENT TO PROVIDE TOWN ATTORNEY LEGAL SERVICES  
TO THE TOWN OF APPLE VALLEY**

This Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley. ("the Agreement") is made as of the 15th day of July, 2008, by and between the Town of Apple Valley, a California municipal corporation ("Town"), and Best Best & Krieger LLP, a limited liability partnership engaged in the practice of law ("BB&K"). The Town wishes to engage the services of BB&K as Town Attorney on the terms set forth below.

**1. TERM.**

The term of this Agreement shall commence on July 15, 2008, and shall continue in full force and effect until terminated in accordance with Section 11 herein.

**2. SCOPE OF SERVICES; DESIGNATION OF TOWN ATTORNEY.**

BB&K shall serve as Town Attorney and shall perform legal services as may be required from time to time by the Town and its officers as set forth by this Agreement ("Services"). As part of the Services to be performed hereunder, BB&K shall be responsible to provide General Legal Services for the Town which shall include, but not limited to the preparation and attendance at all regular, adjourned regular and special Town Council and Redevelopment Agency meetings, and also such Planning Commission and/or other Town related agency, board, commission or committee meetings as deemed necessary and required by the Town Manager, and attendance at other Town business and management meetings, if required by the Town Manager. General Legal Services also include the preparation as necessary, and review of all Town ordinances and resolutions, together with such agreements, deeds and other legal documents as requested by the Town Manager. General Legal Services shall also include rendering to officers and employees of the Town legal advice and opinions on all matters legally affecting the Town, the Town Council, the Redevelopment Agency, the Town Planning Commission, the Town departments and/or other Town related agencies, boards, commissions or committees, as directed by the Town Council or the Town Manager. General Legal Services shall also include all other legal services, other than Specialized Legal Services, as required by the Town Council or Town Manager.

A "Request For Town Attorney Services" is attached and incorporated herein for the Town's use, to request Services.

BB&K shall be designated as Town Attorney and shall be responsible for the performance of services under this Agreement and the supervision of services performed by other members of BB&K. John E. Brown of BB&K shall act for all purposes as the Town Attorney as BB&K's designated Partner. No change in this assignment shall be made without the prior approval and consent of the Town Council.

**3. TOWN ATTORNEY SERVICES AND COMPENSATION.**

BB&K shall receive compensation for all Services rendered by BB&K attorneys and personnel providing Town Attorney Services under this Agreement at the rates set forth

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below, with the exception of bond counsel and third party reimbursable services, if applicable, as follows:

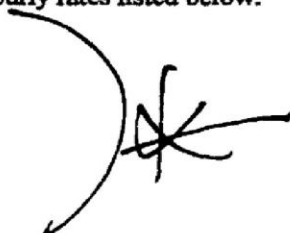
All General Legal Services will be compensated at the fully-capped flat rate of \$20,000 per month, and those General Legal Services will be fully covered by this payment.

Rates will be automatically adjusted annually on July 1<sup>st</sup> of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set forth for the Los Angeles-Anaheim-Riverside area. As part of the Town's annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the amount of such adjustment for the subsequent fiscal year.

**4. SPECIALIZED LEGAL SERVICES AND COMPENSATION.**

Specialized Legal Services, which BB&K and the Town Council or the Town Manager agree are outside the scope of General Legal Services, will be provided in addition to, and billed separately from, the General Legal Services. Specialized Legal Services, with the Town Council's or Town Manager's prior written approval, shall include the following: litigation, including eminent domain, complex legal review and analysis of environmental assessments under the California Environmental Quality Act or the National Environmental Policy Act, water rights and transfers, and complex labor and protracted labor and employment negotiations, litigation and public employee dismissal and release labor and employment services, and will be provided at the hourly rates listed below.

Partner	\$285/hr
Of Counsel	\$275/hr
Senior Associate	\$250/hr
Associate	\$235/hr
Paralegal/Clerk	\$150/hr



Rates will also be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3.

Fees for bond counsel services in connection with the financing of public facilities shall be contingent and based on the size of the issue. Unless otherwise agreed in writing by Town, BB&K shall be compensated for such services solely from the proceeds of the sale of the bonds, certificates of participation or other obligations issued at BB&K's then current bond counsel rates, should the Town choose to engage the bond counsel services of BB&K.

**5. THIRD PARTY REIMBURSEMENTS**

All legal services provided to the Town for which the Town elects to receive reimbursement from a developer or other third party beneficiary shall be billed at the regular private sector rates for the attorneys involved. Those rates shall be shown on the firm's rate schedule on file with the Town, and ordinarily change from year to year. BB&K will provide annually updated rate schedules for private sector rates. The decision by the Town to seek Third Party reimbursement shall be made by the Town exclusively.

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**6. REIMBURSEMENT OF COSTS**

BB&K shall receive reimbursement of reasonable and necessary costs incurred by BB&K on behalf of Town, as well as other expenses, in addition to fees for services. Such reimbursable costs include, but are not limited to, automobile mileage (limited to travel to and from the Ontario office) at the current IRS rate per mile, actual expenses away from the Ontario office on Town business, extraordinary printing and photocopy charges, long distance telephone and facsimile charges, tolls, court fees, computerized research time (e.g. Lexis or Westlaw), extraordinary mail or delivery costs (e.g. courier overnight, express delivery) and similar costs relating to Town Attorney legal services that are generally chargeable to a client. BB&K shall not charge separately for secretarial, administrative or other "overhead" charges.

**7. BILLING**

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

**8. INCREASES TO COMPENSATION.**

BB&K or the Town Council may initiate consideration of a rate increase for legal services. Such rate increase may be approved by the Town Council in its sole and absolute discretion.

**9. COOPERATION WITH TOWN COUNCIL AND TOWN MANAGER.**

BB&K shall work cooperatively with the Town Council and Town Manager and keep them informed on all matters of importance as they arise.

**10. INSURANCE COVERAGE.**

BB&K carries errors and omissions insurance with Lloyd's of London. After a standard deductibility amount, this insurance provides coverage which exceeds the amount required by the State of California.

**11. TERMINATION OF AGREEMENT AND LEGAL SERVICES.**

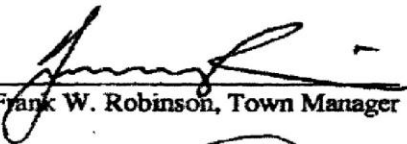
This Agreement may be terminated at any time upon thirty (30) days written notice from either Party, with or without cause. In the event of such termination, BB&K shall be paid for all services (and reimbursable expenses) authorized by the Town and performed up through and including the effective date of termination.

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IN WITNESS WHEREOF, the Town and BB&K have executed this Agreement as of the date first written above.

**TOWN OF APPLE VALLEY**

**BEST BEST & KRIEGER LLP**

By:   
Frank W. Robinson, Town Manager

By:   
John E. Brown, Partner  
Town Attorney

Attest:  
By:   
La Vonda Pearson, Town Clerk

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**AMENDMENT TO THE AGREEMENT TO PROVIDE  
TOWN ATTORNEY LEGAL SERVICES  
TO THE TOWN OF APPLE VALLEY**

This Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley ("Amendment") is entered into between the Town of Apple Valley ("Town") and Best Best & Krieger LLP ("BB&K"). The Town and BB&K are collectively referred to herein as the "Parties."

**RECITALS**

A. The Town and BB&K entered into that certain Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated July 15, 2008 ("Agreement"), setting forth the terms and conditions of BB&K's legal representation of the Town as Town Attorney ("Services").

B. The Parties desire to approve this Amendment to the Agreement relating to BB&K's compensation for legal services.

**NOW, THEREFORE**, the Parties agree as follows:

1. Compensation.

(a) Basic Legal Services. All General Legal Services will be compensated at the fully capped flat rate of \$18,000 per month ("Amended Rate") and those General Legal Services will be fully covered by this payment. The Parties agree that the Amended Rate will take effect for all General Legal Services, as described herein and in the Agreement, rendered by BB&K to Town beginning July 1, 2012.

As stated in the Agreement, rates for the Services will be automatically adjusted annually on July 1<sup>st</sup> of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set forth for the Los Angeles-Anaheim-Riverside area. As part of the Town's annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the amount of such adjustment for the subsequent fiscal year.

2. Specialized Legal Services and Compensation.

Specialized Legal Services, which BB&K and the Town Council or the Town Manager agree are outside the scope of General Legal Services, will be provided in addition to, and billed separately from, the General Legal Services. Specialized Legal Services, with the Town Council's or Town Manager's prior written approval, shall include the following: litigation, including eminent domain, complex legal review and analysis of environmental assessments under the California Environmental Quality Act or the National Environmental Policy Act, and

water rights and transfers, litigation and public employee dismissal and release labor and employment services, and will be provided at the hourly rates listed below.

Partner	\$298/hr
Of Counsel	\$288/hr
Senior Associate	\$261/hr
Associate	\$246/hr
Paralegal/Clerk	\$156/hr

Rates will also be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3 of the Agreement and Section 1 of this Amendment.

Fees for bond counsel services in connection with the financing of public facilities shall be contingent and based on the size of the issue. Unless otherwise agreed in writing by Town, BB&K shall be compensated for such services solely from the proceeds of the sale of the bonds, certificates of participation or other obligations issued at BB&K's then current bond counsel rates, should the Town choose to engage the bond counsel services of BB&K.

3. Except as otherwise specifically set forth in this Amendment, all of the provisions of the Agreement shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE TO THE  
AMENDMENT TO THE AGREEMENT TO PROVIDE TOWN ATTORNEY LEGAL  
SERVICES TO THE TOWN OF APPLE VALLEY

Dated this 14 day of August, 2012.


TOWN OF APPLE VALLEY

BEST BEST & KRIEGER LLP

By:   
FRANK ROBINSON  
Town Manager

By:   
John E. Brown  
Partner

Attest:

By:   
LA VONDA PEARSON  
Town Clerk