City Council
Jose Esteves, Mayor
Carmen Montano, Vice Mayor
Garry Barbadillo, Councilmember
Debbie Indihar Giordano, Councilmember
Marsha Grilli, Councilmember

CITY OF MILPITAS NOTICE OF SPECIAL MEETING

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council will be held at 4:30 p.m. on Tuesday, September 22, 2015, at Milpitas City Hall, 455 East Calaveras Blvd., Milpitas, CA in the Council Chambers on the second floor. The agenda for the meeting is as follows:

SPECIAL MEETING AGENDA

September 22, 2015
4:30 PM
Milpitas City Hall
Council Chambers, 2nd Floor
455 E. Calaveras Blvd., Milpitas, CA

I. CALL TO ORDER/ROLL CALL

II. PUBLIC EMPLOYEE APPOINTMENT/HIRING

Pursuant to California Government Code Section 54957
Position: City Attorney

Approve Contract with Best Best & Krieger LLP to Provide City Attorney Services (Staff Contact: Tom Williams, 408-586-3050)

Background: At the May 19, 2015 Budget Hearing, City Council voted to form an ad-hoc subcommittee to review the cost benefit of retaining in-house legal services versus contracting out legal services. The ad-hoc city attorney subcommittee convened three times (from May 29, 2015 to August 27, 2015). At the June 16, 2015 City Council meeting, the subcommittee recommended and the City Council directed staff to prepare a Request for Proposals (RFP) for contract City Attorney services. The RFP was issued on July 2, 2015. In response, the City received four (4) qualified proposals by the deadline of August 15, 2015. The subcommittee reviewed each proposal and invited all four law firms to interview.

As a result of the interview process, the City Council approved entering into contract with the law firm Best Best & Krieger. The attached contract was drafted by the Interim City Attorney and contains a number of provisions to ensure that the City receives the maximum level of legal services for the lowest cost. These include provisions requiring that the City billing must be controlled and well documented and prohibit double billing or billing for "getting up to speed". A few changes were requested and made based upon request from the law firm, such as including additional attorneys who were preapproved by the City.

The contract is for a two year and 10 month term due to the desire to end the contract at the end of the fiscal year. The first fiscal year of the contract is in the amount of $458,333 for the 10

month term involved. The second year of the contract is for not to exceed $550,000 and the third year of the contract is the sum of $550,000 increased by the CPI of the prior year.

Fiscal Impact: At the proposed rate, the annual budget would be $550,000 of the total adopted budget of $852,040, exclusive of litigation. And far less than the $1,300,000 budget proposed by the previous in-house City Attorney.

Recommendation(s): Approve the contract with Best Best & Krieger LLP to provide City Attorney Services, effective September 23, 2015.

III. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall at 455 E. Calaveras Blvd., Milpitas during normal business hours.

For more information on your rights under the Open Government Ordinance or to report a violation of the ordinance, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA
Phone: 408/586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF MILPITAS
AND
BEST, BEST & KRIEGER LLP

PREAMBLE

This Legal Services Agreement ("Agreement") is made and entered into on this _____ day of September, 2015 (the "Effective Date") by and between the **CITY OF MILPITAS**, a California municipal corporation ("City"), located at 455 E. Calaveras Boulevard, Milpitas, California 95035 and **BEST, BEST & KRIEGER LLP** comprised of attorneys licensed to practice law in the State of California ("City Attorney" or "the firm"), with its principal place of business located at 2001 North Main Street, Suite 390, Walnut Creek, California 94596. City and City Attorney may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

The following recitals are a substantive portion of this Agreement:

A. City desires to secure professional services from Best, Best & Krieger LLP to serve as City Attorney of the City of Milpitas, as more fully described in this Agreement.

B. City Attorney represents that it has the professional qualifications, expertise, necessary licenses, and desire to provide legal services of the quality and type, which meet objectives and requirements of City.

AGREEMENT PROVISIONS

The Parties agree as follows:

1. RETENTION OF FIRM.

A. City hereby confirms, retains, and authorizes City Attorney to represent City and provide legal services as may be requested, from time to time, orally or in writing, by authorized representatives of City on an as-needed basis. By this Agreement, City is retaining Best, Best & Krieger LLP and not individual members of the firm. City Attorney's client is the City, as a public entity, and not any of its individual members, groups of individuals or any other entity. City Attorney shall report to and receive direction from the City Council.

B. City Attorney shall perform such legal services for and on behalf of City under the primary direction of the City Council. City Attorney shall undertake, subject to the written

approval of the City Manager or the City Council, additional duties as the City may authorize from time to time under the terms and conditions of this Agreement.

2. DESCRIPTION OF CITY ATTORNEY SERVICES.

These services may include, but are not limited to, providing advice and counsel on legal matters affecting City, attending and advising at City Council and other meetings, performing legal research, representing City in judicial proceedings in State and/or federal court or other dispute resolution forums or before administrative agencies, negotiating contracts and drafting contracts, correspondence and other legal documents as may become necessary. The services shall also include the preparation and delivery of status reports to City as specified in this Agreement.

3. TERM OF AGREEMENT.

The services of City Attorney commence upon the Effective Date of this Agreement and shall terminate on June 30, 2018, unless earlier terminated by one of the Parties. The Parties may extend the term by a written agreement, following approval of such agreement by the City Council. The City Attorney shall provide services as of the Effective Date. All the City Attorney's services pursuant to this Agreement shall be undertaken and completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care.

4. TOTAL COMPENSATION

For the period of September 23, 2015 to June 30, 2016, total compensation under this Agreement shall not exceed $458,333. For the period from July 1, 2016 to June 30, 2017, total compensation shall not exceed $550,000. For the period of July 1, 2017 to June 30, 2018, total compensation shall not exceed $550,000 (plus an amount equal to the percentage increase in the CPI, if any, from July 1, 2016 through June 30, 2017, multiplied by $550,000). In the event City seeks to have City Attorney undertake litigation that will exceed the total compensation, the parties agree to explore the possibility of entering into a separate agreement for the individual case. At no time shall compensation for Third Party Reimbursable Legal Services discussed in Section 5 of this Agreement be included within the total compensation amounts cited in this Section 4 of this Agreement.

5. THIRD PARTY REIMBURSABLE COMPENSATION

Third Party Reimbursable Legal Services shall include legal services provided to the City for which the City receives reimbursement from a developer or other third party. City shall pay for Third Party Reimbursable Legal Services at City Attorney's then current published standard private client rates. Upon execution of this Agreement, City Attorney shall provide a copy of its published rate schedule to the City. City Attorney shall also provide annual updates to the City when changes are made to the published rate

schedule. At no time shall compensation for Third Party Reimbursable Legal Services be included within the total compensation amount in Section 4 of this Agreement.

6. ASSIGNMENT OF DUTIES.

The Parties agree that Christopher Diaz shall serve as City Attorney and that Mala Subramanian shall serve as back-up City Attorney. Gene Tanaka and Benjamin Lee shall handle any litigation matters for the City. Katy Wisinski shall attend the Planning Commission meetings and provide other coverage as needed, Ethan Walsh shall provide RDA/Successor Agency advice, Stacey Sheston and Kimberly Hood shall provide labor and employment advice, Kevin Wang and Tyree Dorward shall provide public contracting advice, Kelly Salt shall provide Proposition 218, rates and fee advice, Isabel Safie shall provide employee benefits and public retirement systems advice, and Josh Nelson shall provide general advice where needed, all under the supervision of Christopher Diaz. Additional attorneys may be assigned to City, following written approval of City Manager. The City shall have sole discretion in the choice of City Attorney, back-up City Attorney, Assistant City Attorney, Litigation Attorney, or Deputy City Attorney. In the event that City requires a change of the attorney assigned to any of these roles, the firm shall upon written request replace these individuals with other qualified attorneys. Should the firm utilize any other attorney for any task under this Agreement that exceeds three (3) billable hours per month, that attorney must be approved by the City Manager in writing.

7. PUBLIC FUNDING.

City Attorney and City mutually recognize that tax dollars from citizens and taxpayers of the City of Milpitas pay for City Attorney's services under this Agreement. Given this fact, a heightened duty of care exists in both City Attorney and City to ensure that City Attorney scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying forth the goals of this Agreement. City Attorney and each of its attorneys pledge themselves to scrupulously observe a duty of reasonableness and cost effective representation in all aspects of this Agreement and to carry forth the ends of achieving the goals set forth herein while entailing the expenditure of only a reasonable sum for City Attorney's representation under this Agreement.

8. PAYMENT FOR SERVICE.

In consideration for City Attorney's performance of legal services on behalf of City under the terms of this Agreement, and upon review and approval of City Attorney's bill by the City Attorney, City Attorney shall be compensated at the preapproved hourly rates and for authorized expenses set forth in the "Scope of Work and Schedule of Fees and Charges" set forth in **Exhibit "A,"** attached and incorporated by this reference. Fees for services performed by these attorneys are shown in **Exhibit "A."** Fees for services performed by other retained consultants, subcontractors, experts or other personnel for other legal services may be billed to the City only if approved in writing by the City

Manager.

9. BILLING INVOICES.

City Attorney shall, within fifteen (15) days after the end of each calendar month in which services are performed under this Agreement, submit to the City an itemized bill, in duplicate, describing in detail the specific services performed as set forth in this Agreement. City Attorney shall adhere to the Protocols and Guidelines set forth in **Exhibit "B,"** attached and incorporated by this reference. The bill shall be submitted to:

City Manager
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035

10. PROJECT PLAN, BUDGET AND RESERVES.

Upon request of the City Manager, City Attorney shall provide a project plan or budget, or both, for any project or case assigned to City Attorney under this Agreement. Project plans and budgets shall conform to the guidelines set forth in **Exhibit "C"** (Project Plan and Budget) of this Agreement. Counsel understands and agrees that major unjustified deviations from the project budget, or failure to timely submit a project budget or revisions, if requested, or status reports may constitute a breach and result in termination of this Agreement.

11. LITIGATION GUIDELINES.

When litigation is included in the scope of work, the firm must follow the litigation guidelines specified in **Exhibit "D."**

12. PERSONNEL BILLING.

City Attorney shall scrupulously examine all bills submitted for services rendered under this Agreement to assure that the City Attorney and firm has employed appropriate billing judgment in billing the City for service. City Attorney shall not bill for hours other than those hours expressly devoted to the tasks approved in advance by the City Manager or City Council. City Attorney agrees it will not bill for time, which is not specifically devoted to the task(s). City Attorney shall not use legal professionals for secretarial work and under no circumstances shall City Attorney have lawyers billing for making copies, scheduling appointments or taking care of matters or work which would otherwise be work performed by a law clerk, assistant or secretary. The City Attorney shall submit its bills in a format that readily allows detailed review by any City retained auditors.

13. STATUS REPORTS.

In addition to the reporting set forth in Section 9, if required, City Attorney shall, within fifteen (15) days of the end of each month thereafter, submit to City a written report setting forth a summary of services performed on behalf of City during the preceding month, the current status of each significant pending matter or proceeding, results obtained or expected to be obtained, a summary of invoices for the preceding month and other information relating to the services rendered as City may reasonably request.

14. TERMINATION.

Either Party may terminate this Agreement by providing written notice to the other. Any termination hereunder shall become effective immediately upon receipt of written notice of termination; provided, however, that City Attorney may exercise its right of termination only to the extent and under terms and conditions consistent with the obligations of City Attorney under the Rules of Professional Conduct of the State Bar of California; and provided that in the event of termination, the amount due City Attorney for services rendered and costs and expenses incurred prior to termination shall remain due and payable. City Attorney agrees to turn over to any attorney substituted in its place, the entire file and attorney work product regarding any such matter within seven (7) days of any such termination.

15. CONFLICTS OF INTEREST.

A. No member of the governing body of the City, and no other officer, employee or agent of the City who exercises any discretion, function, or responsibility in connection with the carrying out of any project, to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

B. City Attorney agrees to secure the informed written consent of the City before accepting any representation adverse to the City (actual or apparent) during the term of this Agreement, and to forego the representation if the City, in its sole discretion, declines to grant such consent.

16. ASSIGNMENTS AND SUCCESSORS IN INTEREST.

City and City Attorney bind themselves, their partners, successors, assigns, executors and administrators to the terms of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the services provided for in this Agreement shall be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City.

17. AUDITS, RECORDS, AND DOCUMENTATION.

A. The City and any other federal, State or local governmental agency, and any of their

authorized auditors or representatives, including the City's external auditor, shall have access to, and the right to audit and reproduce any of City Attorney's records to the extent the City or such other governmental agency deems necessary to ensure that City is paying only the amounts to which City Attorney is properly entitled or for other purposes relating to the Agreement.

B. City Attorney shall maintain complete and accurate records of the services provided to City and expenses incurred on behalf of City. City Attorney shall maintain and preserve all such records for at least three (3) years after termination of the Agreement or until an audit has been completed and accepted in writing by City. Upon written notice by the City, the City Attorney shall promptly make all such records available to auditors or other representatives of the City or other governmental agencies.

18. NON-DISCRIMINATION.

A. As set forth in the Milpitas Municipal Code, no discrimination will be made in the employment of any person under this Agreement because of the age, race, color, national origin, ancestry, religion, disability, sexual preference, or gender of that person.

C. If City Attorney, based upon acts related to the City of Milpitas, is found to be in violation of the nondiscrimination provisions of the State of California Fair Employment and Housing Act or any other provisions of federal law or executive order in the performance of this Agreement, City Attorney and the firm are in default of this Agreement.

19. HOLD HARMLESS/INDEMNIFICATION.

City Attorney agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, and covenants not to sue, the City, its City Council and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of, or are claimed to result from or to arise out of any negligent performance under this Agreement, or any negligent acts, errors or omissions (including, without limitation, professional negligence) of City Attorney, its employees, representatives, subcontractors, or agents in connection with the performance of this Agreement. This Agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and property or other damage (including, but without limitation, contract or tort or patent, copyright, trade secret or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, City Attorney and its employees or agents, and members of the general public).

20. INSURANCE REQUIREMENTS.

City Attorney shall maintain the following insurance policies in full force and effect during the term of this Agreement and for one year thereafter:

A. Commercial general liability policy (bodily injury and property damage);
B. Worker's compensation/employer's liability policy;
C. Business automobile liability insurance policy; and
D. Professional liability policy.

The policies shall be maintained with respect to employees and vehicles assigned to the performance of services under this Agreement with coverage amounts, endorsements, certificates of insurance and coverage verifications as defined in **Exhibit "E"**, attached to this Agreement and incorporated by this reference.

21. CONFIDENTIALITY AND DISCLOSURE.

The data, information and reports acquired or prepared by City Attorney in connection with matters upon which the City has retained City Attorney shall not be shown or distributed to any other public or private person or entity except as authorized by the City Manager and in no event prior to having been first disclosed to the City Manager. All information, documents, records, reports, data or other materials furnished by City to City Attorney or other such information, documents, records, data or other materials to which the City Attorney has access during its performance pursuant to this Agreement are deemed confidential and shall remain the property of City. City Attorney shall not make oral or written disclosure of such documents or materials, other than as necessary for its performance under this Agreement, without the prior written approval of the City Manager.

22. AMENDMENTS.

This Agreement, including any Exhibits attached to it, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. The Parties may modify this Agreement only by a written amendment duly executed by the Parties. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

23. ENGAGEMENT OF OTHER COUNSEL, SPECIALISTS, OR EXPERTS.

City Attorney will not engage or otherwise incur an obligation to pay other counsel,

specialists, or experts for services in connection with this Agreement without the prior approval of the City Manager.

24. NOTICES.

All notices, invoices, reports, or other communication to the Parties shall be properly given if delivered in person or sent by First Class mail, facsimile or overnight delivery and addressed as follows:

City Manager
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035

In addition, to the firm at its principal place of business listed on page one of this Agreement.

Either Party may change its address for receipt of notices under this Agreement by notice given in the manner provided herein.

25. LAW GOVERNING AGREEMENT.

This Agreement shall be interpreted under the laws of the State of California. All claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within Santa Clara County Superior Court.

26. INVALID PROVISIONS.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

27. LICENSE REQUIREMENTS.

City Attorney shall demonstrate that the attorney(s) who provide legal services to City under this Agreement are licensed to practice law in the State of California and, if not, indicate to the satisfaction of the City Manager why such license is not required to perform the services required.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Parties agree that this Agreement shall become operative on the Effective Date.

APPROVED:

_____
Gary M. Baum
Interim City Attorney

CITY OF MILPITAS

_____
Thomas C. Williams
City Manager

BEST, BEST & KRIEGER

Name:_____
Title:_____

EXHIBIT "A"

SCOPE OF WORK AND SCHEDULE OF FEES & CHARGES

Scope of work:

The firm shall provide legal services as City Attorney for the City of Milpitas.

Schedule of Fees & Charges:

Monthly Retainer amount: $16,000

Monthly retainer services: attendance at Council meetings, Planning Commission Meetings, Campaign Finance Reform Committee Meetings, office hours of minimum 15 hours per week; Brown Act and general municipal/public law advice and legal counsel; conflict of interest advice; supervision of any outside counsel, standard document/opinion preparation and review; monitoring/update reporting of new and pending laws and legislation to ensure compliance; standard training sessions and staff guidance; open meeting guidance; standard communications with City officials and staff; press/media communications.

Services not included in Monthly Retainer: Land use transactions; code and zoning enforcement; litigation services; labor and personnel matters; public retirement systems advice; non-routine advice on taxes, assessments, and fees; non-routine environmental legal services; non-routine real estate legal services; insurance coverage representation; telecommunications.

COMPENSATION

General Counsel services in excess of 75 hours per month would be $210 per hour for attorneys and $150 for paralegals and law clerks. Services outside of the defined Monthly Retainer services would be billed at $290 per hour for Partner and Of Counsel; $245 per hour for Associates; $220 per hour for Junior Associates; $160 per hour for Paralegals and Law Clerks. These rates may be increased by the prior year's CPI on July 1, 2017.

Expense reimbursement shall be at actual cost. Reimbursement for mileage shall be at the IRS rate reset annually. Travel time and mileage for routine office hours and for public meetings will be the responsibility of the firm and not charged to the City.

EXHIBIT "B"

BILLING PROTOCOLS/GUIDELINES

The City of Milpitas ("City") has adopted the following protocols for billing, budgeting, and planning for projects involving City Attorney. City Attorney is required to comply with this protocol. If you have questions concerning it, please contact the City Manager for clarification. In the event you wish to negotiate changes due to the internal operation of your firm, please raise them in writing as soon as possible. Any changes to this protocol will need prior, written approval from the City Manager. In the interest of fairness, all firm attorneys are required to comply with this protocol. This protocol is also to be used in conjunction with any new proposal for services.

These protocols and guidelines are instituted to ensure that City Attorney conveys the information necessary for the City to manage special projects and litigation. In addition, because these guidelines are set out in advance, they are designed to minimize any confusion or misunderstanding. Compliance with these guidelines should enhance the attorney-client relationship. If you have any comments or suggestions that could improve this system, please feel free to contact the City Manager at the above-listed address.

I. BILLING FORMAT

Unless otherwise agreed, the following information must be provided in monthly bills:

a. A detailed description of work, in time increments of .1 hour (one-tenth of an hour) for and by each and every individual billing entry.

b. Identification of the lawyer who is in charge of the matter.

c. Reasonably detailed disbursement breakdowns with backup documentation of any individual charge exceeding $100.00.

d. Each billing item must be separately stated on a separate line identifying the attorney, the time spent and the exact nature of the service rendered.

e. When charges are made for conferences, the specific reason for each conference will be stated. Conferences between attorneys shall be justified in detail.

f. When charges are made for research time, the specific issue being researched and the need for the research must be identified.

g. Each item billed should be coded to a specific litigation budget line item, if applicable.

h. A comparison of the percentage of work completed to the percentage of the litigation or project budget absorbed.

i. The City Manager reserves the right to request various levels of detail and specific formats (such as columnar comparisons with established budgets).

II. BILLING GUIDELINES

a. All tasks set forth in City Attorney's billing documentation shall be specific and detailed. Overly generalized listings of task descriptions such as "review contract" or "prepare for negotiations" are not acceptable.

b. Billings under this Agreement shall not be provided in more than six (6) minute increments and shall represent the devotion of a full six minutes before an increment is billed. Under no circumstances shall City Attorney use "block billing" procedures, wherein a list or series of activities is done each day with only an aggregate amount of time specified.

c. City Attorney shall keep the City advised of the identity and billing rates of the personnel working on the project account.

d. City Attorney shall submit two (2) copies of statements with every invoice covering the past 30 days. The statement should identify the matter, current charges, and any past due or outstanding charges.

e. All bills must be submitted to the City within 15 days of the end of the prior month during which service was performed.

f. City Attorney shall advise City whenever it anticipates the amount of services necessary to properly execute the task will exceed the amount of the contract. City Attorney acknowledges the fiscal constraints on City funding and therefore City Attorney assumes risk of non-payment for services rendered in the event the amount of services rendered exceeds the amount of the contract unless prior written authorization is received. Authorization to exceed the amount of the contract may be given only by City Manager in writing.

g. Only those attorneys approved by the City may bill on the case.

h. The City expects the attorney assigned to the case to handle all significant matters in the litigation. The City Attorney must approve in advance the assignment of other attorneys to the litigation or project. The City may request that the assigned work be instead handled by the primary attorney.

i. City Attorney shall not charge for more than one attorney at any hearing, deposition, or meeting of any kind without advance approval of the City Attorney.

j. No more than one paraprofessional may bill on a particular case without the prior approval of the City.

k. The City has retained City Attorney for its expertise, and therefore expects not to be billed for introductory or background research. City appreciates when City Attorney has researched an issue previously and uses that research on present cases or projects. City Attorney may not charge the City for work City Attorney has done and billed another client for in the past.

l. Within thirty (30) days of the effective date of this Agreement, City Attorney shall provide any manuals or policies describing City Attorney's billing practices.

m. The City does not allow "double billing" of any sort. If City Attorney is working on another client's matter, the City Attorney may not bill City for that time. This applies to travel time or any other matter.

n. Training time is not billable. Law clerks may be used only with prior approval.

o. City will not pay for new attorneys to "get up to speed" on a file unless it has been preapproved.

p. If a matter arises that requires City Attorney to open a new file, the City Attorney should be informed immediately.

q. City reserves the right to require additional substantiation of any item of claimed expense.

III. REIMBURSEMENTS

a. The City will reimburse City Attorney for the following expenses, and for no other expenses:

- Actual printing costs;
- Copying costs at $.12 / page (for legal documents and file materials, but not library materials);
- Actual cost of postage (including express mail delivery charges);
- Facsimile charges at the rate of $0.25 per page;
- Computer research support services (e.g., Westlaw, LEXIS or computer time or services) at actual cost, but not to exceed 15% of the total fees for all legal services;
- Actual cost of long distance telephone calls;
- Transcription and reporter's fees; and
- Reasonable travel. The City does not pay for meals unless City Attorney is required to be away from office for one full day. All meals and/or travel reimbursements will be subject to approval by the City Manager. Travel expenses are limited to the lesser of actual expenses or expenses that would be authorized for City employee travel pursuant to City policy.

b. The City Manager must approve in advance any single reimbursement item in excess of $250.

c. Any expense other than those listed in section "a." must be approved by the City Manager in writing and in advance in an approved budget.

d. No compensation shall be allowed for administrative overhead or premiums added to the direct cost of research support or other services.

e. Court filings shall be prepared in a timely manner so that "rush" or "expedited" messenger fees are not incurred.

f. Messenger and other charges in excess of actual costs are not permitted. City does not allow cost, plus a percentage, for actual costs

g. City does not pay for secretarial time or secretarial overtime. City does not pay attorneys or paralegals for secretarial tasks or tasks that should not be included in City Attorney's overhead. For example, faxing, mailing, arranging for messengers and calendaring are not acceptable charges.

h. City does not pay for billing or discussions of bills, including discussions initiated by the City or City's requests for additional information about a bill.

i. The practice of charging minimum billing charges is unacceptable. Please charge for actual time spent. For example, a minimum of .2 for phone calls or .4 for letters is unreasonable unless it is an accurate measure of time spent.

j. Do not charge for file opening or file closing. These are not true legal services, tasks or adequate descriptions of legal activities.

EXHIBIT "C"

PROJECT PLAN AND BUDGET

Project plans and budgets should conform to the following guidelines:

a. The project plan shall include a projection of recommended strategies and actions to be taken in the project and a range of costs for each such strategy or action.

b. If the scope of work includes representation of the City in litigation, the project plan shall include the following elements, with explanations:

- Anticipated total costs;
- The primary issues;
- The probability of success; and
- A settlement/trial recommendation.

The project plan will be modified during the litigation as the need arises.

c. The project budget shall include an estimate of the attorneys' hours and fees and disbursements during each phase and/or activity. All anticipated expenses must be listed and costs estimated.

d. In the event of litigation, the project budget shall include, but not be limited to, estimates for:

- Pre-commencement (legal and factual research for the complaint or answer);
- Pleadings;
- Preliminary Motions;
- Initial discovery;
- Factual Investigation of merits (interviewing clients, employees and third parties);
- Review and abstract City's documents;
- Expert (non-medical) Investigation and reports;
- Medical experts and examinations;
- Legal research on merits;
- More thorough discovery (including the identity of deponents and expected costs of each deposition and preparation);
- Settlement negotiations;
- Trial preparation; and
- Trial.

e. The project budget should include the anticipated cost of each line item, the time allotted to complete it and the professional level of the person handling it.

f. The project budget is not a fixed fee agreement and is subject to revision.

g. City Attorney shall provide revisions to the project plan or budget at the request of the City Manager.

h. City Attorney understands and agrees that major unjustified deviations from the project budget, or failure to timely submit a project budget or revisions, if requested, may constitute a breach and result in termination of this Agreement.

EXHIBIT "D"

LITIGATION GUIDELINES

The following guidelines should be followed when the scope of work includes representing the City in litigation:

a. The City Attorney shall consult the City Manager regarding the component parts of litigation handled so that the City Manager, in consultation with the City Council, if necessary, can determine whether a particular activity is reasonable in light of its costs and benefits.

b. The City Manager must approve the identity and number of personnel assigned to the litigation, and any changes.

c. Copies of major work product, pleadings, motions, orders, decisions, research memoranda, reports on significant developments, and quarterly status reports shall be submitted to the City Manager to advise of any major developments in the lawsuit.

d. Generally, the City Manager will rely upon City Attorney for guidance on litigation strategy. Nonetheless, prior approval from the City Manager is necessary for demurrers, motions for summary judgment and discovery motions.

e. City expects that City Attorney will resolve all discovery disputes without court intervention. If this is impossible due to the conduct of others, please inform the City Manager immediately. City's intent is to have discovery be fair and open with the money spent on reviewing relevant items that are discovered, not on discovery battles.

f. Provide full descriptions of legal tasks performed. This will help the City Manager follow case development and understand the firm's strategy.

g. Some types of litigation-related expenses require prior approval by the City Manager, including, but not limited to, experts and investigators. Expenses over a certain dollar amount also require prior approval. See Section III (Reimbursements) of Exhibit "B" (Billing Protocols and Guidelines) of this Agreement for a list of those expenses that the City will reimburse.

Exhibit "E"

[INSURANCE CERTIFICATE]

I. CONTRACTORS TO THE CITY OF MILPITAS (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH A BEST'S KEY RATING OF A:VII, OR HIGHER, LICENSED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

CONTRACT IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES	WORKER'S COMPENSATION	STATUTORY		
YES	AUTOMOBILE LIABILITY	STATUTORY		
YES	COMPREHENSIVE GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY PROPERTY DAMAGE BODILY INJURY & PROPERTY DAMAGE COMBINED.	$1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000
YES	COMPREHENSIVE AUTOMOBILE LIABILITY, INCLUDING, OWNED, HIRED, NON-OWNED	BODILY INJURY - EACH PERSON - EACH OCCURRENCE PROPERTY DAMAGE BODILY INJURY AND PROPERTY DAMAGE, COMBINED	$1,000,000 $1,000,000 $1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000 $1,000,000 $1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	$1,000,000	
YES	THE CITY OF MILPITAS IS TO BE NAMED AS AN ADDITIONAL INSURED: THEFIRM, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY BIDDER AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURES CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.		

II. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND

B. A CONTRACTUAL LIABILITY COVERAGE PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY

III. SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE, **OR** COMPLETE THIS SECTION.

A. NAME AND ADDRESS OF COMPANY AFFORDING COVERAGE (NOT AGENT OR BROKER):

_____

B. NAME, ADDRESS, AND PHONE NUMBER OF YOUR INSURANCE AGENT/BROKER:

_____

_____

POLICY NUMBER(S):- _____

C. DEDUCTIBLE AMOUNT(S), IF APPLICABLE.

_____

MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Special Meeting of Milpitas City Council**
Date:	**Tuesday, September 22, 2015**
Time:	**4:30 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Esteves called the meeting to order at 4:30 PM. The Deputy City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbardillo, Giordano and Grilli

ABSENT: None

PUBLIC EMPLOYEE APPOINTMENT / HIRING

Pursuant to California Government Code Section 54957
Position: City Attorney

Approve Agreement with Best Best & Krieger LLP to Provide City Attorney Services

Interim City Attorney Baum briefed the Mayor and the City Council regarding the proposed agreement between the City and Best Best & Krieger LLP.

Vice Mayor Montano asked for clarification regarding the secretarial or administrative portion of agreement, specifically as to whether the City will be billed for such services. Interim City Attorney Baum and Attorney Christopher J. Diaz from Best Best & Krieger LLP replied that the City will not be billed for secretarial or administrative services.

Brief discussions were made regarding the current in-house legal secretary at the City Attorney's office. Mayor Esteves asked Interim City Attorney Baum for clarification regarding certain terms of the proposed agreement such as penalty clauses, rules of professional conduct of the State Bar of California, and termination clause.

Councilmember Giordano said that the proposed agreement with Best Best & Krieger LLP would cost less than the previous in-house City Attorney's office.

Councilmember Barbadillo asked if there were any items to the agreement that had been subject to negotiation or modifications. Interim City Attorney Baum and Attorney Diaz replied the addition of a Section 5 which pertains to developer applications and City Attorney hours incurred by the City on such matters. Attorney Diaz further clarified that his firm's "loyalty" is with the City and not with the developer regarding such issues.

It was discussed and confirmed that Best Best & Krieger LLP will become the City's agreement-based City Attorney starting September 23, 2015. The annual compensation for the legal firm is as follows: first-year compensation will not exceed $458,300 and the second-year compensation will not exceed $550,000.

City Manager Williams, Mayor Esteves, and Vice Mayor Montano complimented Interim Attorney Baum for providing good service to the City and welcomed Attorney Diaz and his firm.

Motion: For Council to approve the legal services agreement with Best Best & Krieger LLP for City Attorney services.

Motion/Second: Councilmember Giordano / Councilmember Grilli

Motion carried by a vote of:
AYES: 5
NOES: 0

PUBLIC COMMENT None

ADJOURNMENT Mayor Esteves adjourned the meeting at ***4:54*** PM.

The foregoing minutes were approved by the Milpitas City Council on October 6, 2015.

_____

Pam Caronongan
Milpitas Deputy City Clerk