COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

LYLE TURPIN, CHAIR
DIANNE A. FRITZ, VICE CHAIR
BRAD ABORN
JANET BIBBY
BOB PICKARD

DISTRICT II
DISTRICT IV
DISTRICT I
DISTRICT III
DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

TO:            RESOLUTION FILE
FROM:          MARGIE WILLIAMS, Clerk of the Board
SUBJECT:       AGREEMENT WITH ABBOTT & KINDERMAN – HAZEL GREEN

RESOLUTION No. 08-68

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on February 19, 2008

ACTION AND VOTE:

2:57 p.m.
CLOSED SESSION: Conference with Legal Counsel: Anticipated Litigation: Significant Exposure to
Litigation Pursuant to Subdivision (b) of Government Code Section 54956.9; Name of Case to be
Discussed: Hazel Green Ranch, LLC v. United States Department of the Interior, et al., Case No. 1:07-CV-
00414-OWW-SWS (County Counsel)
BOARD ACTION: (M)Fritz, (S)Aborn, the closed sessions were held/Ayes: Aborn, Turpin, Fritz,
Pickard; Abstained: Bibby.

Chair Turpin announced that direction was received from counsel relative to the closed session matter
concerning anticipated litigation; and he asked County Counsel to report the actions as a result of the closed
session for the Hazel Green Ranch, LLC v. United States Department of the Interior; and Thomas P.
Guarino advised that the following actions were taken in closed session: 1) adopt a position consistent with
the defense of the Old Coulterville Road/Old Yosemite Turnpike as being a County road; and 2)
authorization to execute the standard legal services agreement to retain the law firm of Abbott &
Kindermann to defend the County in the action. The Clerk of the Board announced that the vote on each of
these actions was four ayes, with Supervisor Bibby voting no.

Cc: File
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 19th day of February, 2008 between:

COUNTY: Mariposa County Counsel
P.O. Box 189
Mariposa, CA 95338

and

CONTRACTOR: Abbott & Kindermann, LLC
2100 21st Street
Sacramento, CA 95818-1708

ARTICLE 1. TERM OF CONTRACT

1.01 Term: This Agreement shall become effective on February 19, 2008 and shall terminate upon completion of the project, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

2.02 Contractor Qualifications: Contractor warrants that it has the necessary competence, experience and qualifications for the services to be performed.

2.03 Contract Management: Contractor shall report to the County Counsel who will review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Specific Services: Contractor agrees to perform the services as described on Exhibit "A" attached hereto.

3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of
Contractor by this Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services. Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

**ARTICLE 4. COMPENSATION**

4.01 **Compensation:** In consideration for the services to be performed by Contractor, County agrees to pay Contractor:

The not to exceed total sum not to exceed Seventy-Five Thousand Dollars ($75,000.00) for services as described above. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

- [ ] Total sum to be paid upon completion of services, 
- [X] Incremental payments based on the following schedule: 
  Pursuant to Exhibit “A”

4.02 **Invoices:** Contractor shall submit invoices for all services being rendered from the Contractor to the County.

4.03 **Date for Payment of Compensation:** County shall endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County.

4.04 **Expenses:** Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

**ARTICLE 5. OBLIGATIONS OF CONTRACTOR**

5.01 **Tools and Instrumentalities:** Contractor will supply all tools and instrumentalities, required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from County.

5.02 **Obligations:** County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.03 **Indemnification:** Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) or an amount as
otherwise determined appropriate by the County Risk Manager to cover such claims. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.04 **Workers’ Compensation:** Contractor shall provide workers’ compensation insurance as required by the State of California for all services provided hereunder.

5.05 **Assignment:** Contractor understands that County retained the services of Contractor because of Contractor’s reputation and expertise in his or her field and, therefore, neither this Agreement nor any duties or obligations under this Agreement may be assigned by Contractor without the prior written consent of County.

5.06 **State and Federal Taxes:** As Contractor is not County’s employee; Contractor is responsible for paying all required state and federal taxes. In particular:

- County will not withhold FICA (Social Security) from Contractor’s payments;
- County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- County will not withhold state or federal income tax from payment to Contractor;
- County will not make disability insurance contributions on behalf of Contractor;
- County will not obtain workers’ compensation insurance on behalf of Contractor.

5.07 **Records:** It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinafter, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.

5.08 **Professional Liability Coverage:** Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.

5.09 **Public Employees Retirement System (CalPERS):** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.
ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

7.01 Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 Termination of Funding: County may terminate this Agreement with thirty (30) days notice prior to the anniversary date of this Agreement upon determination that there is insufficient funding for this Agreement per California State Constitution Article XVI section 18. In that event, County would be released from the second and subsequent years of this Agreement.

ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or
promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the County as provided herein or as otherwise required by law.

8.03 **Partial Invalidity:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.04 **Attorney's Fees:** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

8.05 **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of the State of California.

Executed at Mariposa, California, on the date and year first above written.

**COUNTY:**

Lyd Turpin, Chairman
Mariposa County Board of Supervisors

**CONTRACTOR:**

William W. Abbott, Esq.
Abbott & Kindermann, LLC

Social Security or Taxpayer Identification Number 91-184927

**APPROVED AS TO FORM:**

THOMAS P. GUARINO, County Counsel

Last Revised 7/2/07
EXHIBIT “A”

Abbott and Kindermann, LLC agrees to provide legal services in assisting County Counsel in defending the County’s interests in the case of Hazel Green Ranch, LLC v. Department of the Interior, et al.

Such services shall be at the rates provided in the attached schedule.
RATE SCHEDULE

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<tr>
<th>PARTNERS</th>
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<td>ASSOCIATE IV</td>
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<td>LAW CLERK I</td>
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INDIRECT EXPENSES:

A charge of 4.25% of monthly fees is added to offset ordinary copying, secretarial, postage, including overnight deliveries, faxing, local and long distance telephone charges.

COSTS:

Costs (including filing fees, court reporter fees, special deliveries, on-line computer research, etc.) will be billed as incurred.

SERVICES:

The following services will be billed as incurred at the following rates:

ACCOUNTING - $50.00 per hour
OFFICE CLERK - $15.00 per hour
MILEAGE – Current IRS rate

* Distribution from a client trust account for payment of a bill and all other payments received shall be allocated to amounts owing in the following order: (1) accrued interest; (2) costs advanced; and (3) attorney’s fees.

** This Rate Schedule is adjusted December 21st of each year. This schedule may also be adjusted at any time upon thirty (30) days prior notice to client.

*** Telephone calls to or from a client, or other parties involved in matters pertaining to the client’s legal affairs, are subject to a minimum charge of 0.2 hour times the applicable billing rate.