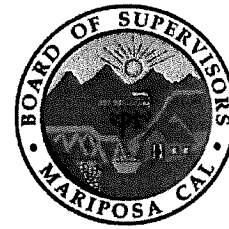




MARIPOSA COUNTY

Planning · 209-966-5151



RESOLUTION - ACTION REQUESTED 2016-345

MEETING: June 28, 2016

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Professional Services Agreement for Abbott & Kindermann

RECOMMENDATION AND JUSTIFICATION:

Approve a Professional Services Agreement with Abbott & Kindermann, LLP, to provide on-call legal consultation; and authorize the Board of Supervisors Chair to sign the agreement. Planning staff and County Counsel sometimes require specialized legal advice on short notice to address urgent land use or environmental (California Environmental Quality Act or CEQA) issues. Abbott & Kindermann are recognized experts in their field and they are familiar with Mariposa County. Under this agreement, Bill Abbott will be available as needed to assist Planning and County Counsel with complex legal research and consultation.

The total compensation for these legal services is not to exceed \$28,600. This amount has been included in the requested Planning Department's Budget for Fiscal Year 2016-2017.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Abbott & Kindermann have provided timely, on-call professional services to Mariposa County in a variety of legal circumstances. Bill Abbott participated in the successful adoption of the Mariposa County General Plan and Environmental Impact Report (EIR) during 2006. He also assisted in such projects as the Silver Tip Resort, the Seventh Day Adventist Camp in Wawona, and the Catheys Valley Community Plan Supplemental EIR. He has provided specialized legal advice on such subjects as mining, agri-tourism and project appeals. Abbott & Kindermann have a Professional Services Agreement with the County for general legal advice and that agreement will expire on June 30, 2016.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

An alternative legal firm could be solicited for expert land use and environmental advice; however there would be a time lapse to get another firm up to speed with land use and CEQA issues in Mariposa County.

FINANCIAL IMPACT:

Funding for the Agreement has been included in the 2016-2017 Planning Department Budget for Professional Services

**ATTACHMENTS:
160628 PSA A & K 2016-2017 (DOC)**

CAO RECOMMENDATION
Requested Action Recommended



Mary Hodson, CAO 6/23/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Kevin Cann
EXCUSED: John Carrier

PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 28th day of June, 2016 between:

COUNTY: Mariposa County
and
CONTRACTOR: Abbott & Kindermann, LLP

ARTICLE 1. TERM OF AGREEMENT

- 1.01** Agreement Term: This Agreement shall become effective on July 1, 2016 and shall terminate on June 30, 2017, 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** Agreement Management: Contractor shall report to the Planning Director who will review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

- 3.01** Scope of Services: Contractor agrees to perform the services as described on Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be monitored by the Planning Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

- 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 in proportion to the services satisfactorily performed in the not to exceed amount of \$28,600.00 for services as described in Exhibit "A" attached. 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,
or
 Incremental payments based on the following schedule:

- Monthly bills for time and materials, consistent as set forth on Exhibit "B", Rate Sheet

- 4.02** Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County.
- 4.03** Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by 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. 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.
- 5.02** 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.

- 5.03** General Liability and Automobile Insurance: During the term of this Agreement Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or the named insureds will be called on to cover a loss covered hereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.
- 5.04** Professional Liability Coverage: Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.
- 5.05** Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in paragraphs 5.02 and 5.03 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to County prior to the effective date of such cancellation.
- 5.06** Workers' Compensation: During the term of this Agreement Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.07** Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement 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.

- 5.08** State and Federal Taxes: As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:
- a) County will not withhold FICA (Social Security) from Contractor's payments;
 - b) County will not make state or federal unemployment insurance contributions on behalf of Contractor;
 - c) County will not withhold state or federal income tax from payment to Contractor;
 - d) County will not make disability insurance contributions on behalf of Contractor;
 - e) County will not obtain workers' compensation insurance on behalf of Contractor.
- 5.09** 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 hereinabove, 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.
- 5.10** Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.
- 5.11** Assignability of Agreement: It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the 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.
- 6.02** Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Contractor.

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: The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

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 Agreement, 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, orally 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 Invalidation: 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.

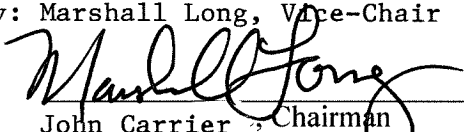
- 8.05** Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06** Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.
- 8.07** Governing Law: This Agreement and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Mariposa.

Executed at Mariposa, California, on June 28th, 2016.

COUNTY:

CONTRACTOR: Abbott & Kindermann LLP

By: Marshall Long, Vice-Chair



John Carrier, Chairman
Mariposa County Board of Supervisors



WILLIAM W. ABBOTT (Signature)

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel

Exhibit “A”

On call legal consultation to the County of Mariposa through the Planning Department and County Counsel pertaining to land use, CEQA, and general governmental matters.

Exhibit "B"

ABBOTT & KINDERMANN, LLP

RATE SCHEDULE

PARTNERS	\$ 360.00 per hour
SENIOR COUNSEL	\$ 330.00 per hour
ASSOCIATE IV	\$ 275.00 per hour
ASSOCIATE III	\$ 225.00 per hour
ASSOCIATE II	\$ 200.00 per hour
ASSOCIATE I	\$ 150.00 per hour
PARALEGAL II	\$ 150.00 per hour
PARALEGAL I	\$ 110.00 per hour
LAW CLERK II	\$ 110.00 per hour
LAW CLERK I	\$ 60.00 per hour
STAFF RESEARCHER	\$ 65.00 per hour

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.