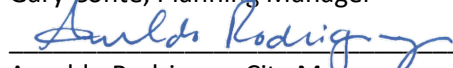


REPORT TO CITY COUNCIL

Approved by:



Gary Conte, Planning Manager



Arnaldo Rodriguez, City Manager

Council Meeting of: November 4, 2020

Agenda Number: D-1

SUBJECT:

Agreement for Professional Legal Services with Telecom Law Firm PC to Update the City's Municipal Code Regulating Wireless Facilities

RECOMMENDATION:

Adopt a Resolution approving the Agreement with Telecom Law Firm PC (Telecom) for professional legal services in the amount of \$37,100 to prepare an ordinance, permit application(s) and related administrative materials, and to authorize additional ad hoc consultation and legal services related to telecommunications infrastructure regulation, policy, technology or transactions up to an amount not to exceed \$5,600.

SUMMARY:

Stringent and limiting state and federal regulations limit a City's ability to regulate the installation and location of wireless facilities and equipment. Against this backdrop, the City has no rules, regulations, ordinances to address wireless facilities and equipment. This void can result in a proliferation of wireless facilities and equipment throughout the City. Additionally, failure to follow state and federal regulations can result in installation by right.

The Agreement with Telecom is for professional legal services to prepare and deliver revisions and additions to the City's Municipal Code and administrative policies to regulate wireless facilities on private property and in the public right-of-way in accordance with the City's local values and all applicable federal, state and local laws and regulations.

In determining to prepare Funding for the project comes from the City's General Fund. The total amount of the Agreement is \$42,700 including ad hoc services up to an amount not to exceed \$5,600 without prior Council authorization, to update the City's Ordinance pertaining to wireless communication facilities, and preparation of supplemental applications, checklist and worksheets for wireless facility applications specifically to new wireless sites, modifications to existing wireless sites and standby power generators.

BACKGROUND:

Wireless communication services play an important role in our everyday lives. Considered a luxury just a decade ago, more than half of American households relies solely on wireless for telephone services. Access to high-quality wireless services contributes to business development, supports public safety operations and facilitates remote work, school and healthcare.

But these services require a vast infrastructure network to function. As the networks evolve and new competitive providers enter the marketplace, the infrastructure becomes more dense, closer to the end-user and more likely to cause unnecessary visual blight in the communities they serve.

Tension between the interest in a widely-available, robust and resilient communications network and the interest in local authority over land use and community aesthetics has resulted in complex federal and state laws that attempt to strike a balance. Both federal and state law generally preserve local land use authority subject to substantive restrictions and procedural limits applicable only to wireless facilities. For example, under federal law, cities cannot effectively prohibit personal wireless services, regulate the environmental effects from RF emissions that meet federal standards, deny applications for facilities without substantial evidence or fail to act on applications within a reasonable time. Cities must follow detailed procedural rules that regulate the application review process. Some federal and state laws also mandate approval for wireless facilities and changes to existing facilities that meet certain statutory criteria.

The City currently lacks any regulations specifically tailored for wireless facilities. Under the current code, proposed wireless facilities may or may not be subject to a use permit pending on the type and location of wireless facilities proposed. But the generalized standards and procedures for a use permit are too loose in some respects and too restrictive in others. Moreover, City Code has not kept up to the regulatory changes. Ultimately, the gap in the City's code limits the City's ability to exercise its full authority and may expose the City to liability for failure to follow federal and state laws.

Several wireless service providers and infrastructure companies have inquired about the City's siting and permitting requirements. These projects appear to involve many so-called "small wireless facilities" on utility poles in the public rights-of-way and upgrades to existing cell towers. Thus, time is of the essence regarding this matter.

In determining to resolve the present City Ordinance short-comings regulating wireless facilities, it is in the City best interest to engage a professional firm which is an expert in the telecommunication and wireless field and experienced in formulating an ordinance, permit application(s) as well as the ability to educate staff in the local, state and federal regulatory statutes regulating the wireless industry.

To fill the gap in the City's Municipal Code and prepare the City for expected increases in wireless applications, staff recommends that the City retain Telecom to prepare an ordinance, permit application and related administrative materials. The proposed contract, scope of services and fee schedule is included as Attachment 1 to this report.

The proposed regulations would cover facilities on private property and within the public rights-of-way, that address the various regulatory classifications for wireless facilities and maximize the City's authority within the applicable federal and state laws. Telecom would work with staff to obtain input and feedback from community and industry stakeholders. In addition, the services include staff training best practices

for the implementation of wireless permitting processes.

FINANCIAL IMPACT:

The agreement will result in a fiscal impact to the City's General Fund in the amount of \$42,700. While the Telecommunication Ordinance update was not contemplated during the preparation of the 2020/21 Budget, unassigned funds from the City's General Fund are available subject to Council appropriation.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Goal CI-1: Quality infrastructure that meets the needs of the community at the time it is needed.

ALTERNATIVES:

Council could direct staff to solicit additional proposals for professional legal service. Such action will represent a delay of approximately 3 to 4 months due to the advertisement period, review of proposals, and selecting a consultant.

ATTACHMENTS:

1. Council Resolution Agreement
 - Exhibit A - Scope of Services and Fee
 - Exhibit B – Insurance and Indemnification

ATTACHMENT 1

Council Resolution

RESOLUTION NO. 20-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA
APPROVING AN AGREEMENT FOR PROFESSIONAL LEGAL SERVICES BETWEEN
THE CITY OF MADERA AND TELECOM LAW FIRM, PC AND AUTHORIZING
BUDGET TRANSFER**

WHEREAS, staff identified the City’s Ordinance is deficient as it pertains to telecommunications and wireless regulations; and

WHEREAS, the City of Madera has a need to secure expert legal services to advise and prepare an ordinance, permit application and related administrative materials to regulate the application, review and approval process of wireless sites and facilities and changes to existing wireless facilities in compliance with state and federal statutory criteria; and

WHEREAS, professional legal services by a professional firm is necessary to update the City’s Ordinance pertaining to telecommunications and wireless sites; and

WHEREAS, Telecom Law Firm, PC (Telecom) was selected based on their experience and knowledge of wireless facilities and the permitting of such facilities; and

WHEREAS, Telecom has the professional knowledge, experience, skills and qualifications to perform the necessary services required of the City; and

WHEREAS, the funds to retain professional legal services to update the City’s Ordinance are available in the City’s Unrestricted General Fund Reserves; and

WHEREAS, amendments to the City of Madera Fiscal Year 2020/21 Budget are necessary to secure an agreement with Telecom; and

WHEREAS, the agreement between the City of Madera and Telecom is attached thereto.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds and orders as follows:

1. The above recitals are true and correct.
2. The Agreement for professional legal services between the City and Telecom, a copy of which is attached hereto as Exhibit A and referred to for particulars, is approved.
3. The City Finance Manager is authorized to transfer \$42,700 from the City’s Unrestricted General Fund Reserves into account “Contracted Services – Legal” within the Planning Department (Account 102041006444).
4. This resolution is effective immediately upon approval.

* * * * *

EXHIBIT A

Agreement

LEGAL SERVICES AGREEMENT

This Legal Services Agreement ("Agreement") is entered into by and between Telecom Law Firm, P.C. ("FIRM"), and the City of Madera ("CITY").

RECITALS

- A. WHEREAS, CITY desires to contract for professional legal services in the capacity of Special Counsel; and
- B. WHEREAS, FIRM has the legal competence and expertise to provide professional legal services as Special Counsel; and
- C. WHEREAS, CITY desires to retain FIRM'S services.
- D. NOW, THEREFORE, DISTICT and FIRM agree as follows:

AGREEMENT

- 1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.
- 2. Scope of Service. FIRM agrees to perform legal services as Special Counsel for CITY and to do so in a timely, efficient, and effective manner. FIRM shall provide the services described in **Exhibit A**, attached hereto and incorporated by this reference. FIRM shall deliver the work product described in Sections 2.a and 2.b of **Exhibit A** within fifteen (15) business days from the date CITY notifies FIRM to commence work on the same. Such work product may require revisions based on CITY's review and FIRM shall return revised work product within five (5) business days after receiving direction from CITY; provided, however, that FIRM and CITY may from time-to-time agree to a longer period as may be reasonably necessary based on the scope of revisions requested by CITY or factors outside FIRM's reasonable control, which may include, without limitation, changes in applicable laws affecting the subject matter of the work product.
- 3. Compensation. CITY shall compensate FIRM for legal services as provided in **Exhibit A**.
- 4. Assignment of Special Counsel Personnel. The Special Counsel under this Agreement shall be Robert C. May III. It is understood that from time to time, other attorneys and employees of FIRM may assist in performing services for CITY.
- 5. Billings and Payments. Firm shall submit its billing statement monthly in arrears, in increments of one-tenth (.10) of an hour, no later than the tenth of the month following the month service was rendered. The billing statement shall be submitted to the Superintendent or his designee. Billing statements shall document related tasks on a daily basis. The billing statements shall be prepared and organized in manner that facilitates an

efficient review of the services performed and expenses incurred in order to provide CITY with a clear and complete understanding of how time was devoted to specific tasks and the fees and costs associated therewith.

5.1 CITY shall make payments for services rendered under this Agreement monthly based on the monthly itemized billing statement FIRM submits to CITY. CITY shall make its best effort to process payments promptly after receiving FIRM's monthly billing statements.

6. Term and Termination. This Agreement shall be effective from the date of its full execution by both CITY and FIRM and shall continue in full force and effect until the services referenced in **Exhibit A** are completed or until otherwise terminated earlier by one of the parties.

6.1 CITY reserves the right to discharge FIRM and terminate this Agreement at any time. In the event of such discharge or termination, the CITY shall compensate FIRM for its satisfactory services rendered and expenses necessarily incurred up to and including the date of termination. CITY shall terminate services and/or the Agreement by delivering to FIRM a written notice specifying the extent to which services and/or the Agreement are terminated and the effective date of the termination.

6.2 FIRM may terminate this Agreement at any time by giving the CITY not less than thirty (30) days prior written notice. The notice shall specify the effective date of and reason for termination. If FIRM elects to terminate this Agreement, CITY's rights under any pending matter which may arise from FIRM's services hereunder shall not be prejudiced due to such termination as required by the Rules of Professional Conduct of the State Bar of California.

7. Indemnification and Insurance. During the term of this Agreement, FIRM shall indemnify Client and provide and maintain the insurance coverage described in **Exhibit B** to this Agreement attached hereto and incorporated by reference.

8. Independent Contractor. In performance of the work, duties and obligations assumed by FIRM under this Agreement, it is mutually understood and agreed that FIRM, including any and all of FIRM's officers, agents, and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as servant, employee, joint venturer, partner, or associate of CITY. Because of its status as an independent contractor, FIRM shall have absolutely no right to employment rights and benefits available to CITY employees. FIRM shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, FIRM shall be solely responsible and same CITY harmless from all matters related to payment of FIRM's employees, including compliance with social security, withholding, and all other regulations governing such matters.

9. Compliance with Law.

9.1 FIRM shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be

included are incorporated by reference. In particular, FIRM shall comply with all Rules of Professional Conduct of the State Bar of California, with confidentiality laws and regulations and with conflict of interest laws and regulations.

10. Miscellaneous.

10.1 Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

10.2 Controlling Law and Venue. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California. Venue shall be in Madera County, California.

10.3 Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.

10.4 Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

10.5 Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.

10.6 Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties. There are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.

10.7 Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.

10.8 Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

10.9 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.

10.10 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

10.11 Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Fresno or in the United States City Court for the Eastern City of California.

10.12 Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

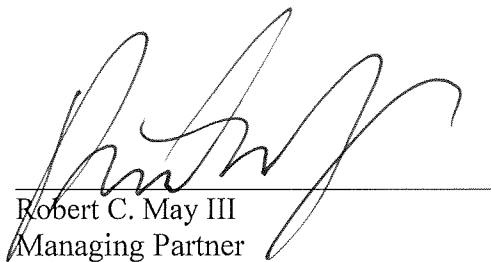
11. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the FIRM and the CITY.

Dated: 10/20/2020, 2020

Dated: _____, 2020

FIRM:

CITY:



Robert C. May III
Managing Partner

Andrew Medellin, Mayor

Sent via email: hildac@montoylaw.com
gconte@madera.gov

October 5, 2020

Ms. Hilda Cantú Montoy
City Attorney
City of Madera
c/o Montoy Law Corporation
2440 Tulare St, Suite 410
Fresno, CA 93721

Mr. Gary Conte
Planning Director
City of Madera
205 West 4th Street
Madera, CA 93637

RE: City of Madera Telecommunications Regulations
Subject: Proposal to Provide Legal Services

Dear Ms. Montoy and Mr. Conte:

Thank you for your interest in our firm's services. Telecom Law Firm would be honored to serve the City of Madera ("City") with its telecommunications matters. This letter contains a proposed scope and fee schedule for the legal services requested. A separate proposal for project/application review consulting will be submitted at your request.

PROPOSAL

1. KEY PERSONNEL

Telecom Law Firm's lead attorneys assigned this project will be Mr. Robert C. May III and Dr. Jonathan L. Kramer. The lead attorneys will be primarily responsible for the services provided. Their CVs are attached to this proposal. Dr. Kramer and Mr. May will be assisted by associate attorneys and other professionals in our firm under their direction.

Mr. Michael D. Johnston, Senior Associate, will be assigned to assist the lead attorneys. Other associate attorneys who may be assigned to assist in the City's matters include Ms. Natalia Shparber and Mr. David Nagele.

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2. SERVICES

- a. **Draft Ordinance.** At the City's option Telecom Law Firm shall prepare and deliver proposed revisions and additions to the City's Municipal Code and administrative policies (collectively, the "Draft Ordinance") to regulate wireless facilities deployed on private property and in the public rights-of-way in accordance with the City's local values and all applicable federal, state and local laws and regulations.

In connection with the Draft Ordinance, Telecom Law Firm shall review and evaluate all current City policies and practices related to wireless facilities and similar development projects and consult with City staff as needed or requested by the City. Telecom Law Firm will also develop a wireless policy guide for adoption by the City by resolution that reflects the then-current state of the siting laws and regulations and provides a mechanism for City-maintenance of and changes to the policies as laws and regulations evolve.

Consultation with City staff will generally be by telephone and/or email, and Telecom Law Firm's personnel will generally not be required to travel to complete this task.

- b. **Application Materials.** Telecom Law Firm shall provide the City with a supplemental application(s), checklist and worksheets for wireless facility applications (the "Application Materials"), specifically as to (1) new wireless sites; (2) 6409(a) modifications to a wireless site; (3) non-6409(a) modifications; and (4) AB 2421 standby power generators.

In connection with the Application Materials, Telecom Law Firm shall review and evaluate all current City policies and practices related to wireless facilities and consult with City staff as needed or requested by the City. Consultation with City staff will generally be by Zoom, GoToMeeting, telephone and/or email, and Telecom Law Firm's personnel will generally not be required to travel to complete this task. The Application Materials will be based on a form prepared by Telecom Law Firm and tailored to suit the City's policies, procedures, objectives and needs.

Telecom Law Firm will provide training to the City on the use and maintenance of the Application Materials described above included in the flat fee.

- c. **Additional Services.** At the City's request, and subject to the terms and conditions in this proposal and any other valid agreement between the City



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and Telecom Law Firm, Telecom Law Firm shall (1) remotely staff public workshops, meetings with industry stakeholders and public meetings before elected and appointed decision-making bodies; (2) assist the City prepare staff reports and responses to comments from the public; (3) provide legal opinions on specific issues in connection with the Draft Ordinance and policies; and (4) provide all services reasonably necessary to introduce and adopt the Draft Ordinance and implement the Application Materials (collectively, the "Additional Services").

Telecom Law Firm personnel will staff meetings through real-time telecommunications at the City's request. In-person meetings are subject to Telecom Law Firm's discretion based on its assessment of safety issues related to the current pandemic.

Telecom Law Firm's attendance, or any particular member's attendance, at such meetings is not guaranteed. Telecom Law Firm schedules meetings on a first-ask, first-schedule basis and advises the City to notify Telecom Law Firm about any potential meeting dates as soon as possible. Telecom Law Firm will certainly try to accommodate the City's requests when timely given.

3. AD HOC SERVICES

In addition to the services described in Section 2, Telecom Law Firm will be available to the City for advice, consultation and other legal services related to telecommunications infrastructure regulation, policy, technology and/or transactions within the firm's experience and expertise. The services described in this Section 3 do not include any litigation services or representation in any judicial or administrative proceedings, which will require a separate written agreement that either party may decline in their sole discretion.

4. COST PROPOSAL

a. Flat Fees. Telecom Law Firm shall charge a flat fee for the following tasks:

- i. Ordinance and Applications for Wireless Facilities on Private Property:** Telecom Law Firm shall charge a flat fee of \$12,000 payable in three installments for the Ordinance, and a flat fee of \$4,000 payable in three installments for the related Application Materials. The first installment of 45% of each flat fee shall be invoiced to the City after the City directs Telecom Law Firm to commence the work. The second installment of 45% of each flat fee



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shall be invoiced to the City after Telecom Law Firm delivers the draft work product to the City. And the final installment of 10% shall be invoiced to the City after the draft work product is published for public comment in advance of its consideration by the Planning Commission and/or City Council. The flat fees shall include consultation time with the City's staff spent by Telecom Law Firm personnel during the internal review process up to the work product's publication.

- ii. **Ordinance, Policy and Applications for Wireless Facilities in the Public Rights-of-Way:** Telecom Law Firm shall charge a flat fee of \$12,000 payable in three installments for the Ordinance, and a flat fee of \$4,000 payable in three installments for the related Application Materials and training. The first installment of 45% of each flat fee shall be invoiced to the City after the City directs Telecom Law Firm to commence the work. The second installment of 45% of each flat fee shall be invoiced to the City after Telecom Law Firm delivers the draft work product to the City. And the final installment of 10% shall be invoiced to the City after the draft work product is published for public comment in advance of its consideration by the Planning Commission and/or City Council. The flat fees shall include consultation time with the City's staff spent by Telecom Law Firm personnel during the internal review process up to the work product's publication.
- iii. **Ordinance, Policy and Applications for Eligible Facilities Requests under Section 6409:** Telecom Law Firm shall charge a flat fee of \$3,500 payable in three installments for the Ordinance, and a flat fee of \$1,600 payable in three installments for the related Application Materials and training. The first installment of 45% of each flat fee shall be invoiced to the City after the City directs Telecom Law Firm to commence the work. The second installment of 45% of each flat fee shall be invoiced to the City after Telecom Law Firm delivers the draft work product to the City. And the final installment of 10% shall be invoiced to the City after the draft work product is published for public comment in advance of its consideration by the Planning Commission and/or City Council. The flat fees shall include consultation time with the City's staff spent by Telecom Law Firm personnel during the internal review process up to the work product's publication



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- b. Hourly Rates.** Telecom Law Firm shall charge an hourly rate for all time spent by Telecom Law Firm personnel in connection with the Additional Services and Ad Hoc Services requested by the City. The hourly rates are specified in **Schedule 1**, attached to this proposal and incorporated by this reference. The Schedule 1 rates attached to this proposal are specially discounted from our normal government rates in recognition of the scope and importance of the larger projects identified above in Section 2. All hourly rates will automatically increase by three percent (3%) each year on the anniversary of the effective date of an agreement with the City to provide the services described in this proposal. Travel time will be billed at fifty percent (50%) rate, except when Telecom Law Firm personnel spend time in transit performing Services for the City (e.g., a telephone call en route to a meeting). Telecom Law Firm shall not bill the City for more than one attorney's time at any in-person meeting, unless approved by the City in advance. All time is billed in six-minute increments (0.1 hours). Telecom Law Firm shall not bill the City for time spent to prepare invoices, open or close a client file or other administrative tasks not directly related to the provision of services.
- c. Expenses.** Telecom Law Firm may incur expenses that will be billed to the City. All expenses are billed at cost with no mark up. Ordinary expenses, such as copying, printing, postage and other administrative costs directly related to the services rendered to the City shall not require the City's prior approval. Extraordinary expenses include any single expense (other than airfare or hotel fees for a meeting at the City's request) that exceeds \$250 shall require the City's prior approval.
- d. Invoices.** Invoices for hourly fees and associated expenses shall be issued approximately every thirty (30) days, and will describe (1) the task performed; (2) the person who performed the task; (3) the applicable hourly rate; and (4) the total time spent on each task.

Invoices for flat fees shall be issued according to the separate proposal requested and accepted by the City. Invoices will be due within 30 days after received by the City.

- e. Fee Deposit.** No initial fee deposit shall be required under this proposal. Telecom Law Firm reserves the right to require a fee deposit in the future for security purposes.

Any such fee deposits if required will be held in a client trust account in accordance with all applicable California Bar regulations. Any fee deposits



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required will be reasonably estimated by Telecom Law Firm to reflect the cost to provide the services requested by the City and/or the security required by Telecom Law Firm. However, such fee deposits are estimates and not guarantees and the actual hourly cost, which may exceed the fee deposit(s).

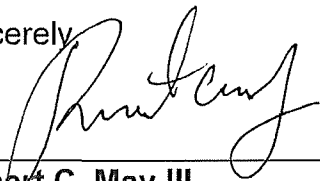
5. CONSULTANTS AND SUBCONTRACTORS

Based on the information provided by the City, Telecom Law Firm does not believe any consultants or subcontractors would be necessary to complete the services described in this proposal. Should any need arise, we do work with several experts in technical, real estate and litigation fields who could be brought on as needed or referred to the City.

CONCLUSION

Thank you for the opportunity to submit this proposal to the City. We take great pride in our work for local public agencies and would look forward to serving the City's needs in this specialized subject matter. Please contact Dr. Kramer or myself with any questions you may have about this proposal or Telecom Law Firm.

Sincerely,



Robert C. May III
TELECOM LAW FIRM PC

enc. Schedule 1 – Hourly Rates
CV of Dr. Jonathan L. Kramer, Esq.
CV of Mr. Robert C. May III, Esq.



EXHIBIT A

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SCHEDULE 1

HOURLY RATES

Professional	Hourly Rate
Per Partner	\$310
Per Senior Associate	\$280
Per Associate	\$260
Per Paralegal	\$175
Per Assistant	\$150



EXHIBIT B

INDEMNIFICATION AND INSURANCE REQUIREMENTS

I. Insurance.

Without limiting Firm's indemnification of City, and prior to commencement of Work, Firm shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Firm shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- \$2,000,000 **Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Firm arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. Firm shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- \$1,000,000 **Professional Liability (Errors & Omissions)** per claim and in the aggregate. Firm shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Firm agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

Maintenance of Coverage

Firm shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Firm, its agents, representatives, employees, subcontractors Firms as specified in this Agreement.

Proof of Insurance

Firm shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Firm, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Firm hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subcontracts or subcontractors.

Enforcement of Contract Provisions (non estoppel)

Firm acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Firm of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Firm maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Firm.

Notice of Cancellation

Firm agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Firm shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Firm's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Firm shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

II. Indemnification.

When the law establishes a professional standard of care for Firm's Services, to the fullest extent permitted by law, Firm shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Firm is responsible for such damages, liabilities and costs on a comparative basis of fault between the Firm and the City in the performance of professional services under this Agreement.