

REPORT TO CITY COUNCIL

Approved by:

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: October 21, 2020

Agenda Number: D-3

SUBJECT:

Agreement for Special Counsel Legal Services with Abbott & Kindermann, Inc.

RECOMMENDATION:

Adopt the resolution approving the agreement for special counsel legal services with Abbott & Kindermann, Inc.

SUMMARY:

The City Council has determined to pursue legal options concerning the High Speed Rail Authority's Final Supplemental Environmental Impact Report and Environmental Impact Statement for the Central Valley Wye Portion of the Merced to Fresno Section of the California High Speed Rail Project (Final SEIR/EIS) and the SR 152 (North) tor Road 11 Wye.

In determining to pursue said legal options, it is in the best interests of City to engage a law firm which is expert in CEQA and also familiar with the Project and environmental documents. Abbott & Kindermann, Inc. has prepared comments to the environmental documents on behalf of the Wye Task Force, comprised of the City of Madera, City of Chowchilla, Madera County, Madera Unified School District, Madera County Transportation Commission, Workforce Development Board, and the Economic Development Commission.

The proposed agreement is standard and includes scope of services, compensation, and standard provisions reviewed by City Attorney. Time is of the essence regarding this matter.

FINANCIAL IMPACT:

The Firm has agreed to utilize a range starting at \$195 and capped at \$400 per hour for their fees. At this time, it is difficult to forecast potential and final costs associated with this Agreement. The City Attorney and this office will keep the Council updated with milestones and potential costs.

ALTERNATIVES:

Council could direct staff to solicit additional proposals for Special Counsel.

ATTACHMENTS:

1. Resolution approving the proposed agreement for legal services.

2. Exhibit 1 to Resolution: Proposed agreement for legal services.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AGREEMENT FOR SPECIAL COUNSEL LEGAL SERVICES BETWEEN THE CITY OF MADERA AND ABBOTT & KINDERMANN, INC

WHEREAS, the City of Madera has a need to secure expert legal services to advise and represent the City concerning the High Speed Rail Authority’s Final Supplemental Environmental Impact Report and Environmental Impact Statement for the Central Valley Wye Portion of the Merced to Fresno Section of the California High Speed Rail Project (Final SEIR/EIS) and the SR 152 (North) tor Road 11 Wye.; and

WHEREAS, Abbott & Kindermann, Inc. has the legal competence, experience, and qualifications to provide professional legal services required by the City.

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 Legal Services between the City and Abbott & Kindermann, Inc., a copy of which is attached hereto as Exhibit A, is approved.
3. This resolution is effective immediately upon adoption.

* * * * *

Exhibit A to Resolution: Proposed
agreement for legal services

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services is made between **City of Madera** (hereinafter collectively referred to as "Client") and **Abbott & Kindermann, Inc.** (hereinafter "Attorney").

1. **Commencement:** Attorney will provide legal services when Client returns a signed copy of this Agreement and pays the initial deposit called for under paragraph 9. Provided, however, that if Attorney provides services to Client at Client's request prior to Client's execution of this Agreement, then the effective date of the Agreement shall be the date Attorney first provided services.

2. **Scope of Services:** Client wishes to retain Attorney to assist Client in legal matters pertaining to the California High Speed Rail matters in the City of Madera.

Client may direct Attorney, either verbally or in writing, to perform additional legal services for Client unrelated to the above-specified matter. Unless such additional services are the subject of a separate written Agreement for Legal Services, Client and Attorney agree that such additional legal services shall be considered within the scope of services under this Agreement, subject to all of the terms and conditions set forth herein, and shall be billed at Attorney's hourly rates as shown on the attached Rate Schedule.

In the event that Attorney is required to represent Client in litigation, Client agrees to fund the litigation, based upon a budget prepared by Attorney, and agreed upon by Client. In the event that the scope of litigation increases, Attorney shall periodically update the budget.

3. **Statement of Representation of Denoted Client:** Client agrees that only the named Client is represented by Attorney. Corporate officers, shareholders, employees or partners, whether general or limited, or consultants acting on behalf of the named client, are not clients of the firm unless agreed to in writing by Attorney.

4. **Designation of Authorized Contact Person:** If the Client is other than a single individual, Client agrees to designate **Arnoldo Rodriguez** as the Contact Person. Attorney shall be responsible to report to and take direction from the Contact Person. Client agrees that information provided to the Contact Person and decisions made by the Contact Person by consensus agreement shall be deemed to be information transmitted to and decisions made by the Client. Unless otherwise agreed to in writing by Attorney, Client agrees that the Contact Person is responsible for relaying all communications between Attorney, Contact Person and Client.

5. **Exclusion for Tax Advice:** This firm does not offer tax advice to its clients. There may be tax consequences associated with the matter for which this firm has been retained. We recommend that you consult with your tax advisor and have him or her consult us.

6. **Client's Duties:** Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any developments, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of any changes in Client's address, telephone number, and whereabouts. In the event that Client has legal concerns requiring immediate attention, Client agrees not to rely upon use of email to communicate with Attorney, but will speak with Attorney directly by telephone or in person regarding these concerns.

7. **Conflicts:** Client understands that Attorney is not prevented by this Agreement from representing other persons with similar legal matters.

8. **Calculation of Legal Fees:** Client agrees to pay Attorney for Attorney's services at the rates shown on the Rate Schedule attached as Attachment A. Attorney's services include those services provided by employees, other attorneys and planners. Client understands that the attached Rate Schedule provides for rate increases after notice to Client.

Time charges to the client will be based upon the nearest one-tenth of an hour devoted to Client's legal matter(s) or two-tenths for telephone calls. Where in the course of providing legal services, Attorney is able to use on- or off-line computer research or a previously prepared document, form, or research of particular relevance to Client, then in lieu of billing based upon actual time, the Attorney may charge the Client for the reasonable time attributable to the service provided.

Attorney will charge Client for time spent on telephone calls relating to Client's matter, including calls with Client, opposing counsel, and/or necessary third parties. When necessary, the legal personnel assigned to Client's matter will confer among themselves, and each person will charge for the time expended. Likewise, if it is necessary for more than one of Attorney's legal personnel to attend a meeting or other proceeding, each person will charge for the time spent. Attorney will charge for waiting time, and for travel time, both local and out of town. When, in the professional judgment of the Attorney, the Attorney believes that it is more cost effective for the Attorney to consult with an attorney outside the firm, the Attorney may do so and may charge the Client for the costs of the consultation for both counsels according to the attached Rate Schedule.

9. **Initial Deposit:** Client will pay **\$0.00** to Attorney at the time of signing this Agreement as preliminary fees and costs. Attorney will deposit this amount into a "Client Trust Account." This deposit is a reserve for payment of legal fees and Client is required to pay each monthly invoice in full. Attorney may withdraw money from this account as work is completed or as costs are incurred. Attorney may request Client to deposit additional money into trust from time to time as Attorney deems necessary. Client is entitled to a return of all unearned money in this account at any time. Client understands that Attorney may discontinue work should the amount in this account be insufficient to pay for Attorney's fees or costs. Client agrees to deposit such additional funds in Client's Trust Account within 10 days upon request by Attorney. Attorney will provide Client with a monthly accounting of disbursements from Client's Trust Account. Client understands that Attorney's decision not to request initial or additional trust monies in no way relieves Client of the obligation to pay for legal services rendered or costs incurred.

10. **Costs and Other Charges:**

(a) **In General:** Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for those costs and expenses in addition to the hourly fees. The costs and expenses commonly include fees fixed by law or assessed by public agencies, long distance telephone calls, messenger and other delivery fees, postage, parking and other local travel expenses, photocopying and other reproduction costs, clerical staff overtime,

charges for computer time and other similar items. Except for the items specified on the Rate Schedule, all costs and expenses will be charged at our cost.

(b) ***Out of Town Travel:*** Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

(c) ***Consultants and Investigators:*** To aid in the preparation or presentation of Client's case, it may become necessary to hire outside consultants or investigators. Attorney will not hire such persons unless Client agrees in advance to pay their fees and charges. Attorney will select any consultants or investigators to be hired.

(d) ***Litigation:*** In the event Client's matter involves arbitration or litigation, Client agrees to pay costs required by an arbitrator or court, or deemed necessary by Attorney to effectively present Client's case. In addition to the other costs and charges set forth in subsections (a) through (c) above, arbitration and litigation frequently include such costs as filing fees, court reporter fees, transcript costs and expert witness fees.

(e) ***Termination:*** Upon completion of Attorney services or upon termination of this contract as provided for in paragraph 16, all unpaid fees and costs will immediately become due and payable. Attorney will return to client any unearned funds or property belonging to Client in Attorney's possession. Attorney agrees to follow Client's written instructions with respect to disposition of Client's file materials. Client agrees to pay Attorney for Attorney's estimated time and expenses in reviewing, copying and forwarding Client's file according to Client's instructions. Client understands and agrees that should Client instruct Attorney to return or forward Client's file materials to Client or any other person, Attorney will not thereafter be required to maintain a copy of Client's file. In the absence of specific directions from Client, Attorney will store Client's file for five (5) years, after which time the file may be destroyed.

11. ***Billing Statements:*** Attorney will send Client statements for fees and costs incurred. Billing statements are due and payable upon receipt and delinquent if not paid within thirty (30) days of the statement date.

In the event Attorney presents any portion of its bill to a third party (such as an insurance firm, co-defendant, or opposing party) for payment, Client understands and agrees that Client will remain primarily liable for payment of the entire bill, and further, that Client will pay any portion of the bill not paid by such third party.

12. ***Interest:*** Interest will be charged on delinquent fees and costs at the rate specified on the attached Rate Schedule, or, if not specified, at the maximum rate permitted by law.

13. ***Application of Payments:*** All payments received from Client (including distributions from a client trust account) will be allocated to amounts owing in the following order: (1) accrued interest; (2) costs advanced; and (3) attorney's fees (with the oldest fees due being paid first).

14. ***Special Billing Requests:*** If Client requests Attorney to provide additional billing service or information, such as separation of charges between multiple matters, details of time billed, or replacement statements, Attorney will charge Client for such service or information at the hourly rates specified for accounting on the attached Rate Schedule.

15. ***Dispute:*** The venue in any action or proceeding arising out of this Agreement or the performance of services pursuant to this Agreement shall be in Sacramento County.

16. ***Discharge and Withdrawal:*** Client may discharge Attorney at any time. Attorney may withdraw with Client's consent (or upon approval of the Court if applicable) or for good cause. Good cause includes Client's breach of this Agreement, Client's refusal to cooperate with Attorney, Client's refusal to follow Attorney's advice on a material matter, or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. In addition, Attorney may withdraw at any time, upon reasonable notice to Client, when, in the sole discretion of Attorney, Attorney determines that Attorney will be unable to devote the necessary time or resources to accomplish the services set forth in paragraph 2 of this Agreement.

17. ***Disclaimer of Guarantee:*** Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of Client's matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of Client's matter are expressions of opinion only.

18. ***Use of Client's Name:*** Client authorizes Attorney to use Client's name, project, or development name in conjunction with marketing efforts undertaken by Attorney. All marketing activities will conform to all rules and guidelines issued by the State Bar regarding advertising.

19. ***Insurance and Indemnification.*** The Attorney shall indemnify Client and maintains insurance as required per Attachment B which is incorporated by reference

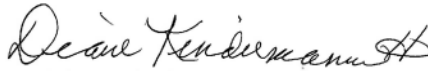
20. ***Periodic Modification.*** Upon 30 days written notice to Client, Attorney may update the Terms and Conditions, as well as the attached Rate Schedule.

21. ***Authorization to Use Email, Facsimile and Mobile Communications.*** Client acknowledges that there are inherent risks in maintaining the confidentiality of communications by email, facsimile and mobile telephone systems. Notwithstanding these risks, Client authorizes Attorney to use these methods of communication.

22. ***Conversion to Professional Corporation/Assignment of Agreement.*** The parties acknowledge that Attorney is considering converting its legal status from a limited liability partnership to a professional corporation and that such an action would require an assignment of this Agreement from Attorney to the new professional corporation. In the event Attorney changes its legal status from a limited liability partnership to a professional corporation, Client hereby consents to an assignment of this Agreement from Abbott & Kindermann, Inc. to the successor professional corporation on the condition that the officers and shareholders of the successor professional corporation are the same as the existing partners in Abbott & Kindermann, Inc.

22. Counterpart and Electronic Originals. This agreement may be executed in counterpart copies that will be deemed one original. Fax or emailed copies of signatures are to be accepted as originals.

ABBOTT & KINDERMANN, INC.



By: _____
Shareholder

Date: October 15, 2020

I/We have read and understood the foregoing terms and those set forth on the attached Rate Schedule and, in addition, have reviewed them with Attorney, and I/we hereby agree to them, as of the date Attorney first provided services. If more than one party signs below, each party agrees to be liable, jointly and severally, for all obligations under the foregoing Agreement.

CITY OF MADERA:

By: _____

Address: _____

Telephone _____

Date: _____

Attachment A: Rate Schedule

ABBOTT & KINDERMANN, INC.

RATE SCHEDULE

PRINCIPAL	\$ 400.00 per hour
OF COUNSEL	\$ 400.00 per hour
SENIOR COUNSEL	\$ 360.00 per hour
SENIOR ASSOCIATE	\$ 330.00 per hour
ASSOCIATE IV	\$ 310.00 per hour
ASSOCIATE III	\$ 235.00 per hour
ASSOCIATE II	\$ 230.00 per hour
ASSOCIATE I	\$ 190.00 per hour
PLANNER II	\$ 150.00 per hour
PLANNER I	\$ 110.00 per hour
PARALEGAL II	\$ 150.00 per hour
PARALEGAL I	\$ 100.00 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.

Court Calls and fax filing for court documents are not included.

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.

Attachment B: Indemnification and Insurance

Insurance Requirements

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, \$4,000,000 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. The cost of such insurance shall be included in Firm's bid.

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 or subFirms 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.

INDEMNIFICATION

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant 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 Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.