



## STAFF REPORT

TOWN COUNCIL MEETING OF JUNE 13, 2017

To: Honorable Mayor and Members of the Town Council

From: Joan L. Phillipe, Interim Town Manager

Subject: Agreement for Legal Services Between the Town of Loomis and Kronick, Moskovitz, Tiedemann & Girard

Date: June 5, 2017

### **RECOMMENDATION ACTION:**

Approve agreement.

### **ISSUE STATEMENT AND DISCUSSION:**

The town entered into an agreement for legal services with Kronick, Moskovitz, Tiedemann & Girard on July 1, 2011 and there have been no increases to the contract since that time. The contract provides for hourly rates and no annual increase. In the ensuing years, the Consumer Price Index (CPI) has increased 8.3 percent and as pointed out by the firm, those costs have been absorbed internally.

The request is to increase hourly rates by \$10 an hour which represents an approximate five percent increase. In addition, the request includes incorporating a modification into the agreement to provide for annual increases beginning July 1, 2018. Increases would be based on the CPI not to exceed three percent without Town Council approval.

The proposed agreement reflecting the above changes is attached along with the new rate schedule.

### **FINANCIAL IMPLICATIONS:**

The requested increase was discussed with Council at the budget workshop on May 8 and by consensus approved. The proposed 2017-2018 fiscal year budget reflects an amount anticipated to cover legal expenses based on the new contract.

## **AGREEMENT FOR LEGAL SERVICES**

This Agreement for Legal Services is entered into between Kronick, Moskovitz, Tiedemann & Girard, A Professional Corporation ("KMTG") and the Town of Loomis ("Client") as of the date last set forth herein.

By signing and returning this Agreement for Legal Services, Client indicates its acceptance of the terms set forth in this document.

### **1. SCOPE OF AGREEMENT**

Client retains KMTG to provide legal services as noted in Government Code section 41801 et seq. and Chapter 2.24 of the Town Municipal Code and in the laws of the State of California governing general law cities to Client as Town Attorney.

### **2. DUTIES OF KMTG AND CLIENT**

#### **KMTG DUTIES**

KMTG shall provide those legal services as noted in Chapter 2.24 of the Town Municipal Code and in the laws of the State of California governing general law cities reasonably required to represent Client in the matter described above. KMTG shall also take reasonable steps to keep Client informed of significant developments in on-going projects and to respond to Client's inquiries.

While the attorney with whom Client originally met may be primarily responsible for completing the work on Client's matter, that attorney may also delegate work to other attorneys, paralegals, law clerks and office personnel within KMTG, if he or she determines that such delegation is appropriate in representation of Client's interests. If Client so requests, Client will be consulted before any delegation is made. Client will be contacted if such delegation results in costs above those listed in the Schedule of Rates in this Agreement.

KMTG may, with Client's prior consent, select and hire attorneys, investigators, consultants and experts to assist in the preparation and presentation of Client's case. While any such persons will report exclusively to KMTG to preserve the Attorney-Client and Attorney Work Product privileges, they will be employed by Client.

KMTG is not authorized or obligated to perform any services for Client until KMTG has received an original-signed copy of this Agreement for Legal Services from Client.

#### **CLIENT'S DUTIES**

Client shall be truthful with KMTG, cooperate with KMTG, keep KMTG informed of developments related to the subject matter for which Client has engaged KMTG, perform the obligations Client has agreed to perform under this Agreement, and pay statements from KMTG in a timely manner.

### **3. BILLING RATES**

Client agrees to pay for legal services at the rates set forth in the attached Schedule of Rates. KMTG's fees will be calculated based on those hourly rates, billed in

increments of 1/10th hour for the legal staff involved, multiplied by the hours devoted on Client's behalf. These rates are subject to adjustment at the beginning of each fiscal year. KMTG will give written notice of rate adjustments at least thirty (30) days prior to the effective date thereof. Annual rates will be increased by an amount equal to the 12 month change in CPI; provided, however, that any increase in excess of Three percent (3%) will be instituted only in consultation with and as approved by Client. These rates are based principally on experience, specialization and training.

KMTG will charge for all time worked on a matter, including travel time portal-to-portal, time waiting in court, and time spent in meetings, unless otherwise agreed to in writing.

#### **4. COSTS AND EXPENSES**

Whenever practical, Client shall directly pay for major costs and expenses in addition to KMTG's fees, either by advancing such costs or expenses to KMTG, or by paying third parties directly. Upon demand, Client shall advance funds to KMTG or directly pay third parties, as specified by KMTG.

In all other cases, Client shall reimburse KMTG for all costs and expenses incurred by KMTG, including, but not limited to, the following: costs of serving pleadings, filing fees and other charges assessed by courts and other public agencies, court reporters' fees, jury fees, witness fees, messenger and other delivery fees, postage, unusually large photocopying, parking, mileage, travel expenses (including air fare at coach rates, lodging, and ground transportation), research, investigation expenses, consultants' fees, expert witness fees, and other costs.

KMTG shall itemize all costs incurred on each periodic statement.

#### **5. STATEMENTS**

KMTG shall send Client a statement for fees and costs incurred every month. However, when the fees and costs for a particular month are minimal, they may be carried over at no interest to the next month's statement. Client shall pay statements from KMTG within thirty (30) days after each statement's date.

KMTG's statements shall clearly state the basis thereof, including the amount, rate and basis for calculation (or other method of determination) of KMTG's fees.

KMTG shall provide a statement to Client, upon Client's request, no later than ten (10) days following the request. Client is entitled to make subsequent requests for statements at intervals of no less than thirty (30) days following the initial request.

#### **6. DISCLAIMER OF GUARANTEE**

By signing this Agreement, Client acknowledges that KMTG has made no promises or guarantees to Client about the outcome of Client's matter, and nothing in this Agreement shall be construed as such a promise or guarantee.

**7. DISCHARGE AND WITHDRAWAL**

Either party may terminate this Agreement upon written notice to the other party. If Client or KMTG elects to terminate this Agreement, KMTG shall be paid for all fees and costs that have accrued up to the time of termination.

KMTG and Client each agree to sign any documents reasonably necessary to complete KMTG's discharge or withdrawal.

**8. LEGAL ACTION UPON DEFAULT**

If Client does not pay the balance when due, or if Client breaches any other term of this Agreement, KMTG may demand that the entire unpaid balance be paid immediately and, as provided by law, commence any legal action for collection of the balance due.

Client and KMTG agree that all legal proceedings related to the subject matter of this Agreement shall be maintained in courts sitting within the State of California, County of Sacramento. Client and KMTG consent and agree that the jurisdiction and venue for proceedings relating to this Agreement shall lie exclusively with such courts. Further, the prevailing party in any such dispute shall be entitled to reasonable costs, including attorneys' fees.

**9. ARBITRATION OF FEE DISPUTE**

If a dispute arises between KMTG and Client regarding attorneys' fees or costs under this Agreement and KMTG files suit in any court, or begins an arbitration proceeding other than through the State Bar or a local bar association under Business and Professions Code Sections 6200-6206, Client will have the right to stay that suit or arbitration proceeding by timely electing to arbitrate the dispute through the State Bar or a local bar association under Business and Professions Code Sections 6200-6206. If Client elects to so arbitrate the dispute, KMTG will submit the matter to that arbitrator.

**10. COMPLETION OF SERVICES**

Upon the completion of KMTG's services, all unpaid charges for services rendered and costs incurred or advanced through the completion date shall become immediately due and payable when a closing invoice is received by Client from KMTG.

**11. CLIENT FILES**

At Client's request, upon the termination of services under this Agreement, KMTG will promptly release all of Client's papers and property (subject to any applicable protective orders or non-disclosure agreements).

**12. DESTRUCTION OF CLIENT FILE**

If Client does not request the return of Client's papers and property, KMTG will retain Client's file for a period of seven (7) years from the last date of service in the matter described above. After seven (7) years, KMTG may have Client's file destroyed. Client acknowledges that it will not be notified prior to the destruction of its papers and property, and

Client consents to the same. If Client desires to have Client's file maintained beyond seven (7) years after Client's matter is concluded, Client must make separate arrangements with KMTG.

**13. COMMENCEMENT OF SERVICES**

KMTG's obligation to provide legal services shall commence upon KMTG's receipt of a signed copy of this Agreement for Legal Services.

**14. INSURANCE**

Pursuant to Business and Professions Code Section 6148, Client is hereby informed that KMTG maintains errors and omissions insurance coverage.

**15. MODIFICATION BY SUBSEQUENT AGREEMENT**

This Agreement may be modified only by a written instrument signed by both parties.

I understand and accept the foregoing terms.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Robert Black, Mayor  
TOWN OF LOOMIS

DATE: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey A. Mitchell  
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,  
A Professional Corporation

**SCHEDULE OF RATES  
As of July 1, 2017**

General governance work: "General governance work" includes all work performed for the Town other than work specifically described in the following sections as "special counsel work" or "work subject to reimbursement":

Town Attorney

Jeffrey A. Mitchell, Shareholder ..... \$235

Additional Support Team

Mona G. Ebrahimi, Shareholder ..... \$235

Amara Harrell, Shareholder ..... \$235

Maggie Stern, Associate ..... \$220

For services by other KMTG attorneys, the schedule of rates is as follows:

Shareholders/of Counsel ..... \$235-\$285

Associate Attorneys ..... \$185-\$215

The schedule of rates for support staff is as follows:

Paralegals ..... \$100-\$135

Paralegal Clerk/Law Clerk ..... \$95-\$120

Hourly rates for attending Town Council meetings, including travel, would be one-half the regular rate shown.

Special counsel work: Special counsel work includes any of the following work performed for the Town: (1) complex or non-routine ordinances, contracts, agreements, or planning, land use, land acquisition, or public works matter for which the Town will not be reimbursed by an applicant; (2) any litigation, including code enforcement and related lien matters; (3) public finance or bond matters; (4) payroll and income tax issues; (5) labor, employment and personnel matters such as employee disciplinary hearings and work related to collective bargaining; (6) eminent domain matters; (7) LAFCO-related work, including, annexations and sphere of influence amendments; and (8) wetlands regulatory, environmental and CEQA issues for developer/non-city initiated projects for which the Town will not be reimbursed by a project applicant.

For special counsel work, the following rates will apply:

Town Attorney

Jeffrey A. Mitchell, Shareholder ..... \$250

Additional Support Team

Mona G. Ebrahimi, Shareholder ..... \$250

Amara Harrell, Shareholder ..... \$250

Maggie Stern, Associate ..... \$235

For services by other KMTG attorneys, the schedule of rates is as follows:

Shareholders/of Counsel ..... \$250-\$300  
Associate Attorneys ..... \$195-\$225

The schedule of rates for support staff is as follows:

Paralegals ..... \$110-\$145  
Paralegal Clerk/Law Clerk ..... \$105-\$125

Work subject to reimbursement: From time to time, the Town may ask KMTG to perform legal services for which the Town is entitled to reimbursement from third parties (e.g. work done in connection with development projects). For services where KMTG's costs will be reimbursed by a private third party, the following rate schedule will apply:

Town Attorney

Jeffrey A. Mitchell, Shareholder ..... \$285

Additional Support Team

Mona G. Ebrahimi, Shareholder ..... \$285  
Amara Harrell, Shareholder ..... \$285  
Maggie Stern, Associate ..... \$245

For services by other KMTG attorneys, the schedule of rates is as follows:

Shareholders/of Counsel ..... \$285-\$325  
Associate Attorneys ..... \$245-\$250

The schedule of rates for support staff is as follows:

Paralegals ..... \$115-\$145  
Paralegal Clerk/Law Clerk ..... \$110-\$135

Expenses, including mileage, unusually large photocopying and delivery charges, will also be billed. A detailed schedule of these charges can be provided upon request. Our usual billing procedure is to submit a monthly itemization of the time and services charged with the names of the attorneys and paralegals whose time is being billed. However, we have a highly sophisticated and flexible billing system which can produce statements specific to each client's billing needs. Please let us know of any specific desires or needs you have in this respect.