

TO: TOWN COUNCIL
FROM: TOWN MANAGER 
RE: CONSENT ITEM
TOWN ATTORNEY AGREEMENT

ISSUE

Agreement is with the firm of Kronick, Moskovitz, Tiedemann & Girard (KMTG) appointing them to serve as Loomis Town Attorney.

RECOMMENDATION

Approve agreement.

CEQA

There are no CEQA requirements involved in appointing a Town Attorney.

MONEY

The cost of attorney services in the Town has run about \$70,000 to \$80,000 for the typical municipal legal services. At times there have been special services requiring additional costs. Though the 2011/12 Budget allocates \$75,500 in the interest of conservative budgeting, it is expected that costs for typical legal services will be less because there won't be as much time spent in Loomis as was previously the case.

DISCUSSION

The Town's legal services were bid earlier this year and Council interviewed firms that provide municipal attorney services. Council choose the firm of Kronick, Moskovitz, Tiedemann, & Girard (KMTG) and the following agreement for services was negotiated by Staff. KMTG has been in an acting capacity since March 2011 so the transition to being formally appointed Town Attorney will be nil.

FOR LEGAL SERVICES

This Agreement for Legal Services is entered into between Kronick, Moskovitz, Tiedemann & Girard, A Professional Corporation (“KMTG”) and 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, and the new rates 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: _____

Rhonda Morillas, Mayor
TOWN OF LOOMIS

DATE: 7/1/11



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

SCHEDULE OF RATES
As of July 1, 2011

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.....\$225

Additional Support Team

Mona G. Ebrahimi, Associate.....\$200

Amara Harrell, Associate.....\$210

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

Shareholders/of Counsel \$220-\$275

Principals..... \$210-\$250

Associate Attorneys \$185-\$215

The schedule of rates for support staff is as follows:

Paralegals \$90-\$125

Paralegal Clerk/Law Clerk..... \$85-\$110

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.....\$240

Additional Support Team

Mona G. Ebrahimi, Associate.....\$215

Amara Harrell, Associate.....\$225

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

Shareholders/of Counsel	\$225-\$300
Principals.....	\$215-\$250
Associate Attorneys	\$195-\$225

The schedule of rates for support staff is as follows:

Paralegals	\$90-\$125
Paralegal Clerk/Law Clerk.....	\$90-\$115

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.....	\$275
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Additional Support Team

Mona G. Ebrahimi, Associate	\$225
Amara Harrell, Associate.....	\$235

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

Shareholders/of Counsel	\$250-\$325
Principals.....	\$230-\$280
Associate Attorneys	\$205-\$250

The schedule of rates for support staff is as follows:

Paralegals	\$100-\$135
Paralegal Clerk/Law Clerk.....	\$95-\$125

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.