

TO: TOWN COUNCIL

FROM: TOWN MANAGER

RE: CONSENT ITEM  
CONTRACT FOR INTERIM TOWN ATTORNEY SERVICES

**ISSUE**

Pursuant to Council direction law firms are being solicited for proposals to provide Town Attorney services and it is necessary to have a firm provide interim services.

**RECOMMENDATION**

Approve attached contract for interim Town Attorney services with KMTG and authorize payment for the services to come from reserves in an amount not to exceed \$40,000 dollars without additional Council authorization.

**MONEY**

The cost of budgeted Town Attorney services runs \$5,688/month (about 42 hours/month at \$135/hr). The interim service will cost more, about \$10,112/month (42 hours x \$240/hr) due to a higher hourly rate. The hours however will be managed by lowering the number of office hours and the time spent at Council and Planning Commission meetings. More work will be done by phone and email. Over the next 3 months the Town will pay extra due to contract provisions that provide for the current Town Attorney to continue receiving the base monthly amount (\$5,688) for 3 months. The Town may be paying a total of \$15,800/month for basic services over the next three months ending June 30, 2011.

**CEQA**

Contracts for services would not typically require CEQA review because it is self-evident that these are not projects that may cause a direct (or reasonably foreseeable indirect) physical environmental change.

**DISCUSSION**

At the 3/10/11 meeting Council approved soliciting proposals from law firms to provide Town Attorney services. The current Town Attorney was also given a 90 day notice (to June 20, 2011) of contract termination because the expectation is that a new contract will be approved over the course of that period of time. The current Town Attorney can also submit a proposal to continue providing attorney services for the Town. Regardless who is selected to provide legal services, a new contract is expected to begin July 1, 2011.

Since the current Town Attorney will not be doing additional work it is necessary to have an interim legal advisor. The firm of KMTG is recommended to serve in that roll until

Council decides who to appoint as Town Attorney. KMTG has also been invited to submit a proposal to provide Town Attorney services. In the interim KMTG is being will provide the typical monthly municipal legal services that include the following:

1. perform the duties of Town Attorney as specified by State law, the Loomis Municipal Code and direction of the Town Council;
2. frame all ordinances and resolutions;
3. furnish all office space, equipment, labor, materials, supplies, reference and background data and information necessary to accomplish the duties except that the Town will provide such things, to the extent necessary as determined by the Town Council, for the Attorney's convenience while conducting office hours in the Town Hall;
4. provide a monthly project status report indicating work in progress on Town business, cost recovery on work such as, but not limited to, development and/or other projects from which costs may be lawfully recovered;
5. prepare and/or review contracts, agreements, leases of Town property and such other documents as may be needed to engage the services of consultants, acquire equipment, purchase property and do such things as municipalities are allowed to do pursuant to general law;
6. recommend legal work (changes to codes, policies, procedures etc) that the Town should consider doing;
7. attend Council and Planning Commission meetings and such other meetings as may be necessary, or as requested by the Council;
8. conduct office hours at the Town when needed;
9. Litigation, including prosecuting code violations and simple law and motion matters;
10. Advise the Council on obtaining special legal services when needed and assist in soliciting and coordinating same.

## AGREEMENT 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 general municipal legal services as requested by Client.

### 2. DUTIES OF KMTG AND CLIENT

#### KMTG DUTIES

KMTG shall provide those legal services reasonably required to represent Client in the matter described above. KMTG shall also take reasonable steps to keep Client informed of significant developments 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.

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 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, long distance telephone calls, messenger and other delivery fees, postage, photocopying, parking, mileage, travel expenses (including air fare at coach rates, lodging, meals, 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 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.

**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: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TOWN OF LOOMIS

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

Jeffrey A. Mitchell

KRONICK, MOSKOVITZ, TIEDEMANN &  
GIRARD, A Professional Corporation

**SCHEDULE OF RATES**  
**As of March 10, 2011**

<b>Shareholders/Of Counsel.....</b>	<b>\$225-\$300</b>
<b>Principals/Senior Associates .....</b>	<b>\$210-\$235</b>
<b>Associate Attorneys.....</b>	<b>\$190-\$220</b>
<b>Paralegals.....</b>	<b>\$90-\$125</b>
<b>Document Clerk/Law Clerk.....</b>	<b>\$65-\$110</b>

The hourly rate for Jeffrey Mitchell will be \$240.

Expenses, including mileage, long distance telephone charges, 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.