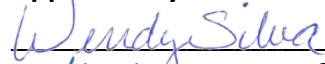



## REPORT TO CITY COUNCIL

**Approved by:**

  
Wendy Silva, Director of Human Resources  
  
Arnaldo Rodriguez, City Manager

**Council Meeting of:** August 21, 2019

**Agenda Number:** C-2

**SUBJECT:**

Consideration of a Resolution Approving an Agreement for Legal Services with Montoy Law Corporation

**RECOMMENDATION:**

It is recommended that the City Council (Council) adopt the resolution approving the agreement for legal services with Montoy Law Corporation and authorizing the Mayor to sign the agreement.

**SUMMARY:**

Following the departure of the City's former in-house attorney, Council directed staff to conduct both a Request for Proposals (RFP) for contract legal services and a recruitment for an in-house City Attorney so that both alternatives could be evaluated by the Council. Following these processes, Council selected the Montoy Law Corporation to provide City Attorney services through a contracted services delivery model.

**DISCUSSION:**

The City published RFP 201819-03 seeking proposals for contract legal services. The City received six (6) responses to the RFP. Simultaneously, the City opened a recruitment for in-house legal counsel and received three (3) applications for such services. The City Council reviewed all of the RFP responses as well as the applications for in-house services at its meeting on June 12, 2019. Based on this review, Council selected for interview two (2) contract firms and two (2) applicants for in-house employment. Interviews were held on June 22, 2019. Following further discussion of Council and review of additional information and analysis of potential costs, Council selected Montoy Law Corporation to provide legal services and act as City Attorney under a contract service delivery model.

Based on direction from Council, the City Manager negotiated an agreement for services with Montoy Law Corporation, provided as Exhibit 1 to the proposed resolution. A summary of the key terms of the agreement is as follows:

Item 1: General Services		
Definition: All legal services in all subject areas regardless of complexity except matters listed in Item 2 as Special Services		
Bill Rate	Attorneys	\$235/hour
	Paralegals/Law Clerks	\$95/hour
Travel Time	Meetings of the City Council, Successor Agency, or Planning Commission	No Charge
	Attendance at 2 staff meetings per month	No Charge
	All other travel for General Services	\$140/hour
Item 2: Special Services		
Definition: Pitchess Motions, Administrative Hearings, and Litigation-related matters		
Bill Rate	Attorneys	\$295/hour
	Paralegals/Law Clerks	\$95/hour
Travel Time	All travel for Special Services	\$140/hour
Item 3: Reimbursable Business Expenses		
Routine photocopying, mail, and faxes		No Charge
Extraordinary printing, mailings, couriers, recording of documents		Actual Cost
Consultants or Experts (must be preapproved by City)		Actual cost
Mileage		No Charge
Item 4: Termination of Services		
City may terminate the agreement for services at any time.		
Firm must provide City at least sixty (60) days prior written notice if firm desires to terminate the agreement.		

If the proposed agreement is approved by Council, Ms. Hilda Cantú Montoy will be designated as the City Attorney for the City of Madera until such time that either the City or Ms. Montoy terminate the relationship in accordance with the provisions of the agreement.

#### **FINANCIAL IMPACT:**

Contracting for City Attorney and general legal services is a new service delivery model for the City. The City has had contract providers for these services since February 2019. This includes services from multiple law firms for legal issues previously handled by the in-house City Attorney. During that time, the total bills from all firms received for these services averaged \$17,027 per month, which equates to \$204,326 per year. However, during this time, there have been no major litigation matters requiring attention. It is anticipated that at least one pending litigation matter will go to trial during the current fiscal year, which will likely cause the billings during that period to be higher than the average experienced to date. The total adopted City Attorney department budget for 2019-20 is \$430,860. Staff does not anticipate exceeding the City Attorney department adopted operating budget.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

**ALTERNATIVES:**

Council could direct staff to solicit additional proposals or applications for employment.

**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  
LEGAL SERVICES BETWEEN THE CITY OF MADERA AND MONTROY LAW CORPORATION AND  
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Madera has a need to secure expert legal services to advise the City in general and specialty matters; and

WHEREAS, the City published a Request for Proposals (RFP) for legal services and conducted an open competitive recruitment for in-house legal services, and after its review and consideration of submitted proposals and applications, the City Council desires to retain Montroy Law Corporation to provide legal services; and

WHEREAS, Montroy Law Corporation 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 Montroy Law Corporation, a copy of which is attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City of Madera.
4. Ms. Hilda Cantú Montroy is designated as City Attorney for the City of Madera.
5. This resolution is effective immediately upon adoption.

\* \* \* \* \*

## **CITY ATTORNEY LEGAL SERVICES AGREEMENT**

This Legal Services Agreement ("Agreement") is made and entered into the 21<sup>st</sup> day of August, 2019, by and between Montoy Law Corporation ("Firm") and the City of Madera ("City").

### **RECITALS**

- A. The City has issued a Request for Proposals (RFP) for contract City Attorney services.
- B. Firm has the legal competence, experience, and qualifications to provide professional legal services required by City and submitted a proposal to City.
- C. Firm has served as Temporary and Interim City Attorney.
- D. After conducting an RFP process for City Attorney services, and after its review and consideration, City desires to retain Firm to provide said services.

### **AGREEMENT**

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

2. Services. The City hereby contracts with Firm to provide services herein set forth at the compensation and upon the terms and conditions herein expressed, and Firm hereby agrees to perform such services for said compensation, and upon said terms and conditions. City hereby authorizes Firm to commence work immediately upon approval of this agreement by the City Council at a scheduled meeting of said governing body.

3. Obligations, duties and responsibilities of Firm. It shall be the duty, obligation and responsibility of the Firm, in a skilled and professional manner, to perform the services in accordance with the Scope of Work identified in Exhibit A.

4. Compensation. City shall compensate Firm for legal services at the following hourly rates:

4.1 General Services Hourly Rates: \$235.00 for attorneys and \$95.00 for paralegals/law clerks. The term "General Services" includes all legal services in all subject areas and regardless of complexity except matters listed under Special Services in Section 4.2 below. Travel time is not charged for City Council meetings, Successor Agency meetings, Planning Commission meetings, and two Staff meetings per month. Other travel time will be billed at \$140.00 per hour.

4.2 Special Services Hourly Rates: \$295.00 for attorneys and \$95.00 for paralegals/law clerks. The term "Special Services" includes Pitchess Motions,

Administrative Hearings, and Litigation-related matters. Travel time required for Special Services will be billed at \$140.00 per hour.

4.3 Reimbursement: No fees will be charged for routine photocopying, mail, and faxes. Actual costs will be charged for extraordinary printing, mailings, couriers, recording of documents, as well as consultants and experts preapproved by Madera. Mileage reimbursement will not be requested.

5. Assignment of Personnel. Hilda Cantú Montoy is designated as City Attorney. It is understood that from time to time, Firm may subcontract with other attorneys to provide services to City including Shannon Chaffin, Roy C. Santos, and Michelle Sassano of Aleshire & Wynder per the proposal submitted under the RFP as well as other attorneys including from other firms. Assignment to subcontracted attorneys will be made in consultation with the City Manager. All work shall be performed under Ms. Montoy's close supervision. It is understood that from time to time the City may wish to retain Special Counsel for certain specified services. Firm will cooperate and collaborate with Special Counsel.

6. Billings and Payments.

6.1 Montoy Law Corporation shall submit a billing statement which will include services by Firm provided 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 City's designee.

6.2 Billings are to be made directly to the following address:

City of Madera  
Attn: Wendy Silva  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637

6.3 The billing statements shall be prepared and organized in a 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.

6.4 City shall make payments monthly based on a monthly itemized billing statement for the previous month. City shall make its best effort to process payments promptly and not later than 30 days after receiving Firm's monthly billing statement.

7. Term and Termination.

7.1 This Agreement shall be effective on August 8, 2019, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect unless otherwise terminated earlier by one of the parties. Firm may be contacted following termination of the Agreement for clarification and consultation on matters

covered during performance of the scope of services. Any such contact will be billed in accordance with Section 4 of this Agreement.

7.2 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 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. Notice of termination shall be mailed and emailed as follows:

Montoy Law Corporation  
Hilda Cantú Montoy  
2440 Tulare Street, Ste. 410  
Fresno, CA 93721  
[hildac@montoylaw.com](mailto:hildac@montoylaw.com)

7.3 Firm may terminate this Agreement at any time by giving the City not less than sixty (60) days prior written notice. 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. Notices required under this section shall be mailed and emailed as follows:

City of Madera  
Arnoldo Rodriguez, City Manager  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637  
[arodriguez@madera.gov](mailto:arodriguez@madera.gov)

## 8. Insurance and Indemnification.

8.1 During the term of this Agreement, Firm shall maintain, keep in force, and pay all premiums required to maintain and keep in force the policies and limits of such policies as required in Exhibit B of this Agreement.

8.2 To the furthest extent allowed by law, Firm shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of Firm, its principals, officers, employees, agents, or volunteers in the performance of this Agreement. The obligations under this paragraph are in addition to, and are not limited by any insurance which Firm is otherwise required to maintain under this Agreement.

9. 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, agent, partner, or associate of City. Because of its status as an independent contractor, Firm and its employees 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 hold 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.

10. Compliance with Law. 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.

11. Miscellaneous.

11.1 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.

11.2 Governing Law. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California.

11.3 Required License and Professional Credentials. Firm and personnel providing legal services shall maintain all licenses and professional credentials necessary for the provision of such services. Firm shall promptly notify City of changes of status or events that might impact the provision of legal services to City.

11.4 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.

11.5 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.

11.6 Incorporation of Documents. All documents constituting the Agreement documents described in Section 3 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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.

11.12 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 Madera or in the United States City Court for the Eastern City of California.

11.13 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.

12. 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.

**MONTOY LAW CORPORATION**

**CITY OF MADERA**

\_\_\_\_\_  
Hilda Cantú Montoy  
President

\_\_\_\_\_  
Andrew J. Medellin, Mayor

Date: \_\_\_\_\_, 2019

Date: \_\_\_\_\_, 2019

**ATTEST**

\_\_\_\_\_  
Claudia Mendoza, Interim City Clerk

Date: \_\_\_\_\_, 2019

## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. Act as the City of Madera's (City's) designated City Attorney.
2. Advise the City Council, Commissions, and City officials and staff on legal matters pertaining to municipal government, including the Ralph M. Brown Act and parliamentary procedures for running meetings.
3. Provide legal advice, written legal opinions, and consultation on matters affecting the City to the City Council, City Manager, boards, commissions, committees, officers, and employees of City in accordance with such policies and procedures as may be established by City.
4. Review agendas and staff reports for:
  - a. City Council
  - b. Redevelopment Agency Successor Agency
  - c. Planning Commission
  - d. Various other City committees/commissions
5. Advise on procedural and substantive issues that arise during meetings.
6. Prepare or review necessary legal documents such as: ordinances and resolutions; various types of agreements; real property instruments of varying nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; bond size, amount, and offering terms and conditions; public works construction documents including bid specifications, contracts, bonds, insurance, liens and related documents; memorandums of understanding; franchise agreements; bargaining agreements and bargaining agreement language, employment agreements, independent contractor agreements, investigative reports, as required, public records act responses, and similar documents, as requested by City.
7. Represent and advise City on pending and potential litigation as requested by City.
8. Attend meetings commissioned by the City as needed. Regular meeting dates for the identified bodies are:
  - a. City Council: 1st & 3rd Wednesday of each month, 6:00 pm
  - b. Redevelopment Agency Successor Agency: 2nd Wednesday of each month, 6:00 pm

- c. Planning Commission: 2nd Tuesday of each month, 6:00 pm
  - d. On an as-needed basis to attend Council workshops or other meetings as specified by the City
9. Analyze proposed and enacted legislation, published legal opinions, and other matters that may have an impact on the operations of the City upon request.
  10. Review Requests for Proposals to be published before publication upon request.
  11. Upon request, provide oversight of administrative appeal hearings for code enforcement violations and water citations; provide notice of denial of appeal if applicable.
  12. Appearances at Court for *Pitchess* Motions.
  13. Review of Public Records Act requests as well as documents scheduled for production prior to response/production.
  14. Potentially litigate matters not covered by the City's insurance pool, to include land use and planning issues, breach of contract matters, and the like.
  15. Upon request, provide litigation coordination and oversight for tort liability claims and litigation. Primary legal coverage is provided through the City's insurance pool; the City Attorney's office provides general legal oversight in partnership with the City's risk management staff.
  16. File restraining orders on behalf of City staff, as necessary, when circumstances affect their work.
  17. Upon request, review Deeds of Reconveyance, demands for payment, Release of Lien documents and other related documents.
  18. Provide legal assistance pertaining to land use issues including, but not limited to, property acquisition, property disposition, public improvements, easements, dedications, CEQA, and public utilities as requested.
  19. Provide legal advice and services on personnel matters as requested.
  20. Be available for telephone consultation with City staff, as needed, on legal matters which are within their area of operation and maintain office hours at City Hall as requested by the City Manager at times mutually agreed to by the City Manager and designated City Attorney.
  21. Promptly respond to calls, emails, and correspondence from City officials and staff.

22. Perform such other legal duties as may be required by the City Council and City Manager that are necessary to complete the performance of City Attorney functions.
23. In addition to the more technical scope of work outlined above, the City Attorney must understand her role in local government, avoiding political debates and active participation in the policy and managerial decision-making process entrusted to the City Council and City Manager. The City Attorney is expected to provide technically sound and consistent legal advice to members of the City Council and City staff while maintaining trust and an unwavering ethical standard no matter the situation or individuals involved.

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

**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 and Sub-consultants of every Tier 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 should 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.
- **\$1,000,000 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.
- **Workers' 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 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 of no less than three years after completion of 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, or sub-consultants 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 too 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 to 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 sub-consultants 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 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 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 judgment may be necessary for its proper protection and prosecution of the Work.