

# BOARD OF SUPERVISORS COUNTY OF MADERA

MADERA COUNTY GOVERNMENT CENTER  
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MEMBERS OF THE BOARD

FRANK BIGELOW  
VERN MOSS  
RONN DOMINICI  
MAX RODRIGUEZ  
TOM WHEELER

TANNA G. BOYD, Chief Clerk of the Board

File No: 09021

Master Agreement No. 001

Date: August 4, 2009

In the Matter of CONSIDERATION OF APPROVAL OF AMENDMENT TO MADERA  
COUNTY MASTER CONTRACT NO. 001, FOR LEGAL SERVICES,  
COUNTY COUNSEL DEPARTMENT.

Upon motion of Supervisor Wheeler, seconded by Supervisor Moss, it is  
ordered that the attached be and it is hereby adopted as shown, and the Chairman is  
authorized to execute said agreements.

I hereby certify that the above order was adopted by the following vote, to wit:

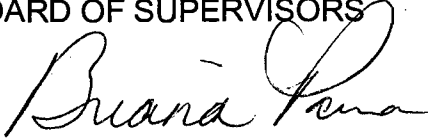
AYES: Supervisors Bigelow, Moss, Dominici, Rodriguez and Wheeler.  
NOES: None.  
ABSTAIN: None.  
ABSENT: None.

Distribution:

All Departments (via Michelle Garvin)  
County Counsel  
Binder  
Granicus

ATTEST: TANNA G. BOYD, CLERK  
BOARD OF SUPERVISORS

By

  
Deputy Clerk II

MADERA COUNTY MASTER CONTRACT NO. 001  
(Master Contract for Legal Services)

1. **SCOPE OF ENGAGEMENT.** Attorneys, including law firms and all professional, paraprofessional and clerical or administrative staff (collectively "Attorney"), shall adhere their conduct in the matters assigned to them in accordance with terms and conditions of this Contract. Attorney will provide legal services to and in representation of the County of Madera (County) within the areas of law assigned and advise County as appropriate. Services include the provision of Outside Counsel Guidelines as described in Exhibit "A-1" and Budget Guidelines as described in Exhibit "A-2."

2. **FEES AND PERSONNEL.** Compensation for Attorney services shall be based on currently approved billing rate for the personnel performing services under this Contract at the time such services are rendered; or at the current rate of the client's insurance carrier, if the carrier is providing for the cost of the defense. Fees for services shall not exceed those approved by the Board of Supervisors for any Attorney. Fees shall be billed in accordance with the Outside Counsel Guidelines attached as Exhibit "A," and incorporated herein as if fully stated.

Attorney shall assign a Principal in charge of representing County. Other attorneys and/or paralegals may be assigned to a particular matter as allowed by the Guidelines. Any change in fees or personnel must be completed pursuant to the Guidelines.

3. **DISBURSEMENTS AND EXPENSES.** The County will not pay a retainer in advance of an invoice for fees, disbursements or expenses. Expenses will be paid in accordance with the Budget Guidelines. Expenses must be anticipated, to the extent possible and described as provided in the appropriate section of Exhibit "A-2."

4. **BILLING AND PAYMENT RESPONSIBILITIES.** Attorney must invoice the County for services monthly. Invoices must detail the work performed and identify all billing professionals or paraprofessionals. County will not pay for administrative overhead costs, including clerical services.

5. **TERMINATION OF SERVICES.** County retains the right to terminate services at any time by written notice. After receiving such notice, Attorney will cease providing services and will cooperate with County in the orderly transfer of all related files and records to the County or County's new counsel.

Attorney may only terminate services with consent of the County or for good cause. Good cause exists if:

An invoice is not paid within 90 days of its date of submittal to County; and/or County fails to meet any other obligation under this Contract and continues in that failure for 30 days after receiving written notice of said failure; and/or the County misrepresents or failed to disclose material facts, refuses to cooperate with Attorney, and/or otherwise made the representation of County unreasonably difficult. In addition, Attorney may withdraw upon the existence of any other circumstance which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises.

Termination of services will not relieve the County of its obligation to pay for services rendered and costs incurred before services formally ceased.

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6. **INSURANCE.** During the term of this engagement, Attorney shall maintain policies of insurance throughout the term of this Agreement in the types and amounts specified in the Legal Services Agreement which incorporates this Master Agreement and approved by the County's Risk Management.

7. **NO GUARANTEE OF OUTCOME.** County acknowledges that any comments made about the potential outcome of a matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

8. **ENTIRE AGREEMENT; FULL UNDERSTANDING; MODIFICATIONS IN WRITING.** This Agreement is modified by a written contract executed by Attorney. Said contract is incorporated herein as if fully stated and must contain a similar provision which incorporates this document to be enforceable as against County. This Agreement and the Attorney contract will collectively along with all exhibits form the entire agreement of the parties and no modifications of the agreement shall be enforceable against any party unless in writing, which writing must reference this agreement.

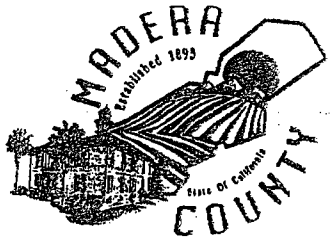
9. **JOINT REPRESENTATION.** County neither agrees to nor allows for joint representation unless such representation is expressly authorized by the Board of Supervisors.

10. **CONFLICTS.** County acknowledges that Attorney may represent other public agencies in California. In the event that a conflict of interest develops during the pendency of any action, County shall be notified immediately and no further services shall be performed unless written authorization is received from County.

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IN WITNESS WHEREOF, the Board of Supervisors caused this Master Contract to be executed this 4<sup>th</sup> day of AUGUST, 2009, and shall become binding upon Attorney's execution of the Attorney Contract referencing and incorporating this Agreement.



COUNTY OF MADERA

[Signature]  
Chairman, Board of Supervisors

ATTEST:

By [Signature]  
Clerk of the Board of Supervisors

Approved as to Legal Form:  
COUNTY COUNSEL

By [Signature]

Approved as to Form:  
RISK MANAGEMENT

By [Signature]

ACCOUNT NUMBER(S)

\_\_\_\_\_  
\_\_\_\_\_

# **EXHIBIT "A"**

**EXHIBIT A**  
**OUTSIDE COUNSEL GUIDELINES**

**Introduction**

The following guidelines are intended to create a positive and healthy business relationship between the County of Madera and its outside counsel. As a result of adherence to the conditions recited below, it is believed that both County staff and the assigned firms will be able to meet their expectations of delivering quality legal services at a reasonable cost. Primarily, these policies will be managed by the office of the County Counsel and the County Administrator through Risk Management. Liability cases, those cases which are paid from the liability trust and underwritten through the county's excess insurance authority are managed by the County's Risk Manager. Non-liability cases are supervised by the County Counsel. However, the County Counsel will coordinate with the Risk Manager on liability cases to ensure proper communication between County staff and outside counsel and to promote compliance with the following policies.

**Case Management**

**A. Case Evaluation and Budget**

Within ninety (90) days following receipt of a case, Counsel shall prepare and send to County Counsel and the Risk Manager (on liability cases) the following:

1. Case Status Report Guideline using the template attached as Exhibit A-1.
2. Initial and revised Budget Guidelines using the template attached as Exhibit A-2.

These documents may be submitted by e-mail to the respective county staff as appropriate.

## **B. Communication**

1. Correspondence and pleadings. Copies of all pertinent correspondence, investigations, and summaries of depositions, interrogatories and pertinent pleadings shall be promptly provided to County Counsel/Risk Manager and the excess and/or reinsurance carrier when the case meets the excess reporting criteria. Counsel will promptly respond to all letters or phone calls and will keep County Counsel/Risk Manager fully advised of the progress in each case.

2. Depositions and hearings. We require timely notification of all scheduled depositions, deposition preparations, mediations, MSC, VSC, arbitrations, trials, etc. We consider timely notification to be not less than two weeks in advance with three to four weeks advanced notice being preferable. Notice of all hearings shall be sent by Counsel to the County Counsel/Risk Manager and to the excess carrier when the case meets excess reporting requirements to allow them to attend the hearing. It is required that within ten days of any County employee's deposition being taken, Counsel will meet with the county employee for the purpose of preparing the employee for their depositions and for trials in which they will serve as witnesses and/or experts. There are to be no telephone preparations, except upon approval by County Counsel.

3. Evaluations. We request evaluations as to liability and settlement value issues as early in the case as possible. Upon request, and at such other times as deemed necessary, Counsel shall provide written or oral evaluations of the litigation. These evaluations shall disclose any weaknesses or strengths that have been discovered, any changes in applicable statutes or case law, any increase or decrease in anticipated costs, and (if possible) the potential liability and settlement value of the case. These evaluations should be as straightforward and as objective as possible to allow the County Counsel/Risk Manager to meaningfully analyze the case and to determine the course of action to be taken.



It is the responsibility of Counsel to update any item of information contained in the initial status report, including judgments and opinions of Counsel, promptly when a change occurs. All updates shall also be concise. If six months elapse since the initial report or the last previous update and no changes have occurred, Counsel shall advise of that fact in a written update. Consequently, no six-month period shall expire without written communication from Counsel to County Counsel/Risk Manager.

**C. Case Staffing**

The assigned trial attorney is responsible for the case. Attendance at substantive court appearances and depositions should be made by the assigned attorney. The assigned attorney should discuss the need for involving other law firm members in the case with County Counsel/Risk Manager, including the cost of managing this group. Counsel should assign only personnel appropriate to a particular case. For example, the County will not pay for partner time when an associate can properly handle a particular matter; and County will not pay for attorney time when a paralegal can properly handle a particular matter.

Counsel is expected to provide guidance to other members of the law firm that are involved in the case. Unless otherwise agreed in advance, the County will pay for two hours of intra-office conference time per month to allow the assigned attorney to discuss the case strategy with other law firm staff members that have been specifically approved by the County Counsel/Risk Manager, the County will only pay for the assigned attorney's actual time for conducting the conference. The County will not pay for the time of other attendees, nor will the County pay for file memoranda giving directions to staff, or any other form of intra-office conference, whether oral or written.

**D. Multiple Attorney Attendance**

Unless otherwise discussed in advance, the County will pay for only one attorney attending depositions, meetings, court appearances, trials, etc.

**E. Paralegal Services**

The County recognizes the value of paralegal services when used appropriately to perform work in a file. However, the County will not pay for attorney or paralegal services which are clerical in nature, such as for file organization or Bates stamping, or where there is no significant value added to the case.

**F. Personnel Changes**

When changes within the law firm require changes to the personnel involved in the matter, County Counsel/Risk Manager must be immediately notified of said change and the reason for the change. The County will not pay for the cost of preparing new participants for their involvement. The County will also not pay for multiple file reviews by the same lawyer or paralegal.

**G. Research**

All research in excess of five hours total during a single budgeted timeframe must be discussed with County Counsel/Risk Manager.

Since assignments are made to firms which have been selected for their expertise in particular areas of law, the County will not pay for research which is routine in nature. The County expects all counsel to maintain a central research depository, such as a brief bank, and refer to that depository prior to conducting de novo research. The County will not pay for redundant research, and will only pay for extending or revising prior research to update it, not if the previous research had been conducted de novo. It is anticipated that routine discovery motions, if approved, will not require any special research.

The results of research in matters of first impression in the locality, or which are otherwise unique or of interest and the results of any extensive research projects should be supplied to County Counsel/Risk Manager.

#### **H. Expert Witnesses**

Expert witnesses, including medical witnesses, should not be engaged without prior consultation with County Counsel/Risk Manager and may need approval of the Board of Supervisors at the discretion of the Claims Review Committee. All expert services shall be conducted pursuant to written agreement defining tasks to be performed, and a budget shall be prepared for each expert and submitted to County Counsel/Risk Manager before the expert is authorized to commence the work. Payment of retainers to experts is not encouraged by the County absent an emergency.

#### **I. Settlement Activity**

##### **1. Attendance at Settlement Conferences, Mediations or Arbitrations.**

As soon as a settlement conference, mediation or arbitration is scheduled, Counsel shall confer with County Counsel/Risk Manager to determine whether the attendance of a County representative is desirable or required by the Court. If it is decided that no County representative need attend, then arrangements for telephone contact with County Counsel/Risk Manager during the conference must be established. The County expects Counsel to identify any relevant requirements or local rules regarding participation in settlement conferences and mediations.

Counsel shall not settle any lawsuit or make a settlement offer in any amount or make any representation as to settlement possibilities without prior authorization of the County Counsel/Risk Manager and/or Board of Supervisors' approval when necessary.

2. Request for Settlement Authority. Requests for settlement authority must be made on a timely basis, preferably *not less than 30 days* prior to a settlement discussion. The County will not tolerate requests for authority on the "eve of trial" or the day before a settlement conference. Settlement demands shall be communicated to the County Counsel/Risk Manager as soon as they are received, with a settlement recommendation to follow as soon as possible. County Counsel/Risk Manager shall schedule such settlement offers for Board or Claims Review Committee discussion as early as possible under current Board rules.

3. Settlement Drafts. Requests for settlement drafts must be in writing. Counsel should avoid making any promises concerning the timing of delivery of settlement drafts without discussing same with County Counsel/Risk Manager in advance. In those rare cases where a settlement draft is required on a priority basis, Counsel shall immediately advise the County Counsel/Risk Manager of the precise date when the settlement draft is required.

**J. Trial Activity**

The decision to take a case to trial should be discussed between Counsel and County Counsel/Risk Manager as early in the matter as possible, but no later than 14 days prior to trial setting. If necessary, County Counsel/Risk Manager shall schedule the issue for Board discussion.

**K. Jury Verdicts**

Counsel shall immediately advise the County Counsel/Risk Manager of the time a jury verdict is to be returned.

**L. Appeals**

The decision to file an appeal, interlocutory or otherwise, should **only** be made after consultation with County Counsel/Risk Manager. If another party files

an appeal, County Counsel/Risk Manager is to be advised immediately. Neither an appeal nor opposition to appeal shall be undertaken without Board authority.

## **Billing Practices**

### **A. Billing Rates**

The County must agree upon all billing rates prior to retention. Under no circumstances shall billing rates be increased on any litigation in progress. *Any rate increase shall apply only to assignments made after the rate increase has been approved by us.* Funds paid in violation of this provision are subject to reimbursement.

### **B. Flat Charges and Minimum Charges**

Counsel shall not apply flat charges as part of its rate structure unless such flat charges have specifically been agreed to by us. Nor shall Counsel apply minimum charge for any activity.

### **C. Travel Expenses**

**The County will not pay for local travel expenses.** The County will only reimburse Counsel for reasonable travel expenses which have been incurred after consultation with County Counsel/Risk Manager. Only coach class airfare, moderately priced hotel accommodations and moderately priced meals will be reimbursed. The County will not accept lavish or unnecessary expenses for reimbursement. All travel expenses submitted to the County for reimbursement must apply all cost savings received by Counsel through rebates or other value. **Meals and entertainment expenses incurred while traveling are subject to the provisions of section E below.** Travel expenses shall be itemized on Counsel's billing, with copies of all receipts attached. **Undocumented travel expenses will not be reimbursed.** County will not pay for meals within the home city of the firm or the approved attorney.

#### D. Meals and Other Expenses

All requests for reimbursement of meals and other expenses shall be individually itemized, showing persons attending, amounts incurred and the business purpose.

#### E. Overhead and Non-billable Items

The County considers the following items to be overhead costs, included in the law firm's hourly rate, or otherwise non-billable:

- Base charges for computerized legal research services such as Westlaw or Lexis
- Charges for opening or closing files
- Charges for preparation of or collection of bills or invoices
- Word processing, clerical or secretarial charges, including overtime, whether expressed as a dollar disbursement or time charge
- Storage of open or closed files, rent, electricity, file folders, binders or other office supplies or equipment
- E-mail is the preferred method of exchanging information. The County will not pay for other methods of delivery when e-mail is available and sufficient. The necessity for express charges, messenger services or the like should be discussed with County Counsel/Risk Manager and approved prior to incurring the charges except in emergency situations. Where case necessity requires the use of these services, the County will consider reimbursement on a case-by-case basis. **If there is no written confirmation of approval, the County will not pay for these services.**
- Local telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium.
- **Technology costs, including hardware, software, licenses, personnel or services related to acquisition, maintenance or upgrade of the firm's technology infrastructure. If the firm finds it necessary to incur additional technology costs as a result of a specific matter, the firm**

should discuss this need with the management of the applicable claim handling office.

- Long distance telephone, litigation support, or any other service in excess of the amount actually expended by the firm for such service. The County will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.
- Photocopy charges in excess of \$.10 (ten cents) per page.
- Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.
- Equipment, books, periodicals, research materials.
- Any other items traditionally associated with overhead.

#### **F. Travel**

When it is appropriate for Counsel to bill for travel time, the time for travel shall be separately stated and billed at 50% of the timekeeper's approved hourly rate. However, in the event Counsel bills another client or case or matter for the time in travel, County shall not be billed for travel time. Where travel time is involved, billing for services in excess of eight hours per day must be specifically approved in advance. Exceptions may be granted on a case by case basis upon a showing of hardship to Counsel.

#### **G. Contract Timekeepers**

Timekeepers who are not employees of the law firm should be identified as such and should be charged at the actual cost to the law firm. Additional compensation to the law firm for management of non-employee timekeepers must be approved by the claim handling office management in advance.

# **EXHIBIT "A-1"**

**EXHIBIT "A-1"**



Exhibit A-1  
CASE STATUS REPORT GUIDELINE

To be completed by Firm's Supervising Attorney

1. FIRM NAME:  
  
CASE NAME:  
  
COURT CASE #:  
COUNTY FILE #:  
  
INCIDENT DATE:  
CLAIM DATE:  
COMPLAINT FILED DATE:
2. STATUS OF DISCOVERY (since last status report). List depositions taken.
3. INTERROGATORIES SENT/RECEIVED (list names):
4. REQUESTS FOR MEDICAL EXAMS:
5. STATUS OF EXPERT WITNESS/CONSULTANT INVESTIGATIONS:
6. RESULTS OF MOTIONS (describe all Motions and indicate outcome):
7. SIGNIFICANT DEVELOPMENTS WHICH MAY INCREASE OR DECREASE COUNTY'S EXPOSURE/LIABILITY:
8. RECOMMENDED CASE STRATEGY (state clearly changes from previously agreed to strategy):
9. SIGNIFICANT EVENTS:  
Trial Setting Conference Date:  
Arbitration Date:  
Voluntary Settlement Conference Date:  
Mandatory Settlement Conference Date:  
Department  
Jury \_\_\_ Non-Jury \_\_\_ (check one)
10. Please update Exhibit A-2 - Budget Guidelines.

Approved by: \_\_\_\_\_  
(Firm's Supervising Attorney)

Date: \_\_\_\_\_

# **EXHIBIT "A-2"**

**EXHIBIT "A-2"**

**Exhibit A-2**

**BUDGET GUIDELINES**

Date: \_\_\_\_\_

New

Revised

<b>Case Assessment, Development and Administration</b>	
Facts Investigation/Development	\$
Analysis/Strategy	\$
Experts/Consultants	\$
Document/File Management	\$
Budgeting	\$
Other Case Activity	\$
<b>Total</b>	<b>\$</b>

<b>Pre-Trial Pleadings and Motions</b>	
Pleadings	\$
Preliminary Injunctions/Provisional Remedies	\$
Court Mandated Conferences	\$
Dispositive Motions	\$
Other Written Motions and Submissions	\$
Class Action Certification and Notice	\$
<b>Total</b>	<b>\$</b>

<b>Discovery</b>	
Written Discovery	\$
Document Production	\$
Depositions	\$
Expert Discovery	\$
Discovery Motions	\$
Other Discovery	\$
<b>Total</b>	<b>\$</b>

<b>Trial Preparation and Trial</b>	
Fact Witnesses	\$
Expert Witnesses	\$
Written Motions and Submissions	\$
Other Trial Preparation	\$
Trial and Hearing Attendance	\$
Post-Trial Motions and Submissions	\$
Enforcement	\$
<b>Total</b>	<b>\$</b>

<b>Appeal</b>	
Appellate Motions and Submissions	\$
Appellate Briefs	\$
Oral Argument	\$
<b>Total</b>	<b>\$</b>

<b>Expenses (Itemize)</b>	
Copying	\$
Outside Printing	\$
Facsimile	\$
Telephone	\$
Online Research	\$
Delivery services/Messengers	\$
Postage	\$
Local Travel	\$
Out-Of-Town Travel	\$
Meals	\$
Court Fees	\$
Subpoena Fees	\$
Witness Fees	\$
Deposition Transcripts	\$
Trial Transcripts	\$
Litigation Support Venders	\$
Experts	\$
Private Investigators	\$
Arbitrators/Mediators	\$
Local Counsel	\$
Other Professionals	\$
Other	\$
<b>Total</b>	<b>\$</b>
<b>Grand Total</b>	<b>\$</b>
<b>Revised Grand Total</b>	<b>\$</b>