

COUNTY COUNSEL
LOUIS B. GREEN

CHIEF ASS'T. COUNTY COUNSEL
EDWARD L. KNAPP

PRINCIPAL ASS'T COUNTY COUNSEL
PATRICIA E. BECK

DEPUTY COUNTY COUNSEL
JUDITH M. KERR
REBECCA C. SUDTELL
PAULA F. FRANTZ
MICHAEL J. CICCOTZI

**EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL**



January 26, 2007

COUNTY GOVERNMENT
CENTER
330 FAIR LANE
PLACERVILLE, CALIFORNIA 95667
(530) 621-5770
FAX# (530) 621-2937

DEPUTY COUNTY COUNSEL
BETH A. MCCOURT
DAVID A. LIVINGSTON
SCOTT C. STARR

Honorable Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

**Subject: Approval of Agreement for Legal Services with Diepenbrock
Harrison Providing for Representation of County in the Case of
California Native Plant Society, et al. v. County of El Dorado, et al., El
Dorado County Superior Court No. PC20070021**

Honorable Chair and Supervisors:

Recommendation:

County Counsel recommends that the Board approve and authorize the Chair to execute the attached Agreement for Legal Services between El Dorado County and Diepenbrock Harrison.

Reasons for Recommendation:

A lawsuit has been filed by the California Native Plant Society challenging the Board's approval of a congregate care facility (Pilegaard project) in the Cameron Park area. The lawsuit names the County and related entities as the respondents and defendants. The project proponents are named as real parties in interest. The real parties in interest are represented by the law firm of Remy, Thomas, Moose and Manley, LLP. We anticipate that counsel for the real parties in interest will play an active, if not lead, role in the defense of the lawsuit. However, the lawsuit has implications beyond simply this specific project moving forward. The lawsuit relates to broader County policies and programs related to mitigating impacts of development on rare plants in the vicinity. Because of the potential effect of the lawsuit on issues beyond just this project, we believe the County should retain its individual counsel and remain actively involved in the litigation. A hearing on a preliminary injunction has been scheduled for February 15, 2007, and the County's brief is due on February 2, 2007, necessitating rapid action to retain counsel.

Diepenbrock Harrison is fully qualified to perform this work and has represented the County in recent, major litigation. Their blended rate of \$290.00 per hour is competitive with the rates of similarly qualified firms. The project approval does provide for indemnification of the County for its litigation costs by the project proponents.

Fiscal Impact:

None. The project proponents are obligated to indemnify the County for litigation arising out of the project. Therefore, costs incurred under this contract should be reimbursed by the project proponents. County Counsel can advance initial costs until initial reimbursement is made so that no budget amendment is required.

Actions to be Taken Following Approval:

County Counsel will work with Diepenbrock Harrison and the Real Parties in Interest to prepare and coordinate the County's defense of the lawsuit.

We would be pleased to answer any questions the Board might have.

Respectfully submitted,



LOUIS B. GREEN
County Counsel

LBG:km

Encl.

cc: Chief Administrative Officer
Dir. of Development Services
Paula Frantz, Dep. County Counsel
Mike Brady, Diepenbrock Harrison

s:\Bd of Supervisors\Correspondence\Diepenbrock Harrison Contract Agenda Staff Letter