

1 **AGREEMENT FOR LEGAL SERVICES BETWEEN EL DORADO COUNTY**
2 **AND ABBOTT & KINDERMANN**

3 This Agreement is made and entered into between EL DORADO COUNTY
4 (“County”), a governmental entity organized and existing under the laws of the State of
5 California, and ABBOTT & KINDERMANN, LLP (“Law Firm”), a professional law
6 corporation, duly authorized do to business in the State of California, whose address is 2100
7 Twenty-First Street, Sacramento, California 95818, for the performance of specific legal
8 services for County.

9 **1. Scope of Services.** The County retains the Law Firm as special legal counsel to
10 provide all customary and usual legal services to (1) assist the County in preparing (a)
11 amendments to the County’s General Plan, (b) a comprehensive update to the zoning
12 ordinance, (c) an updated travel demand model and (d) the necessary CEQA documents for
13 those legislative documents in accordance with all applicable laws and requirements; and (2) to
14 defend the County in that case against any objections, protests or other opposition to the
15 County’s approvals of those documents. Such services shall include all such services normally
16 provided by the Law Firm which are reasonably related to the accomplishment of the project
17 objective, which is successful adoption of the various legislative documents listed above in
18 compliance with applicable legal requests. Services may include, but are not necessarily
19 limited to, providing advice to County boards, commissions, officers and staff, preparing and/or
20 reviewing such documents as may be requested by the County, attending meetings as may be
21 required by County providing direction to other consultants which may be employed on the
22 project and preparing necessary pleadings to be filed in any actions filed regarding the
23 legislative approvals and representing the County in proceedings before the Court in any
24 litigation filed.

25 The Law Firm may also provide such additional services as may be mutually agreed by
26 the parties; provided, that such additional services must be authorized in writing by the County
27 and may require an amendment to this Agreement.

1 **2. Compensation.** In consideration of the services set forth in paragraph 1, the
2 County shall pay the Law Firm on an hourly rate in accordance with the billing rates set forth
3 on Exhibit A, “Abbott & Kindermann, LLP Rate Schedule.”

4 Law Firm shall keep proper records to enable County to verify the services rendered,
5 and such records shall be made reasonably available to County or its agents for inspection and
6 audit.

7 William Abbott and Kate Hart will be the attorneys primarily responsible for the
8 services to be provided under this agreement. The Law Firm may utilize the services of other
9 attorneys or staff as deemed appropriate and efficient; provided, that such other persons shall
10 be under the supervision of either Mr. Abbott or Ms. Hart as determined appropriate for the
11 particular task.

12 The County and Law Firm acknowledge that there are a wide range of factors that will
13 influence the total compensation for work performed pursuant to this agreement. An initial
14 appropriation of \$150,000 has been made for legal services in connection with this matter.
15 Although total costs are expected to exceed this amount, Law Firm will not incur fees or costs
16 in excess of this amount unless and until an additional appropriation has been made.

17 **3. Costs.** The firm will also be reimbursed for customary costs and disbursements
18 incurred I the course of representation, including long-distance telephone, travel, facsimile,
19 messenger services and photocopying under the terms set forth on Exhibit A. The Firm will
20 also be reimbursed for any subcontracted consultant services approved in advance by the
21 County Counsel. Such costs shall be detailed in billings submitted.

22 **4. Billings.** The Law Firm shall submit to County itemized statements of services
23 rendered and costs incurred monthly. Such statements shall identify the services rendered, and
24 specify the time expended in rendering such services, calculated in no larger than one-tenth
25 (.10) hour increments. County agrees to pay the Law Firm within thirty (30) days of such bill
26 or statement.

27 **5. Termination.** This Agreement shall be terminable by the County at any time
28 and for any reason, or without cause. Funds budgeted for the purpose of this Agreement are

1 made available on a fiscal year basis, and budgeting is subject to change at any time. Should
2 funding not be made available, this Agreement shall be automatically terminated in its entirety.
3 The Law Firm may terminate this Agreement upon sufficient written notice to County, made in
4 such a manner so that the County shall not be prejudiced, but in no event less than thirty (30)
5 day's notice. Upon termination of this Agreement for any reason, attorney shall immediately
6 cease all work, except as may be reasonably required to avoid prejudice to County which shall
7 be immediately reported to County and within ten (10) days shall provide a final bill to County
8 for all services rendered. The Law Firm shall take all steps necessary to ensure smooth
9 transition to any other counsel which may be retained by County. The obligation of
10 confidentiality shall continue and shall not terminate when this Agreement ends.

11 **6. Independent Contractor.** The Law Firm and all persons who perform services
12 for or through the Law Firm pursuant to this Agreement shall be an independent contractor and
13 shall not be deemed to be an employee of the County for any purpose. The Law Firm's
14 services shall be under the general direction of the County Counsel, who shall also be
15 responsible for administering this Agreement on behalf of the County.

16 **7. Standards of Performance.** The Law Firm and every employee thereof shall
17 provide their services, advice and any reports in full compliance with all applicable law and
18 professional standards. Law Firm represents that it is specially trained, experienced, expert and
19 competent to perform the services required under this Agreement and that each individual
20 providing legal services is a member in good standing of the State Bar and is licensed to
21 practice in California. Further, Law Firm certifies that it will not accept representation in any
22 matters, including litigation, under this Agreement if it or any employee thereof has any
23 personal or financial interest therein,

24 **8. Qualifications.** Law Firm certifies that it accepts this retention because it has
25 the time, energy, skills and ability necessary to perform the duties required in an efficient,
26 trustworthy, professional and businesslike manner. It is understood that the services under this
27 Agreement must be provided immediately, and that they are time critical. Law Firm is engaged
28 by County for its unique qualifications and skills. Law Firm shall not subcontract, delegate or

1 assign the services to be provided under this Agreement, in whole or in part, to any other
2 person or entity not employed by Law Firm without consent of County.

3 **9. Insurance.** Law Firm shall maintain insurance in a form acceptable to County
4 to be in full force and effect from the first day of the term of this Agreement, as set forth in
5 paragraph 16. Law Firm specifically represents that it maintains errors and omissions
6 insurance applicable to the services to be rendered under this Agreement.

7 **10. Attorney-Client Relationship.** Law Firm agrees that it will comply with all
8 ethical duties, will maintain the integrity of the lawyer-client relationship, and will take all
9 steps available to preserve all applicable legal privileges, confidences, and records from
10 disclosure. All documents and information obtained by or generated by Law Firm pursuant to
11 this contract, all opinions and conclusions of Law Firm, any reports, information, data,
12 statistics, forms, procedures, systems, studies and all communications with County, are
13 confidential. Law Firm agrees to take all steps reasonably necessary to maintain this
14 confidentiality. Law Firm is responsible for ensuring that it and all of its employees faithfully
15 adhere to the confidentiality requirements of law and this Agreement.

16 **11. Ownership of Documents.** All documents and other writings prepared by or
17 for the Law Firm in the course of implementing this Agreement shall become the property of
18 the County immediately and the County shall have the right to use such materials in its
19 discretion without compensation to the Law Firm or any other party other than the
20 compensation provided under this Agreement.

21 **12. Notification of Conflict.** Law Firm shall immediately notify County if any
22 services to be performed under this Agreement involves an actual or potential conflict of
23 interest, financial or otherwise. Law Firm shall not engage in any activity under this
24 Agreement that involves any actual or potential conflict of interest unless Law Firm first makes
25 a fully and complete disclosure of all relevant facts and obtains a written waiver of such conflict
26 in advance from County.

27 The Law Firm has disclosed to the County that the Sierra Club is a party to the litigation
28 that is the subject of this Agreement and that the law firm represents the Sierra Club in matters

1 unrelated to this litigation and may represent the Sierra Club in other unrelated matters during
2 the course of this Agreement. The Law Firm has disclosed that although there is no direct
3 conflict of interest as a result of these matters, the firm's simultaneous representation of the
4 Sierra Club and El Dorado County could give rise to divided loyalties.

5 The County acknowledges this disclosure and hereby consents to the Law Firm's
6 representation of the County in the matters which are the subject of this Agreement
7 notwithstanding the Law Firm's simultaneous representation of the Sierra Club in other
8 unrelated matters. The County expressly waives any conflict of interest, or potential conflict of
9 interest, arising out of the Law Firms' representation of the Sierra Club in the matters described
10 and in other matters outside El Dorado County where the Law Firm has not received material
11 confidential information from the County.

12 **13. Indemnity.** To the fullest extent allowed by law, the Law Firm shall defend,
13 indemnify, and hold harmless the County against and from any and all claims, suits, losses,
14 damages, and liability for damages of every name, kind and description, including reasonable
15 attorneys' fees and costs incurred, which are claimed to or in any way arise out of, directly or
16 indirectly, or are connected with: (1) any negligent act, whether passive or active, error or
17 omission, or willful misconduct, of the Law Firm, its subcontractor(s), agents or employee(s) or
18 any of these: or (2) any breach of any statutory, regulatory, contractual or legal duty of any
19 kind related, directly or indirectly, to the services, responsibilities or duties required of Law
20 Firm by this Agreement. This duty of Law Firm to indemnify and save County harmless
21 includes the duties to defend set forth in California Civil Code section 2778.

22 **14. State Filing.** All independent consultants providing services to the County
23 must file a State of California Form 590 certifying their California residency or, in the case of a
24 corporation, certifying that it has a permanent place of business in California. Law Firm will
25 be required to submit a Form 590 prior to execution of this Agreement or County shall
26 withhold seven (7) percent of each payment to be made to Law Firm during the term of this
27 Agreement. This requirement applies to any Agreement exceeding \$1,500.00.
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1 **15. Proof of Insurance.** Law Firm shall provide proof of a policy of insurance
2 satisfactory to the El Dorado County Risk Manager and documentation evidencing that Law
3 Firm maintains insurance that meets the following requirements:

4 A. Full workers' Compensation and Employer's Liability Insurance covering all
5 employees of Law Firm as required by law in the State of California.

6 B. Commercial General Liability Insurance of not less than \$500,000 combined
7 single limit per occurrence for bodily injury and property damage.

8 C. Automobile liability insurance of not less than \$500,000 is required in the
9 event motor vehicles are used by the Law Firm in the performance of the contract.

10 D. In the event Law Firm or any of its personnel are licensed professionals, and
11 are performing professional services under this contract, professional liability (for example,
12 malpractice insurance) covering such services is required with a limit of liability not less than
13 \$1,000,000 per occurrence.

14 E. Law Firm shall furnish a certificate of insurance satisfactory to the El
15 Dorado County Risk Manager as evidence that the insurance required above is being
16 maintained.

17 F. The insurance will be issued by an insurance company acceptable to the Risk
18 Management Division, or be provided through partial or total self-insurance likewise
19 acceptable to the risk Management Division.

20 G. Law Firm agrees that the insurance required above shall be in effect at all
21 times during the term of this contract. In the event said insurance coverage expires at any time
22 or times during the term of this contract, Law firm agrees to provide at least thirty (30) days
23 prior to said expiration date, a new certificate of insurance evidencing insurance coverage as
24 provided for herein for not less than the remainder of the term of the contract, or for a period of
25 not less than one year. New certificates of insurance are subject to the approval of the Risk
26 Management Division and Law Firm agrees that no work or services shall be performed prior
27 to the giving of such approval. In the event the Law Firm fails to keep in effect at all times
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1 insurance coverage as herein provided, County may, in addition to any other remedies it may
2 have, terminate this contract upon the occurrence of such event.

3 H. The certificate of insurance must include the following provisions stating
4 that:

5 a. The insurer will not cancel the insured's coverage without thirty (30)
6 day prior written notice to the County; and

7 b. The County, its officers, officials, employees, and volunteers are
8 included as additional insured, but only insofar as the operations under this contract are
9 concerned. This provision shall apply to all liability policies except workers' compensation
10 and professional liability insurance policies.

11 I. The Law Firm's insurance coverage shall be primary insurance as respects the
12 County, its officers, officials, employees and volunteers. Any insurance of self-insurance
13 maintained by the County, its officers, officials, employees or volunteers shall be excess of the
14 Law Firm's insurance and shall not contribute with it.

15 J. Any deductibles or self-insured retentions must be declared to and approved
16 by the County. At the option of the County, either: the insurer shall reduce or eliminate such
17 deductibles or self-insured retentions as respects the County, its officers, officials, employees,
18 and volunteers; or the Law Firm shall procure a bond guaranteeing payment of losses and
19 related investigations, claim administration and defense expense.

20 K. Any failure to comply with the reporting provisions of the policies shall not
21 affect coverage provided to the County, its officers, officials, employees or volunteers.

22 L. The insurance companies shall have no recourse against the County, its
23 officers and employees or any of them for payment of any premiums or assessments under any
24 policy issues by any insurance company.

25 M. Law Firm's obligations shall not be limited by the foregoing insurance
26 requirements and shall survive the expiration of this Agreement.

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1 N. In the event Law Firm cannot provide an occurrence policy, the Law Firm
2 shall provide insurance covering claims made as a result of performance of this contact for not
3 less than three years following completion of performance of this Agreement.

4 O. The certificate of insurance shall meet such additional standards as may be
5 determined by the contracting County either independently or in consultation with the Risk
6 Management Division, as essential for protection of the County.

7 **16. Contract Administrator.** For the purpose of administering this Agreement, the
8 County shall be represented by its County Counsel, Louis Green, or successor. Notices
9 provided pursuant to this Agreement shall be effective immediately upon receipt and shall be
10 directed as follows:

11 For County: Kim Kerr, Assistant Chief of Administration
12 El Dorado County
13 330 Fair Lane
14 Placerville, California 95667

15 For Attorney: William Abbott
16 Abbott & Kindermann, LLP
17 2100 21st Street
18 Sacramento, California 95818

19 **17. Entire Agreement.** This Agreement and any exhibits thereto are the entire
20 agreement between the parties and they supersede all prior written or oral agreements or
21 understandings between the parties. This Agreement may only be modified by mutual consent
22 of the parties in writing fully executed by duly authorized officers of the parties. Any dispute
23 resolution action arising out of this Agreement, including, but not limited to litigation,
24 mediation or arbitration, shall be brought in El Dorado County, California, and shall be
25 resolved in accordance with the laws of the State of California. Law Firm waives any removal
26 rights it may have under Code of Civil Procedure section 394.

27 **18. Term.** This Agreement shall be effective on the date fully executed by all
28 parties, and shall remain in effect until terminated by any party or until all work contemplated
hereunder shall be completed.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year set forth below.

DATED: _____

EL DORADO COUNTY

By: _____
Chair, Board of Supervisors
"County"

ATTEST:

APPROVED AS TO FORM

Terri Daly
Acting Clerk of the Board of Supervisors

By: _____
Louis B. Green, County Counsel

By: _____
Deputy Clerk

DATED: _____

ABBOTT & KINDERMANN, LLP

By: _____
"Law Firm"