

**NORTH COUNTY CORRIDOR  
EXPRESSWAY TRANSPORTATION AUTHORITY COMMITTEE**

**ITEM: 7a**

**SUBJECT:**

Recommendation of Approval of Professional Services Agreement for Legal Services

**STAFF RECOMMENDATIONS:**

Approval to allow Authority Manager to enter into the Personal Services Agreement with Tom Terpstra.

**FISCAL IMPACT:**

The NCC budget approved at the April 8<sup>th</sup> meeting appropriated \$20,000 for outside professional legal services. The Agreement specifies that the amount to be paid is not to exceed \$100,000 per year. Expenditures beyond the budgeted amount will need to be approved by the Board.

**DISCUSSION:**

The North County Corridor Project invokes many land use and environmental issues that particular expertise would be useful in addressing. Therefore, it is proposed that the NCC enter into a Professional Services Agreement with an attorney that can provide legal services, advice and representation from time to time, as requested by the Authority to help identify and resolve issues relating to the project.

Tom Terpstra is a practicing attorney and expert in the area of land use and environmental law, with particular emphasis on the California Environmental Quality Act (CEQA) and related litigation. Tom has lived and worked in the area for many years and is familiar with land use and environmental issues as they relate to the area. Tom will help assure that the project complies with all CEQA and land use requirements as we move forward.

## **AGREEMENT FOR LEGAL SERVICES**

This Agreement For Legal Services is made and entered into by and between the North County Corridor Transportation Expressway Authority ("Authority") and Thomas H. Terpstra ("Attorney") on June \_\_\_, 2009 (the "Agreement").

### **RECITALS**

WHEREAS, the Authority has a need for legal services involving compliance with State and Federal environmental laws; and

WHEREAS, the Attorney is specially trained, experienced and competent to perform and has agreed to provide such services;

WHEREAS, Business and Professions Code section 6148(a) provides, among other things, that where it is foreseeable that the total expense to a client will exceed \$1,000, an agreement for legal services must be in writing and contain (1) the applicable hourly rate and other standard rates, fees and charges, (2) the general nature of the legal services to be provided, (3) the respective responsibilities of the Attorney and the client, and (4) a statement disclosing whether the Attorney maintains errors and omissions insurance applicable to the services to be rendered; and

WHEREAS, the total expenses to the Authority may exceed \$1,000;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

### **TERMS AND CONDITIONS**

#### **1. Scope of Work**

1.1 The Attorney shall provide legal services, advice and representation from time-to-time as requested by the Authority and shall identify issues and other matters that the Attorney reasonably believes to be of interest to the Authority or that might affect the Authority's interest and shall notify the Authority of such issues or matters.

1.2 Services and work provided by the Attorney at the Authority's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and local laws, ordinances, regulations and resolutions. The Attorney may provide the Authority with an opinion about the possible result or outcome of a legal matter, but the Attorney makes no promises, guarantees or representations regarding the outcome of any matter as to which the Attorney will provide legal services, advice or counsel to the Authority.

1.3 The Attorney shall provide sufficient staff to carry out the legal services provided under this Agreement. If the Attorney deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Attorney will so advise the Authority and seek the Authority's prior approval of such employment. Any consultant, expert or investigator employed by the Attorney will be the agent of the Attorney, not the Authority.

1.4 Attorney is obligated to perform in a timely manner those services and work under this Agreement. It is understood by Attorney that the performance of these services and work will require a varied schedule with the hours and times for completion of said services to be set by Attorney; provided, however, that such schedule is subject to review by and concurrence of the Authority.

## 2. Consideration

2.1 The Attorney shall be compensated on a time and materials basis, based on the hours worked by the Attorney, multiplied by the current hourly Schedule of Rates charged by the Attorney, a copy of which shall be attached to this Agreement and incorporated herein by reference. The parties acknowledge that rates may change in the future, and agree that the most current Schedule of Rates shall apply when made a part of the Agreement. Attorney will provide the Authority 30-days notice before any proposed change in the rate schedule, and the new schedule of rates shall take effect when approved by the Authority. In addition to the aforementioned fees, Attorney will be reimbursed for the following expenses that are reasonable, necessary and actually incurred by the Attorney in connection with the services:

- (a) Fees or charges of any kind paid or advanced by the Attorney, including, but not limited to costs of service and filing of pleadings, filing fees, other charges assessed by courts and other public agencies, court reporter fees, jury fees, witness fees, messenger and delivery fees.
- (b) The cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement.
- (c) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs.
- (d) Communications charges, including, but not limited to, long distance telephone charges (including facsimile and e-mail charges) and postage.
- (e) Travel expenses, including transportation, lodging and meals, parking, and mileage; provided.
- (f) Any other reasonable out of pocket expenses incurred by the Attorney.

2.2 The parties hereto acknowledge the maximum amount to be paid by the Authority for services provided shall not exceed \$100,000.00 during any single calendar year, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement, unless fees and compensation exceeding \$100,000.00 are approved by the Authority.

2.2 The Attorney shall provide the Authority with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the Authority shall pay in full within 30 days of the date each invoice is approved by the Authority. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.3 Except as otherwise expressly provided in this Agreement or any amendment to this Agreement, Attorney shall not be entitled to nor receive from the Authority any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Attorney shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.4 The Authority will not withhold any Federal or State income taxes or Social Security tax from any payments made by the Authority to Attorney under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Attorney. The Authority has no responsibility or liability for payment of Attorney's taxes or assessments.

### 3. Term

3.1 The term of this Agreement shall commence on the date of this Agreement and shall continue from year-to-year until terminated as provided in this Agreement.

3.2 Either party may terminate this agreement without cause upon prior written notice to the other party. Termination of this Agreement shall not affect the Authority's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Attorney as provided in Paragraph 2 herein, subject to any applicable setoffs. Both parties shall sign any documents necessary to complete Attorney's discharge or withdrawal.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) death or incapacity of the Attorney, or (c) sale of Attorney's business or practice.

### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Attorney to provide the services and work provided under this Agreement must be procured by Attorney and be valid at the time Attorney enters into this Agreement. Further, during the term of this Agreement, Attorney must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Attorney at no expense to the Authority.

### 5. Office Space, Supplies, Equipment, Etc.

Attorney shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Attorney to provide the services under this Agreement. The Authority is not obligated to reimburse or pay Attorney for any expense or cost incurred by Attorney in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Attorney in providing and maintaining such items is the sole responsibility and obligation of Attorney.

## 6. Insurance

6.1 Attorney shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than \$1,000,000.00 per incident, and \$2,000,000.00 aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Attorney's work under this Agreement.

6.1.2 Automobile Liability Insurance. If the Attorney or the Attorney's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than \$100,000 per person, \$300,000 per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Attorney certifies under section 1861 of the Labor Code that the Attorney is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Attorney will comply with such provisions before commencing the performance of the work of this Agreement.

6.2. Any deductibles or self-insured retentions must be declared in writing and approved by Authority. At the option of the Authority, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Attorney shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the Authority guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The Authority, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Attorney agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Attorney's defense and indemnification obligations as set forth in this Agreement.

6.3 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to Authority. The Attorney shall promptly notify, or cause the insurance carrier to promptly notify, the Authority of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.4 Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the Authority. A rating of at least A-:VII shall be acceptable to the Authority; lesser ratings must be

approved in writing by the Authority.

6.5 The limits of insurance described herein shall not limit the liability of the Attorney and Attorney's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend the Authority from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Attorney or Attorney's employees, agents, representatives or subcontractors. Notwithstanding the foregoing, Attorney's obligation to indemnify the Authority and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Attorney in contributing to such claim, damage, loss and expense.

7.2 Attorney's obligation to defend, indemnify and hold the Authority and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Attorney to procure and maintain a policy of insurance.

7.3 To the extent permitted by law, the Authority shall defend, indemnify and hold harmless Attorney and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the active negligence or wrongful acts of Authority.

## 8. Status of Attorney

8.1 All acts of Attorney and its employees, agents, representatives, subcontractors and all others acting on behalf of Attorney relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of the Authority. Attorney, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of the Authority. Except as expressly provided in this Agreement or other written authorization, Attorney has no authority or responsibility to exercise any rights or power vested in the Authority. No agent, officer or employee of the Authority is to be considered an employee of Attorney. It is understood by both Attorney and Authority that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Attorney and its employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of the Authority.

8.3 As an independent contractor, Attorney hereby indemnifies and holds the Authority harmless from any and all claims that may be made against the Authority based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Attorney shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of the Authority shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Attorney. Further, the Authority have the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Nondiscrimination

During the performance of this Agreement, Attorney and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, age, political affiliation, sex or sexual orientation. Attorney and its officers, employees, agents, representatives or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, sections 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations. Attorney shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said act. Attorney further agrees to abide by the Authority's nondiscrimination policy.

11. Confidentiality

The Attorney agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

12. Assignment

This is an agreement for the services of Attorney. The Authority has relied upon the skills, knowledge, experience and training of Attorney and the Attorney's firm, associates and employees as an inducement to enter into this Agreement. Attorney shall not assign or subcontract this Agreement without the express written consent of the Authority. Further, Attorney shall not assign any monies due or to become due under this Agreement without the prior written consent of the Authority.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided

below.

14. Conflicts

The Attorney represents and warrants that it has no interest and agrees that it shall not acquire any interest, direct or indirect, which would conflict in any manner of degree with the performance of the work and services under this Agreement, unless specifically waived in writing by the Authority.

15. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Attorney or the Authority shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To Authority:           Matt Machado  
                                  Authority Manager  
                                  1010 Tenth Street, Suite 3500  
                                  Modesto, CA 95354

To Attorney:            Thomas H. Terpstra  
                                  Attorney at Law  
                                  578 N. Wilma Avenue, Suite A  
                                  Ripon, CA 95366

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.



19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

In Witness Whereof, the parties have executed this Agreement in duplicate on the day and year first hereinabove written.

**NORTH COUNTY CORRIDOR  
TRANSPORTATION EXPRESSWAY  
AUTHORITY**

**THOMAS H. TERPSTRA**

By: \_\_\_\_\_  
Matt Machado  
Authority Manager

By: \_\_\_\_\_  
"Attorney"

"Authority"

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas E. Boze  
Deputy County Counsel

## Rate Sheet

<u>Name:</u>	<u>Position:</u>	<u>Government Rate:</u>
Thomas H. Terpstra	Partner	\$325.00
Shanti L. Halter	Associate	\$240.00
Vincent L. Jamison	Associate	\$160.00
Rosie A. Ruppel	Paralegal	\$125.00

**THOMAS H. TERPSTRA**  
**A PROFESSIONAL LAW CORPORATION**  
578 N. Wilma Avenue, Suite A  
Ripon, California 95366  
(209) 599-5003  
[tterpstra@thtlaw.com](mailto:tterpstra@thtlaw.com)

**LAW PRACTICE**

Tom Terpstra practices in the area of land use and environmental law, with particular emphasis on the California Environmental Quality Act and related litigation. In addition to an extensive list of private clients, including real estate developers, agricultural interests and the mining industry, Tom has served as City Attorney for the City of Ripon since 1993. Tom has also served as special counsel to various cities in the Central Valley on land use and environmental law matters, including the cities of Livingston, Patterson, and the Merced County Association of Governments.

**PROFESSIONAL HISTORY**

THOMAS H. TERPSTRA, A Professional Corporation, Ripon, California  
President/Shareholder, 2007 to Present

Practice emphasizes land use, eminent domain, environmental litigation and municipal law. Numerous trial court and reported decisions in eminent domain and CEQA cases.  
City Attorney, City of Ripon

HERUM CRABTREE BROWN, Stockton, California  
Shareholder, 1997 to 2007

NEUMILLER & BEARDSLEE, Stockton, California  
Attorney/Shareholder 1989 to 1997

**JURISDICTIONS**

State Bar of California  
U.S. District Court for the Eastern District of California

**EDUCATION**

UNIVERSITY OF THE PACIFIC, McGeorge School of Law  
Sacramento, California  
Honors at Entrance Scholar  
Juris Doctor 1989

NORTHWESTERN COLLEGE  
Orange City, Iowa  
Bachelor of Arts – Political Science 1985

## **COMMUNITY ACTIVITIES**

Board Member and Past President of Ripon Christian Schools  
Board of Elders-Calvary Reformed Church  
Governing Board of the Gospel Center Rescue Mission.  
Board Member Building Industry Association

## **SPEAKING ENGAGEMENTS**

Tom has lectured for several industry and trade groups on land use and environmental law, including Western United Dairymen, California Building Industry Association and other civic organizations.