

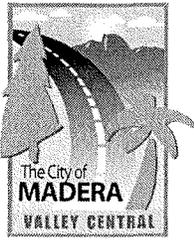
OFFICE OF THE CITY ATTORNEY  
CITY OF MADERA

**MEMORANDUM**

DATE: August 2, 2017  
TO: Mayor and Council Members  
FROM: Brent Richardson, City Attorney   
SUBJECT: Item B-5, August 2, 2017 City Council Meeting;

Please be advised that the terms of the agreement with David Hale for legal services which is the subject of the above item, were just finalized today. The delay was primarily the result of my being on vacation and Mr. Hale's work taking him out of town. The agreement and accompanying documents are therefore being provided to you less than 72 hours before the meeting. I apologize for the inconvenience.

Copy: David Tooley



## REPORT TO CITY COUNCIL

Approved by:

\_\_\_\_\_  
Department Director

\_\_\_\_\_  
City Administrator

Council Meeting of: August 2, 2017

Agenda Number: B-5

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING AN AGREEMENT WITH DAVID HALE FOR LEGAL SERVICES**

**RECOMMENDATION:** Staff requests that the Council approve an agreement with David Hale for legal services.

### **BACKGROUND:**

Occasionally the City Attorney's department has the need to bring in outside counsel to perform services such as fill in at a Council Meeting. To do this we need to have an agreement for such representation in place. Mr. Hale has been a municipal attorney for many years, and is well qualified to perform such services. Additionally, we will be having Mr. Hale make a presentation to the Council at an upcoming meeting on the legal aspects of allowing certain activities relative to marijuana cultivation and production to occur within the City. Approval of this agreement allows us to retain him to do this as well as any follow up services that might be needed.

**FINANCIAL IMPACT:** The financial impact is unknown at this time and depends on the number of times we may require Mr. Hale's services.

### **CONSISTENCY WITH THE VISION MADERA 2025 PLAN –**

The activity described in this report is not specifically incorporated in the strategies contained in the action plans of the Vision Madera 2025 and is not in conflict with any of the action or goals contained in the plan.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AGREEMENT WITH DAVID HALE FOR LEGAL SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the City requires the services of outside legal counsel from time to time for services such as attending Council meetings; and

WHEREAS, David Hale has the experience and qualification necessary to perform such services; and

WHEREAS, the City also desires to retain Mr. Hale to make a presentation to the Council regarding the legal aspects of allowing certain marijuana related activities in the City; and

WHEREAS, an agreement has been prepared and is on file in the Office of the City Clerk.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MADERA, hereby finds, determines, resolves and orders as follows:

1. The recitals listed above are true and correct.
2. The Agreement with David Hale for legal services, a copy of which is on file in the Office of the City Clerk and referred to for particulars, is hereby approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City of Madera.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

## LEGAL SERVICES AGREEMENT

This Agreement is effective this 2<sup>nd</sup> day of August, 2017, by and between The City of Madera, a Municipal Corporation (hereinafter called "Client"), and David P. Hale, a Professional Corporation (hereinafter called "Attorney").

### RECITALS

1. Client desires to engage Attorney to perform general legal services, including but not limited to advice related to establishing cannabis uses within their City, as well as any and all other services requested by the City Attorney.
2. The Client and Attorney desire to set forth in this Agreement the terms, conditions, and benefits of such engagement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

### SECTION 1. DUTIES AND FIRM STATUS

Client hereby retains Attorney to perform such functions and duties and to provide legal advice and perform legal services for the Client consistent with duties enumerated in the Recitals above. The firm is a Professional Corporation, incorporated pursuant to the statutory authority granted by the State of California and in conformance with State law.

### SECTION 2. COMPENSATION

Client shall pay to Attorney an hourly rate of **\$175.00 per hour for transactional and \$200.00 per hour for litigation**, payable on a monthly basis, for all legal services performed by Attorney. Paralegal time shall be billed at **\$110.00 per hour**. Billable time includes reviewing materials, drafting contracts, drafting letters and pleadings, research, telephone calls, consultations, depositions and appearances in court (including waiting for the case to be called) and before the City Council and other commissions and boards, if necessary, and any other time required to represent the Client. Litigation shall include administrative hearings, personnel hearings, code enforcement, and litigation in state or federal courts.

#### A. Payment of Fees and Costs

Statements for legal services are rendered monthly and are due and payable within 30 days of the statement date; any amounts not paid within 30 days of the statement date accrue interest at the current legal rate per annum from the statement date until paid. Attorney shall have the right to discontinue rendering services to the Client for nonpayment of fees and costs, which will be considered a breach of this Agreement by the Client.

B. Confidentiality and Absence of Conflicts

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, Attorney maintains a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents Attorney from representing Client. Similarly, Client will be included in Attorney's list of clients to ensure it complies with the Rules of Professional Conduct.

Attorney warrants that no conflict exists with its current representation of public entities and private clients. Based on that check, Attorney has determined that it can provide legal services to the Client.

**SECTION 3. TERMINATION AND SEVERANCE**

A. Client may discharge Attorney at any time, for no reason or any reason, subject to a 10-day written notice to Attorney.

B. Notwithstanding the above, Attorney may withdraw from representation at any time as permitted under the Rules of Professional Conduct of the State Bar of California with 10-day written notice to Client.

C. If at the time of withdrawal or discharge pursuant to this Sections 3, Attorney is representing Client in any proceeding, then Client will sign a Substitution of Attorney form immediately upon receipt of such a form from Attorney.

D. Notwithstanding the withdrawal or discharge of Attorney, Client will remain obligated to pay at the agreed rate for all services already provided and to reimburse Attorney for all costs advanced before the withdrawal or discharge related to work performed in matters under Section 2 above. Such payment will be due in accordance with Section 2A above.

**SECTION 4. OTHER TERMS AND CONDITIONS OF AGREEMENT**

A. The Client with mutual consent of the Attorney, may amend or add any such other terms and conditions of engagement as it may determine from time to time, relating to the performance of Attorney.

B. Client agrees that Attorney shall have a lien on any and all sums recovered or received by Attorney on Client's behalf, for payment of any fees owing and/or any unreimbursed costs advanced for Client.

C. Client and Attorney agree that in the event of a dispute between the parties concerning this Agreement, the prevailing party in arbitration or other legal proceeding will be entitled to recovery of reasonable attorney's fees and costs from the other party.

#### **SECTION 5. NOTICES**

Notices pursuant to this Agreement shall be given by deposit in the United States Postal Service, postage prepaid, as follows:

CLIENT: Mr. Brent Richardson  
City of Madera  
City Attorney  
205 W. 4<sup>th</sup> Street  
Madera, CA. 93637

ATTORNEY: David Hale  
A Professional Corporation  
201 Clovis Ave., Ste. 208  
Clovis, CA. 93612

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

#### **SECTION 6. INSURANCE**

Without limiting Attorney's indemnification of City, and prior to commencement of work, Attorney shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement policies of insurance of the type and amounts described below and in form satisfactory to the City.

##### *Minimum Scope and Limits of Insurance*

Attorney shall maintain limits no less than:

- \$500,000 **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 Attorney 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.

- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Attorney 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 Attorney agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.
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*Proof of Insurance*

Attorney shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. City 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.

*Enforcement of Contract Provisions (non estoppel)*

Attorney acknowledges and agrees that any actual or alleged failure on the part of the City to inform Attorney 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 Attorney maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

*Notice of Cancellation*

Attorney 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.

*Timely Notice of Claims*

Attorney shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Attorney's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

*Additional Insurance*

Attorney shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

**SECTION 7. INDEMNITY**

Attorney shall indemnify and save harmless the City, its officers, agents, employees, and servants from all claims, suits or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the fault or negligence of Attorney, its officers, agents, employees and/or servants in connection with this Agreement.

City shall indemnify and save harmless Attorney, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the fault or negligence of the City, its officers, agents, employees, and/or servants in connection with this Agreement.

**SECTION 8. GENERAL PROVISIONS**

A. The text herein shall constitute the entire agreement between the parties. There are no oral agreements or understandings or any other written agreements which directly or indirectly affect the terms and conditions of this Agreement.

B. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

C. No addition, modification, amendment, or deletion to this Agreement shall be valid unless it is in writing and executed by the parties to this Agreement.

D. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Attorney.

E. Client and Attorney agree that the construction and interpretation of this Agreement and the rights and duties of Client and Attorney hereunder shall be governed by the laws of the State of California.

F. Attorney shall act as an independent contractor in providing the services described in this Agreement. Attorney shall be solely responsible for the supervision, payment and protection of its agents, employees, experts or consultants, if any, and furnish the services in Attorney's own manner and method. In no respect, shall Attorney, its agents, employees, experts or consultants, if any, be considered employees of the Client.

G. Attorney agrees to scrupulously avoid performing services for any party or entering into any contractual or other relationship with any party which might create a conflict with the rendering of services under this Agreement. Attorney shall immediately inform Client of any conflict of interest or potential conflict of interest which may arise during the term of this Agreement by virtue of any past, present, or prospective act or omission of Attorney.

H. Attorney agrees to comply with all federal, state and local laws, rules, and regulations, now or hereafter in force, pertaining to the services performed pursuant to this Agreement.

**The remaining portion of this page was intentionally left blank.**

**IN WITNESS WHEREOF**, the Client has caused this Agreement to be signed and executed on its behalf by its City Attorney, and Attorney has signed and executed this Agreement the day and year first above written.

CITY OF MADERA

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

David P. Hale

A Professional Corporation

By: \_\_\_\_\_  
David P. Hale

ATTEST:

\_\_\_\_\_  
Sonia Alvarez, City Clerk