

BARBARA A. MOED, PG
Air Pollution Control Officer

DONNA ROBERTS NASH
Program Coordinator



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Ukiah, California 95482
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www.mendoair.org

**MENDOCINO COUNTY
AIR QUALITY MANAGEMENT DISTRICT**

BOS AGREEMENT # 17-022

ATTORNEY-CLIENT AGREEMENT

Derek P Cole, Attorney, Cota Cole & Huber, LLP. ("Attorney") and Mendocino County Air Quality Management District, a county air pollution control district established pursuant to Division 26, Part 3, Chapter 2 of the Cal. Health and Safety Code ("District") hereby agree that Attorney will provide legal services to District on the terms set forth below.

1. **CONDITIONS:** Attorney may provide services pursuant to the terms of this Agreement, provided that the Agreement is approved by the District Board and signed on behalf of the District.
2. **SCOPE OF SERVICES:** District hires Attorney to provide legal services in the following matters.
 - a. Mendocino County Superior Court, Case # SCUK-CVPT -15-66445 – Friends of Outlet Creek v. Mendocino County Air Quality Management District, Mendocino County Air Quality Management District Hearing Board, and Robert A. Scaglione, Air Pollution Control Officer, et al,
 - b. Mendocino County Superior Court Case No. SCUK-CVPT-15-66620 - Grist Creek Aggregates, LLC and Mercer Fraser Company v. Mendocino County Air Quality Management District, Robert A. Scaglione, Donna Roberts-Nash, Mendocino County Air Quality Management District Hearing Board, Mendocino County Air Quality Management District Board, et al.,
 - c. Mendocino County Superior Court, SCUK-CVPT-16-67314 – Mendocino County Air Quality Management District v., Grist Creek Aggregates, LLC, Brian Hurt, DBA, Grist Creek Aggregates, LLC and Mercer Fraser Company, et al,
 - d. Mendocino County Superior Court, Case No. SC UK CVPT-16-67449 - Friends of Outlet Creek v. Mendocino County Air Quality Management District, Hearing Board of Mendocino County Air Quality Management District, and Robert A. Scaglione, Air Pollution Control Officer, et al.,
3. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Attorney is an Independent Contractor. Attorney is not the agent or employee of the District in any capacity whatsoever, and District shall not be liable for any acts or omissions by Attorney nor for any obligations or liabilities incurred by Attorney.

Attorney shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Attorney shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold the District and the County harmless from any and all liability which District may incur because of Attorney's failure to pay such amounts.

In carrying out the work contemplated herein, Attorney shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of District.

Attorney does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of District is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the District.

Notwithstanding the foregoing, if the District determines that pursuant to state and federal law Attorney is an employee for purposes of income tax withholding, District may upon two (2) week's written notice to Attorney, withhold from payments to Attorney hereunder federal and state income taxes and pay said sums to the federal and state governments.

4. **INSURANCE AND BOND:** Attorney shall at all times during the term of the Agreement with the District maintain in force insurance as specified in Exhibit A attached hereto and incorporated herein by this reference, including but not limited to professional liability insurance with policy limits of at least one hundred thousand dollars (\$100,000) per claim and three hundred thousand dollars (\$300,000) in aggregate.
5. **WORKERS' COMPENSATION:** Attorney shall provide Workers' Compensation insurance, as applicable, at Attorney's own cost and expense and further, neither the Attorney nor its carrier shall be entitled to recover from District any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. CONFORMITY WITH LAW AND SAFETY:

- a.** In performing services under this Agreement, Attorney shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Attorney shall indemnify and hold District harmless from any and all liability, fines, penalties and consequences from any of Attorney's failures to comply with such laws, ordinances, codes and regulations.
- b.** Accidents: If a death, serious personal injury or substantial property damage occurs in connection with Attorney's performance of this Agreement, Attorney shall immediately notify Mendocino County Risk Manager's Office by telephone. Attorney shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Attorney's sub-contractor, if any; (3) name and address of Attorney's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- c.** Attorney further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Attorney.

8. CONFLICT OF INTEREST: Attorney is unaware of any conflicts of interest regarding representation of the District in these matters

9. LEGAL FEES AND BILLING PRACTICES: The District agrees to pay by the hour at Attorney's prevailing rates for all time spent on the District's matter by Attorney and Attorney's legal personnel. The current hourly rate for general legal services is \$210 per hour for Partners, \$185 for Associates, and \$115 per hour for paralegal services. Attorney may employ the services of other attorneys with the District's prior written consent at the same hourly rates. The time charged will include the time Attorney spends on telephone calls relating to the District's matters, including calls with the District, witnesses, and legal counsel representing parties to the aforementioned litigation; all costs associated with provision of general services, except non-routine copying, long distance telephone charges, Lexis or Westlaw charges at the District's proportionate share, based on usage, of the firm's flat rate, charges for overnight delivery (such as UPS or Federal Express), travel expenses for travel of 25 miles or more, one way, including mileage at the current IRS rate, Court Call telephone court appearances, out-of-pocket litigation expenses.

General services will include research, advice, and preparation of legal memoranda, file and document reviews, attendance at public and staff meetings, telephone conferences, negotiations, and other activities that do not involve litigation services. Litigation services will include attendance at Court and Administrative hearings, drafting and filing pleadings and motions, serving and responding to discovery, taking and defending depositions and other Court related activities.

The legal personnel assigned to the District's matter with the District's prior approval may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative.

Compensation for services provided pursuant to the terms of this Agreement shall not exceed Fifty Thousand Dollars (\$50,000.00).

10. **COSTS AND OTHER CHARGES.** Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include; long distance telephone charges, messenger and other delivery fees, non-routine postage and photocopying and other reproduction costs, and other similar items. All costs and expenses will be charged at Attorney's cost.
11. **BILLING STATEMENTS:** Attorney will provide the District with monthly invoices for fees and costs incurred. Each statement will be payable within thirty (30) days of its receipt. The District may request a statement at intervals of less than 30 days. If the District so requests, Attorney will provide one within 10 days. The statements shall include the amount of time spent by project, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.
12. **DISCHARGE AND WITHDRAWAL:** The District may discharge Attorney and Attorney may withdraw from representing the District at any time. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney will, upon the District's request, deliver the District's files and property in Attorney's possession, whether or not the District has paid for all services.
13. **DISCLAIMER OF GUARANTEE AND ESTIMATES:** Nothing in this Agreement and nothing in Attorney's statements to the District will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given.
14. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

15. **SEVERABILITY IN EVENT OF PARTIAL INVALIDITY:** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.
16. **MODIFICATION BY SUBSEQUENT AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
17. **SUBCONTRACTING/ASSIGNMENT:** Attorney shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the District's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Attorney shall use subcontractors identified in Exhibit "A" and shall not substitute subcontractors without District's prior written approval.
 - c. Attorney shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Attorney and its subcontractors.
18. **EFFECTIVE DATE.** The term of this Agreement shall commence with the date Attorney first performed services until it is terminated by either party, but in no event shall this contract continue beyond June 30, 2018, unless it is expressly extended in writing by both parties. Even if this Agreement does not take effect, the District will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for the District.

The parties have read and understood the foregoing terms and agree to them as of the date attorney first provided services. The District shall receive a fully executed duplicate of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEPARTMENT FISCAL REVIEW:

Barbara A. Moed
Barbara A. Moed, Air Pollution Control Officer

Budgeted: Yes No
District has available funds in the 2000 Series

Budget Unit: 0327

Line Item: 86-2183

Grant: Yes No
Grant No.:

**Mendocino County
Air Quality Management District Board**

By: John McCowen
JOHN MCCOWEN, Chair
BOARD OF SUPERVISORS **MAY 16 2017**

ATTEST:

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: K. J. Angelo
Deputy **MAY 16 2017**

**INSURANCE REVIEW:
RISK MANAGER**

By: Alan D. Flora
ALAN D. FLORA, Risk Manager

EXECUTIVE OFFICE REVIEW:

APPROVAL RECOMMENDED

By: Carmel J. Angelo
CARMEL J. ANGELO, Chief Executive Officer

Contractor/Company Name

Derek P. Cole, Esq., Attorney at Law

By: Derek P. Cole

Name and Address of Contractor:

Cota, Cole & Huber, LLP.

2261 Lava Ridge Court

Roseville, California 95661

(916)-780-9009

State Bar Number: 204250

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: K. L. Elliott
Deputy

FISCAL REVIEW:

By: Kenneth R. Johnson
Deputy CEO/Fiscal

ATTEST:

Carmel J. Angelo, Clerk of the Board
Mendocino County Board of Supervisors

K. J. Angelo
DEPUTY **MAY 16 2017**

EXHIBIT A

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve Attorney for liability in excess of such coverage, nor shall it preclude the District from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

Attorney affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and Attorney further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. Attorney shall furnish to the District certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, if any, and Attorney shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of Attorney's and subcontractors' employees.

Attorney shall at all times during the term of the Agreement with the District maintain in force professional liability insurance with policy limits of at least one hundred thousand dollars (\$100,000) per claim and three hundred thousand dollars (\$300,000) in aggregate.

[End of Insurance Requirements]