

MARIPOSA COUNTY

Human Services • (209) 966-2000



RESOLUTION - ACTION REQUESTED 2016-337

MEETING: June 28, 2016

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Professional Service Agreement with John LaLonde

RECOMMENDATION AND JUSTIFICATION:

Approve the Professional Service Agreement with John LaLonde to provide legal services for Mariposa County Human Services in an amount not to exceed \$15,000; and authorize the Board of Supervisors Chair to sign the Agreement.

It is the goal of Child Welfare to work with families to prevent removal; however, in cases of abandonment, imminent danger, and/or sexual molestation, there is a need to remove children from the adults who are abusing them. Such action requires that we bring the matter before the Juvenile Court. Three separate court proceedings (detention, jurisdiction, and disposition) are involved. All parties in court are represented by counsel, including the child and the parents. The Department must have qualified legal representation to be able to act in the best interest of the child and to do so in a manner that is lawful and prevents civil litigation to the greatest extent possible. The laws surrounding Child Welfare are complex. It is difficult for most counties to find quality legal representation.

John LaLonde can also provide paralegal services for the Public Guardian/Conservator unit currently housed in the Behavioral Health Division of Human Services. He has the expertise to support our staff in accurately preparing or reviewing documents for the court.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The current Professional Service Agreement with John LaLonde to provide legal services for the Human Services Department was approved by the Board on July 21, 2015, by Resolution 2015-370. This service was provided by others in the past and is a vital component of department services.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the Board does not approve the Agreement, the department will not have access to Mr. LaLonde's legal representation or legal expertise for child welfare cases.

FINANCIAL IMPACT:

Funding in the amount of \$15,000 has been included in the 2016/17 Requested Budget for Social Services.

There is no impact to the County General Fund.

ATTACHMENTS:

LaLonde PSA 2017 Wc-sig (PDF)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 6/23/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Kevin Cann

EXCUSED: John Carrier

PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 28th day of June, 2015 between:

COUNTY:

MARIPOSA COUNTY
Human Services Department
Post Office Box 99
Mariposa, CA 95338

and

CONTRACTOR:

JOHN P. LALONDE
P.O. Box 1299
Coarsegold, CA 93614

ARTICLE 1. TERM OF AGREEMENT

1.01 Agreement Term: This Agreement shall become effective as of July 1, 2016 and shall terminate on June 30, 2017, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

2.02 Contractor Qualifications: Contractor warrants that it has the necessary competence, experience and qualifications for the services to be performed.

2.03 Agreement Management: Contractor shall report to Chevon Kothari, Human Services Department Director, who will review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to perform the services as described on Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be monitored by the Human Services Director or his/her

designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

- 3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.
- 3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services. Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of Fifteen Thousand Dollars (\$15,000) for services as described above. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

- Total sum to be paid upon completion of services,
- or
- Incremental payments based on the following schedule:

Submittal of monthly invoices.

- 4.02 Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County.
- 4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.
- 4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities, required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide

working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

- 5.02** Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy professional general liability insurance in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per claim with Five Hundred Thousand Dollars (\$500,000) annual aggregate. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.03** Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in paragraphs 5.02 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to County prior to the effective date of such cancellation.
- 5.04** Professional Liability Coverage: Contractor shall furnish a certificate of insurance evidencing such insurance for the above-cited liability coverage prior to commencing work.
- 5.05** Workers' Compensation: During the term of this Agreement Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.06** Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.
- 5.07** State and Federal Taxes: As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:
- a) County will not withhold FICA (Social Security) from Contractor's payments;
 - b) County will not make state or federal unemployment insurance contributions on behalf of Contractor;
 - c) County will not withhold state or federal income tax from payment to Contractor;
 - d) County will not make disability insurance contributions on behalf of Contractor;
 - e) County will not obtain workers' compensation insurance on behalf of Contractor.

- 5.08** Records: It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.
- 5.09** Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.
- 5.10** Assignability of Agreement: It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

- 6.01** Cooperation of County: County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.
- 6.02** Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF AGREEMENT

- 7.01** Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
 2. Death of Contractor.
- 7.02** Termination by County for Default of Contractor: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.
- 7.03** Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the

compensation for said phase satisfactorily completed at the time the notice of termination is received.

- 7.04** Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

- 8.01** Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02** Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the County as provided herein or as otherwise required by law.
- 8.03** Partial Invalidity: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04** Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
- 8.05** Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06** Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of

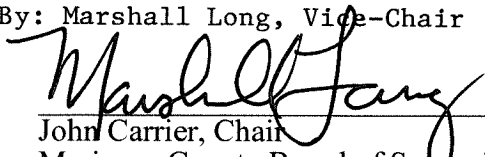
any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.

8.07 Governing Law: This Agreement and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Mariposa.

Executed at Mariposa, California, on the date and year first above written.

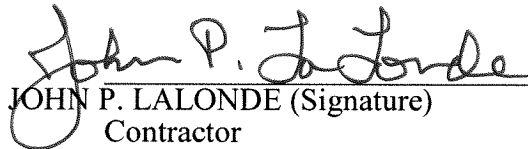
COUNTY:

By: Marshall Long, Vice-Chair



John Carrier, Chair
Mariposa County Board of Supervisors

CONTRACTOR:



JOHN P. LALONDE (Signature)
Contractor

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel

EXHIBIT A

RATE SCHEDULE

Hourly Rate

John LaLonde

\$145.00

Standard Charges

Time is charged in minimum units of tenths (.1) of hours.

SCOPE OF SERVICES

You are hiring me as an attorney to represent the Mariposa County Human Services Department in any cases wherein the County Counsel deems my services necessary. I will provide those legal services reasonably required to represent the County and will take reasonable steps to keep the County informed of any progress to any cases and respond to their inquiries.

VENDOR ASSURANCE OF COMPLIANCE WITH
THE MARIPOSA COUNTY
WELFARE DEPARTMENT
NONDISCRIMINATION IN STATE
AND FEDERALLY ASSISTED PROGRAMS

John P. LaLonde

NAME OF VENDOR/RECIPIENT

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

John P. LaLonde 6/9/16
Signature Date

Director's Signature

PO Box 1299, Coarsegold CA
Address of vendor/recipient 93614

(08/13/01)