

LEGAL SERVICES AGREEMENT FOR COUNTY OF SONOMA

This Agreement dated as of **February 1, 2024** ("Effective Date"), is made by and between the County of Sonoma ("County") and **Porter Scott, A professional corporation** ("Attorneys"). This Agreement is required by Business and Professions Code Section 6148 and is intended to fulfill its requirements.

R E C I T A L S

WHEREAS, Attorneys specialize in public agency defense of claims and civil litigation and have significant experience and recognized expertise in that area, and specifically, has specialized knowledge and expertise in the defense of claims against public entities and law enforcement in use of force civil rights cases.

WHEREAS, County, through its County Counsel and Risk Management Division of the Human Resources Department, has identified that there is a need to retain the services of outside legal counsel with expertise and specialized knowledge in the areas of law identified above; and

WHEREAS, after researching law firms with experience in the relevant areas of law, soliciting further information and rates for services, and completing interviews of four different firms for this position, County, through its County Counsel and Risk Management Division of the Human Resources Department, determined that Attorneys' experience and expertise would benefit the County.

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

A G R E E M E N T

1. Services. Attorneys will furnish legal and other related services to County through the appropriate Authorized Representative as follows: Provide legal representation of County in regards to tort and civil rights litigation matters and other claims administered by the County of Sonoma Risk Management program as directed by County Counsel in consultation with the Human Resources Department, Risk Management Division. Legal services will be provided in accordance with the professional standards and diligence required to represent County in the defense of actual or potential litigation and claims against the County, as well as any individually named County employees, as directed by County Counsel and Risk Management. Attorneys understand and agree that the County is the client, acting by and through the Board of Supervisors. Attorneys shall provide those legal services reasonably required to represent the County's interests in such matters. All litigation matters will be handled consistent with the County's Litigation Management Guidelines, attached hereto as **Exhibit A** and incorporated herein by reference.

2. Compensation. Compensation to Attorneys for services shall be at the rates and terms set forth in **Exhibit B**, which is incorporated by this reference, provided however that total payments hereunder shall not exceed **\$50,000** for the contract term without the prior written approval of the County. The rates set forth in **Exhibit B** shall not be adjusted without a formal amendment to this Agreement and approval by the Board of Supervisors.

3. Term. The term of this Agreement shall commence upon the **Effective Date** and shall terminate on **December 31, 2025**, unless terminated earlier in accordance with the terms herein.

4. Standard of Care. The County has relied on the professional ability, professional experience, and training of Attorneys as a material inducement to enter into this Agreement. Attorneys warrant that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance by Agency of work performed by Attorneys shall not operate as or be interpreted to be a waiver or release.

5. Billing and Timekeeping. Duplicate billing statements shall be provided on a monthly basis, one copy to County Counsel and one copy to Sonoma County Risk Management. Additional terms are set forth in **Exhibit B** which is incorporated by this reference.

6. Attorneys' Key Personnel. The parties identified in this section as the key legal personnel providing professional services under this Agreement, are key persons, whose services are a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Key personnel shall be as listed below. Changes to the key personnel may be approved by written authorization from the County Counsel and Risk Management.

Lead Attorney Team: **Carl Fessenden**
 William Camy

7. Assignment of Defense Counsel. Attorneys shall identify the lead attorney handling each matter in its letter of acknowledgement of receipt of the matter. The assignment of a matter to an attorney within a law firm shall be based on the nature and complexity of the case, the experience and ability of the attorney, as well as other relevant factors. The County retains the right to approve or disapprove any and all attorney assignments.

8. Termination. This Agreement may be terminated by County at any time, subject to equitable proportional payments due to Attorneys. County Counsel shall have the authority to terminate the Agreement on behalf of the County. All files, written material, and documents will be transferred to the County upon such termination. Attorneys will be available to consult with County or, should one be retained, with the County's new attorney with respect to facts and circumstances of any matters previously worked on by Attorneys for a reasonable period of time following such termination.

9. Withdrawal. Attorneys may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.

10. No Suspension or Debarment. Attorneys warrant that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Attorneys also warrant that they are not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If Attorneys become debarred, Attorneys have the obligation to inform the County.

11. Status of Attorney. The parties intend that Attorneys, in performing the services under this Agreement, shall be independent contractors and shall control the work and the manner in which it is performed. Attorneys shall acquire no rights or status in the service of County. Attorneys shall not be considered an agent or employee of County and are not entitled to participate in any pension plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to the terms herein, Attorneys expressly agree that they shall

have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

12. Modification. If, during the term of this Agreement, it becomes necessary to amend or add to its terms, conditions, scope or requirements, such amendment or addition shall only be made after mutual agreement of Attorneys and County and by way of execution of a written modification to this Agreement.

13. Records. Consistent with the County's records retention policy, Attorneys shall retain (in either physical or electronic form) all records (except for original time records) for a period of twenty (20) years from the date of completion of services; or, alternatively, if Attorneys' own internal retention policy is for a period less than that provided under the County's retention policy, Attorneys shall after expiration of its own internal retention period, forward the records to County Counsel for retention. In no event shall Attorneys destroy or otherwise purge any records without providing the County with at least thirty (30) days written notice. Records will be made available to the County upon request for audit purposes. Attorneys will maintain both invoices of costs and primary records in order that such auditing may occur. (Original time records will be retained for two years.)

14. Insurance. With respect to performance of work under this Agreement, Attorneys shall maintain and require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C, which is attached hereto and incorporated herein by this reference.

15. Indemnity. Attorneys agree to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release the County, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Attorneys, arising out of or in connection with the negligent performance or willful misconduct of Attorneys hereunder, whether or not there is concurrent negligence on the part of County, but excluding liability due to the sole or active negligence or due to the willful misconduct of County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Attorneys or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. In addition, Attorneys shall be liable to County for any loss or damage to County property arising from or in connection with Attorneys' negligent performance or willful misconduct hereunder.

16. Rules of Professional Conduct. Nothing contained herein shall be construed to relieve Attorneys of their obligations under the Rules of Professional Conduct.

17. Merger. 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.

18. Taxes. Attorneys agree to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Attorneys agree to indemnify, defend, and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Attorneys' failure to pay, when due, all such taxes and obligations. If County is audited for compliance regarding any withholding or other applicable taxes, Attorneys agree to furnish the County with proof of payment of taxes on these earnings.

19. Conflict of Interest. Attorneys covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services hereunder. Where the County deems that there is an actual or potential conflict of interest in Attorneys representing another party in a matter, the County must waive any such actual or potential conflict before Attorneys may represent such other party.

20. Nondiscrimination. Attorneys shall comply with all applicable federal, state, and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis, including without limitation the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

21. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

22. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and may be given by personal delivery, by mail or email. Payments shall be made within the normal course of County business after presentation of an invoice for services performed. Payments shall be made within 60 days only upon the satisfactory completion of the services as determined by the County. Notices, bills, and payments sent by mail shall be addressed as follows:

For County:	e-mail: hr-accounting@sonoma-county.org By mail or personal delivery: Human Resources Department 575 Administration Drive, Suite 116C Santa Rosa, CA 95403 Attn: Reesha Ruel
Copy to:	County Counsel 575 Administration Drive, Room 105A Santa Rosa, CA 95403 Attn: Joshua Myers
For Attorneys:	Porter Scott, A Professional Corporation 2180 Harvard Street, Suite 500 Sacramento, CA 95815 Attn: William Camy

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

23. No Waiver of Breach. The waiver by the County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

24. Applicable Law and Forum. This Agreement shall be construed and interpreted according to California Law, and any action or proceeding to enforce this Contract or for the breach thereof shall be brought or tried in the County of Sonoma.

25. AIDS Discrimination. Attorneys agree to comply with the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

26. Statutory Compliant/Living Wage Ordinance. Attorneys agree to comply with, and to ensure compliance with from its subcontractors, all applicable federal, state and local laws, regulations, statutes and policies – including but not limited to the County of Sonoma Living Wage Ordinance – applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Attorneys expressly acknowledge and agree that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

27. Business Associate Addendum. County anticipates that it may need to disclose certain information to Attorneys in the course of their representation of the County, some of which information may constitute Protected Health Information ("PHI"), including electronic Protected Health Information ("ePHI"). Therefore, the parties agree that any Protected Health Information disclosed in connection with this Agreement will be subject to the terms and requirements contained in the Business Associate Addendum attached hereto as **Exhibit D** and incorporated herein by reference.

28. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or same counterpart.

The remainder of this page has been intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTORNEYS: **PORTER SCOTT, A PROFESSIONAL CORPORATION**

Dated: Feb 14, 2024

By: *William Camy*
William Camy (Feb 14, 2024 06:22 PST)

Name: William Camy

Title: Shareholder / Attorney

COUNTY OF SONOMA:

Dated: Feb 13, 2024

By: *Robert Pittman*
Robert H. Pittman
County Counsel

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE BY DEPARTMENT:

Dated: Feb 13, 2024

By: *Janell Crane*
Janell Crane
Director of Human Resources

EXHIBIT A

COUNTY OF SONOMA LITIGATION MANAGEMENT GUIDELINES

1. CASE ANALYSIS, STRATEGY AND BUDGET

Within forty-five (45) days following receipt of a case, Attorneys shall prepare a Defense Counsel Evaluation (DCE) Form and send to the Risk Manager (and designated Third Party Administrator and/or Excess Insurer, if applicable) and County Counsel. The DCE shall contain a comprehensive written case analysis, a proposed litigation strategy, and budget.

- A. Analysis: A comprehensive written analysis of the case. This analysis shall provide the initial evaluation of the case, including a brief synopsis of the facts of the case, a litigation hold analysis, an analysis of plaintiff's injuries, damages and exposures to the case, and identification of the strengths and weaknesses of the case. Attorneys shall also provide an initial impression of liability and identify the pertinent statutes and/or case law that may affect the outcome of the litigation. The case analysis shall also include an update on investigations to date. Investigation of the matter shall be conducted in a timely manner and may include the following: obtaining witness statements, accident reconstruction, requests for production of documents, obtaining and reviewing internal statements, memos, and correspondence, and site inspections.
- B. Strategy: An analysis of the litigation strategy for the matter. Attorneys shall define the strategy to be used in defending each lawsuit, including, but not limited to, the following:
 - 1. The anticipated course of action to be taken and prospect for success (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.);
 - 2. The facts or elements which must be proved or disproved and the discovery necessary to establish these defenses or proof;
 - 3. The timing of the discovery, filing of motions, negotiations, or other objectives;
 - 4. A description of how the work will be distributed among those who will be working on the case;
 - 5. The tactics to be used in defending the case and advantages to be gained by use of these tactics; and
 - 6. When appropriate, bifurcation of liability from damage issues should be considered.
- C. Budget: Attorneys will provide an estimate of the anticipated cost of each significant aspect of the litigation including:
 - 1. Discovery/Litigation expenses up to trial, including additional investigative services;
 - 2. Outside expert expenses through trial; and,
 - 3. Trial expenses.

2. COMMUNICATION

- A. Copies: Copies of all pertinent correspondence, investigations, summaries of depositions, interrogatories and pertinent pleadings shall be promptly provided by Attorneys to the Risk Manager (and designated Third Party Administrator and/or Excess Insurer, if applicable). Attorneys shall promptly respond to all letters or phone calls and will keep the County Risk Manager and County Counsel fully advised of the progress in each case. Attorneys shall timely notify the Risk Manager and County Counsel of all depositions, mediations, mandatory

settlement conferences, voluntary settlement conferences, arbitrations, trials and any other significant case events.

B. Updates:

1. It is the responsibility of Attorneys to update any item of information contained in the initial status report, including judgments and opinions of Attorneys promptly when a change occurs. All updates shall be concise.
2. Attorneys shall submit a Defense Counsel Update (DCU) Form each January and July to the Risk Manager (and designated Third Party Administrator and/or Excess Insurer, if applicable) and County Counsel. The DCU shall contain a revised case and litigation hold analysis, case strategy (including a review of discovery completed and a new discovery plan), and budget. Consequently, no six-month period shall expire without written communication from Attorneys to the County's Risk Manager and County Counsel.

- C. ADR Update:** No later than thirty (30) days prior to a mediation or settlement conference, Attorneys shall provide case updates utilizing the DCU Form.

3. SETTLEMENT AUTHORITY

Attorneys shall not settle any lawsuit, make a settlement offer in any amount, or make any representation as to settlement possibilities without prior authorization of the County Risk Manager, County Counsel, and/or Board of Supervisors' approval when necessary.

4. TRIALS AND REPORTING

No later than ninety (90) days before trial, Attorneys shall provide the Risk Manager and County Counsel a written report on trial preparation, a detailed trial budget, and the status of any settlement discussions, using the DCU Form.

No later than sixty (60) days before trial, Attorneys shall meet and confer with the Risk Manager, County Counsel, and appropriate Department Head and employees and brief them on trial preparation and status of any settlement discussions.

No later than thirty (30) days before trial, Attorneys shall provide the Risk Manager and County Counsel a written update on trial preparation and status of any settlement discussions, using the DCU Form.

5. FINAL REPORT

At the conclusion of a case, Attorneys shall provide the Risk Manager with a short final report and final billing for the case.

6. THIRD PARTY ADMINISTRATOR OR EXCESS CARRIER

In the event that the County designates a Third Party Administrator to handle a claim or litigation matter, Attorneys shall provide the Third Party Administrator with copies of any reports of communications as that provided to the Risk Manager. In the event that a claim or litigation matter meets excess insurance reporting criteria, Attorneys shall also provide the County's Excess Insurer with copies of any reports or communications as that provided to the Risk Manager, and will comply with all other reporting requirements of the Excess Insurer.

EXHIBIT B RATES

1. COMPENSATION

Attorneys' legal fees and usual and customary reasonable out-of-pocket expenses shall be paid at the rates set forth below.

A. Legal Fees:

Attorneys with 15+ Years of Experience: \$250.00 per hour

Attorneys with 7-14 Years or More of Experience: \$225.00 per hour

Attorneys with Less Than 7 Years of Experience: \$210.00 per hour

Paralegals: \$125.00 per hour

- B. Usual and Customary Reasonable Out-of-Pocket Expenses:** In addition to paying legal fees, the County shall reimburse Attorneys for all usual and customary costs and expenses incurred by Attorneys, including but not limited to process server fees, the subpoena of records, fixed fees by laws or assessed by Courts or other agencies, Court Reporter fees, long distance telephone calls, messenger and other delivery fees, postage, photocopying, parking, mileage, and other similar items.

2. BILLING

Billings shall be submitted to the County's Risk Management Division on a monthly basis and shall include the following information:

- a. The date and time spent by each person performing services. Minimum billing times shall not exceed one-sixth of an hour;
- b. Summary description of services performed, with a separate time allocation for each function (e.g., telephone calls, research, drafting);
- c. Billings shall be itemized to indicate the following:
 1. The attorney doing the work
 2. Hours spent
 3. Hourly rate
 4. Work being done by paralegals or law clerks should be identified;
- d. Separate itemization of non-legal costs by type; and,
- e. Total fees and costs on the matter to date.

3. NON-REIMBURSABLE SERVICES

Attorneys shall not be reimbursed for the following expenses:

- a. Unnecessary messenger or express mail charges;
- b. Travel expenses, except to the extent approved in accordance with Section 4 below;

- c. Local travel within Sonoma County (Travel expenses, including reasonable costs for meals and accommodations, if necessary, for appearances, depositions, or other similar events, outside Sonoma County is a reimbursable cost.);
- d. Normal or routine overhead functions such as local telephone calls and faxes, ordinary word processing or typing time, routine scheduling of depositions, routine ordering records, calendaring functions, filing, indexing, proofreading or copying time, or any other procedures that are of a secretarial nature;
- e. Meals (except for that allowable under subsection c above), overtime, office supplies, or attorney time for preparation of bills; and,
- f. Intra-office conferencing time of more than one attorney for routine tort cases, unless such conference involves expert opinion (applies to routine tort cases – necessary intra-office conferencing in regard to more complex cases, such as civil rights or employment cases, is a reimbursable cost);
- g. Replacement attorney learning time or other ramp-up learning costs;
- h. Charges/fees for use of computer research programs (e.g. Lexis Nexis, WestLaw, etc).

4. EXTRAORDINARY EXPENSES

The Risk Manager and the County Counsel's Office will review all requests for extraordinary expenses before the same is incurred by Attorneys. By way of example, extraordinary expenses shall include expenses for preparing complex motions, such as a motion for summary judgment, retaining experts and consultants, conducting investigative services, and preparing expert or investigative reports, such as accident reconstruction reports. Contractor agrees to get prior approval for all travel in excess of 1 hour and agrees to charge no more than 3 hours of travel time, each way, for any travel, including but not limited to travel from his office to Sonoma County or the Northern District Federal Court(s).

5. USE OF APPROPRIATE PERSONNEL

Within a law firm, research and minor discovery work should be performed by the lowest level of personnel (e.g. junior attorneys, paralegals) capable of performing a given task. Responsibility for the quality of the work product remains with the assigned trial attorney.

6. MULTIPLE ATTORNEY CONFERENCES/ATTENDANCE

The County shall not pay for attendance by more than one representative of a law firm at meetings, court appearances, conferences, or other similar events without prior notice to the Risk Manager. County retains the right to approve or disapprove multiple attorney attendance at such events.

7. RESEARCH

The County will not pay for extensive research of relatively routine matters which should otherwise be within the knowledge of experienced practitioners.

EXHIBIT C

INSURANCE REQUIREMENTS

With respect to performance of work under this Agreement, Attorneys shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Attorneys from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a. Required if Attorneys have employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Attorneys currently have no employees as defined by the Labor Code of the State of California, Attorneys agree to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Attorneys maintain higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Attorneys.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Attorneys are responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Attorneys have a claim against the insurance or are named as a party in any action involving the County.
- d. **County of Sonoma, its officers, agents and employees** shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Attorneys in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Attorneys and include a "separation of insureds" or "severability" clause which treats each insured separately.

h. Required Evidence of Insurance:

- i. Copy of the additional insured endorsement or policy language granting additional insured status; and
- ii. Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Attorneys currently own no autos, Attorneys agree to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,500,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.
- c. If Attorneys' services include: (1) programming, customization or maintenance of software; or (2) access to individuals' private, personally identifiable information, the insurance shall cover:
 - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
 - ii. Claims against Attorneys arising from the negligence of Attorneys, Attorneys' employees and Attorneys' subcontractors.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

6. Documentation

- a. The Certificate of Insurance must include the following reference: **Legal Services Agreement with County February 1, 2024 to December 31, 2025.**
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Attorneys agree to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: **County of Sonoma, Department of Human Resources, Risk Management Division, 575 Administration Drive, Suite 116C, Santa Rosa, CA 95403.**
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

- e. Attorneys shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

7. Policy Obligations

Attorneys' indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach

If Attorneys fail to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Attorneys resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Attorneys, County may deduct from sums due to Attorneys any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

EXHIBIT D
BUSINESS ASSOCIATE ADDENDUM
TO THE LEGAL SERVICES AGREEMENT BETWEEN
COUNTY OF SONOMA
AND
PORTER SCOTT, A PROFESSIONAL CORPORATION
(Revised 2018 Sep 11)

This Business Associate Addendum ("Addendum") supplements and is made a part of the Legal Services Agreement ("Agreement") dated as of February 1, 2024 by and between County of Sonoma ("County") and Porter Scott, A professional corporation ("Business Associate" or "Attorneys").

RECITALS

WHEREAS, County is a Hybrid Entity as defined under 45 Code of Federal Regulations ("CFR") Section 164.103;

WHEREAS, Porter Scott, A professional corporation is a Business Associate as defined under 45 CFR Section 160.103;

WHEREAS, County wishes to disclose certain information to Business Associate pursuant to the terms of Addendum, some of which information may constitute Protected Health Information ("PHI"), including electronic Protected Health Information ("ePHI");

WHEREAS, County and Business Associate intend to protect the privacy and provide for the security of PHI, including ePHI, disclosed to Business Associate pursuant to Addendum in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104 191 ("HIPAA"), regulations promulgated thereunder by the U.S. Department of Health and Human Services, and other applicable laws; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and Security Rule require County to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, including ePHI, as set forth in, but not limited to, 45 CFR Sections 164.502(e), 164.504(e), and 164.308(b)(1) and contained in Addendum.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to Addendum, the parties agree as follows:

1. Definitions

Terms used, but not otherwise defined, in Addendum shall have the same meaning as those terms in the HIPAA Regulations as set forth at 45 CFR Sections 160.103, 164.304, and 164.501.

1.1 HIPAA Regulations

"HIPAA Regulations" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules as set forth at 45 CFR Part 160 and Part 164.

1.2 Breach

"Breach" shall mean the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 CFR Part 164 Subpart E and that compromises the security or privacy of PHI as defined at 45 CFR Section 164.402.

1.3 Business Associate

"Business Associate" shall have the same meaning as the term "Business Associate" as set forth at 45 CFR Section 160.103.

1.4 Covered Entity

"Covered Entity" shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 CFR Section 160.103. For purposes of this Addendum, this term is intended to mean the County of Sonoma.

1.5 Data Aggregation

"Data Aggregation" shall have the same meaning as the term "Data aggregation" as set forth at 45 CFR Section 164.501.

1.6 Designated Record Set

"Designated Record Set" shall have the same meaning as the term "designated record set" as set forth at 45 CFR Section 164.501.

1.7 Disclosure

"Disclosure" shall mean the release of, transfer of, provision of access to, or divulging in any manner information outside the entity holding the information in accordance with 45 CFR Section 160.103.

1.8 Health Care Operations

"Health Care Operations" shall have the same meaning as "Health care operations" as set forth at 45 CFR Section 164.501.

1.9 Individual

"Individual" shall have the same meaning as the term "Individual" as set forth at 45 CFR Section 164.501, except that the term "Individual" as used in this Addendum shall also include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).

1.10 Minimum Necessary

"Minimum Necessary" shall mean the minimum amount of PHI necessary for the intended purpose, as set forth at 45 CFR Sections 164.502(b) and 164.514(d): Standard: Minimum Necessary.

1.11 Privacy Rule

"Privacy Rule" shall mean the HIPAA Standards for Privacy of Individually Identifiable Health Information as set forth at 45 CFR Part 160 and 45 CFR Part 164 Subparts A and E.

1.12 PHI

"PHI" shall have the same meaning as the term "protected health information" as set forth at 45 CFR Section 160.103, except limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

1.13 Required by Law

"Required by law" shall have the same meaning as the term "required by law" as set forth at 45 CFR Section 164.103.

1.14 Secretary

"Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his/her designee.

1.15 Security Incident

"Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of personally identifiable information. A Security Incident includes the

attempted or successful unauthorized access, use, disclosure, modification, or destruction of or interference with systems operations in an information system which processes PHI that is under the control of Covered Entity or Business Associate of Covered Entity, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

1.16 Security Rule

"Security Rule" shall mean the HIPAA Security Standards for the Protection of ePHI as set forth at 45 CFR Part 160 and 45 CFR Part 164 Subparts A and E.

1.17 Subcontractor

"Subcontractor" shall mean a subcontractor of Business Associate that creates, receives, maintains, or transmits PHI on behalf of Business Associate.

1.18 Unsecured PHI

"Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" as set forth at 45 CFR Section 164.402, except limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

1.19 Use

"Use" shall mean, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information in accordance with 45 CFR Section 160.103.

2. Obligations of Business Associate

Business Associate acknowledges that Business Associate is directly required to comply with the HIPAA Regulations and that Business Associate (including its subcontractors) may be held directly liable for and be subject to penalties for failure to comply. To the extent Business Associate is to carry out one or more of County's obligations under 45 CFR Part 164 Subpart E of the Privacy Rule, Business Associate agrees to comply with the requirements of 45 CFR Part 164 Subpart E that apply to County in the performance of such obligations.

2.1 Use or Disclosure of Protected Health Information

Except as otherwise provided in Addendum, Business Associate shall use and/or disclose PHI only as necessary to perform functions, activities, or legal services documented in Paragraph 1 (Services) of Agreement for or on behalf of County, as specified in Addendum, provided that such use does not violate the HIPAA Regulations. Business Associate agrees not to further use or disclose PHI other than as permitted or required by Addendum or as required by law. Business Associate must make reasonable efforts to limit PHI to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request. The uses of PHI may not exceed the limitations applicable to County under the HIPAA Regulations.

2.2 Safeguarding Protected Health Information

Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by Addendum. Business Associate shall implement administrative, physical, and technical safeguards and shall comply with 45 CFR Part 164 Subpart C with respect to ePHI that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI created, received, maintained, or transmitted on behalf of County and prevent the use or disclosure of PHI other than as provided for by Agreement.

- a. Encryption Requirements for Transmission and Storage of Electronic Data. All ePHI transmitted to Business Associate by County, and/or for or on behalf of County by Business Associate, and/or to County by Business Associate shall be provided or transmitted using encryption methods which renders such ePHI unusable, unreadable, or indecipherable by unauthorized persons. All ePHI stored by Business Associate on electronic media shall be protected using encryption methods which render such ePHI unusable, unreadable, or indecipherable by unauthorized persons. Encryption of ePHI in transit or at rest shall use a technology or methodology set forth by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5, and in accordance with the National Institute of Standards Technology (NIST) and Standards and Federal Information Processing Standards (FIPS), as applicable.
- b. Destruction of PHI on paper, film, or other hard copy media must involve either shredding or otherwise destroying the PHI so that it cannot be read or reconstructed.
- c. Should any employee or subcontractor of Business Associate have direct, authorized access to County computer systems that contain ePHI, Business Associate shall immediately notify County of any change of such personnel (e.g., employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for County to disable the previously authorized access.

2.3 Notification of Breach, Unauthorized Use or Improper Disclosure

Business Associate must notify County in writing of any access, use, or disclosure of PHI not permitted or provided for by Addendum and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware. A breach or unauthorized access, use, or disclosure shall be treated as discovered by Business Associate the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of Business Associate.

- a. Notification must be made as soon as practicable, but not later than 24 hours after discovery, by telephone call to 707-565-5703 plus e-mail to: DHS-Privacy&Security@sonoma-county.org, and will include:
 1. The identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed; and
 2. A description of any remedial action taken or proposed to be taken by Business Associate.
- b. Business Associate must mitigate any harm that results or may result from the breach, security incident, or unauthorized access, use, or disclosure of unsecured PHI by Business Associate or its employees, officers, subcontractors, agents, or other representatives.
- c. Following a breach or unauthorized access, use, or disclosure of unsecured PHI, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such corrective action, and to make this documentation available to County.

2.4 Agents and Subcontractors of Business Associate

In accordance with 45 CFR Sections 164.502(e)(1)(ii) and 164.308(b)(2), and to the extent that Business Associate uses any agent, including a subcontractor, to which Business Associate provides PHI

received from, created by, maintained by, or received by Business Associate on behalf of County, Business Associate shall execute an agreement with such agent or contractor containing a requirement to ensure compliance with the same restrictions and conditions that apply through Addendum to Business Associate with respect to PHI.

2.5 Access to Protected Health Information

At the request of County, and in the time and manner designated by County, Business Associate shall provide access to PHI in Designated Record Set to an Individual or County to meet the requirements of 45 CFR Section 164.524.

2.6 Amendments to Designated Record Set

Business Associate shall make any amendment(s) to PHI in Designated Record Set as directed or agreed to by County, or to take other measures necessary to satisfy County's obligations under 45 CFR Section 164.526.

2.7 Accounting of Disclosures

Business Associate shall document and make available such disclosures of PHI and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

2.8 Records Available to County, State, and Secretary

Business Associate shall make available internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from County, or created, maintained, or received by Business Associate on behalf of County, to County, State, or the Secretary for the purposes of investigating or auditing Business Associate's compliance with the HIPAA Regulations in the time and manner designated by County, State, or Secretary.

2.9 Return or Destruction of Protected Health Information

Upon termination of Addendum for any reason, Business Associate shall:

- a. (i) Return all PHI received from County; return all PHI created, maintained or received by Business Associate on behalf of County; and return all PHI required to be retained by the HIPAA Regulations; or (ii) at the discretion of County, destroy all PHI received from County, or created, maintained, or received by Business Associate on behalf of County. Destruction of PHI on paper, film, or other hard copy media must involve shredding or otherwise destroying the PHI in a manner which will render the PHI unreadable, undecipherable, or unable to be reconstructed. Business Associate shall certify in writing that such PHI has been destroyed.
- b. In the event Business Associate determines that returning or destroying PHI is not feasible, Business Associate shall provide County notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

2.10 Data Aggregation

Business Associate may provide data aggregation services related to the health care operations of County as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

2.11 Other Applicable Laws

Business Associate shall comply with all other applicable laws to the extent that such state confidentiality laws are not preempted by HIPAA.

2.12 Penalties/Fines for Failure to Comply with HIPAA

Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

2.13 Training of Employees and Enforcement of Requirements

Business Associate shall train and use reasonable measures to ensure compliance with the requirements of this Business Associate Agreement by employees who assist in the performance of functions or activities on behalf of County under this Contract and use or disclose protected information; and discipline employees who intentionally violate any provisions.

3. Amendments to Addendum

No amendment of Addendum shall be effective unless and until such amendment is evidenced by a writing signed by the parties. County and Business Associate agree to take such action as is necessary to amend Addendum as required for County to comply with the requirements of the HIPAA Regulations. However, any provision required by HIPAA Regulations to be in Addendum shall bind the parties whether or not provided for in Addendum.

4. Termination of Addendum

If Business Associate should fail to perform any of its obligations hereunder, or materially breach any of the terms of Addendum, County may terminate Addendum immediately upon provision of notice stating the reason for such termination to Business Associate. County, within its sole discretion, may elect to give Business Associate an opportunity to cure such breach.

5. Material Breach

A breach by Business Associate or any of its agents or subcontractors of any provision of Addendum, as determined by County, shall constitute a material breach of Addendum and shall provide grounds for immediate termination of Addendum.

6. Indemnification

Business Associate agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees from and against any actions, claims, damages, liabilities, disabilities, or expenses that may be asserted by any person or entity, including Business Associate, that arise out of, pertain to, or relate to Business Associate's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under Agreement. Business Associate agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Business Associates' or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under Agreement. Business Associates' obligations under this Paragraph 6 (Indemnification) apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Business Associate's expense, subject to Business Associate's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Business Associate or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.