

LEGAL SERVICES AGREEMENT

This Agreement dated as of May 4, 2021 (“Effective Date”), is made by and between the County of Sonoma (“County”) and Carle, Mackie, Power, Ross, LLP (“Attorney”). This Agreement is required by Business and Professions Code Section 6148 and is intended to fulfill its requirements.

RECITALS

WHEREAS, Attorney has significant experience and recognized expertise in representing public entities in litigation and other related matters; and

WHEREAS, County, through its County Counsel Office, and as approved by the Board of Supervisors, has determined via a Request for Proposal (“RFP”) process completed in April 2021, that Attorney’s experience and expertise would benefit the County and the Office of Law Enforcement Review and Outreach (“IOLERO”) in instances where there is an actual or potential conflict of interest between IOLERO and/or the County of Sonoma Sheriff’s Office and/or the IOLERO Community Advisory Council (“CAC”).

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

AGREEMENT

1. Services. Attorney will furnish legal and other related services to IOLERO as conflict counsel through the appropriate Authorized Representative as follows: On an as-needed basis, provide legal representation to IOLERO as conflict counsel to advance the legal needs of IOLERO in regards to subpoena disputes or other legal matters or litigation between IOLERO, the Sheriff’s Office and/or the CAC. Such legal services will also include advice and representation regarding the roles of such entities under applicable federal, state and local laws in relation to the powers and duties of IOLERO, the CAC and the Sheriff’s Office. Legal services will be provided in accordance with the representations set forth in the proposal submitted by Attorney in response to IOLERO’s Request for Proposal RFP for IOLERO Conflict Counsel 2021, and the proposal is incorporated by reference and made part of this agreement. Attorney understands and agrees that IOLERO is the client, and that the Sonoma County Counsel’s Office manages this Agreement but will not direct or control the legal services provided to IOLERO pursuant to this Agreement. There is no guarantee of work pursuant to this legal services agreement. All services will be on an as-need basis, depending on County Counsel declaring an actual conflict in its representation of the Sheriff’s Office, IOLERO and/or CAC.

2. Compensation. Compensation to Attorney for services shall be at the rates set forth in Exhibit A, provided however that total payments hereunder shall not exceed \$100,000 over the contract term. Should IOLERO elect to extend the agreement from January 1, 2024 to December 31, 2025, fees shall not exceed an additional \$100,000. The rates set forth in Exhibit A 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, 2023.

4. Standard of Care. The IOLERO Director has relied on the professional ability, professional experience, and training of Attorney as a material inducement to enter into this Agreement. Attorney warrants 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 IOLERO of work performed by Attorney shall not operate as or be interpreted to be a waiver or release.

5. 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 IOLERO to enter into this Agreement, and without whose services IOLERO 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 the IOLERO Director.

Lead Attorney Team: Dawn M. Ross, Esq.
Phillip J. Terry, Esq.
Justin D. Hein, Esq.

6. Assignment of Defense Counsel. Attorney 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 and IOLERO retain the right to approve or disapprove any and all attorney assignments.

7. Billing and Timekeeping. Billing statements shall be provided on a monthly basis to County Counsel, with one copy to the IOLERO Director, and shall include the following information:

- a. The date and time spent performing services. Minimum billing times shall not exceed one-tenth of an hour.
- b. Summary description of the services performed regarding the designated matter, with a separate time allocation for each function (e.g., telephone calls, research, drafting);
- c. Separate itemization of non-legal costs by type.
- d. Total fees and costs of the matter to date.

- e. For any extraordinary expenses, the invoice must include the date and who gave prior approval for incurring such expense.
- f. All invoices submitted must include the following statement signed by the firm's supervising attorney:

"I have personally examined this billing statement. All entries are in accordance with the Legal Services Agreement, are correct and reasonable for the services performed and the costs incurred, and no item on this statement has been previously billed to IOLERO."

8. Non-Reimbursable Services. Attorney shall not be reimbursed for any of the following expenses:

- a. Travel expenses, except to the extent approved in accordance with Section 9 below.
- b. Unnecessary messenger or express mail charges.
- c. Normal overhead functions such as word processing or typing time, scheduling of depositions, ordering records, calendaring functions, filing, indexing, proofreading or copying time, or any other procedures that are of a secretarial nature.
- d. Meals, overtime, office supplies, or attorney time for preparation of bills or audit responses.
- e. Expenses for experts or Attorneys that have been retained without prior written approval.
- f. Photocopying charges in excess of \$25.00 in any billing cycle without prior written approval.
- g. Office supplies, local telephone charges, per-page fax charges, conference call line charges, routine mail, etc.
- h. Intra-office conferencing time of more than one attorney for routine matters, unless such conference involves expert opinion.
- i. Replacement attorney learning time or other ramp-up learning costs.
- j. Travel time.
- k. Charges/fees for use of computer research programs (e.g. Lexis Nexis, WestLaw, etc.).

9. Direction and Extraordinary Expenses. All direction and control of Attorney's work will be by IOLERO and in conjunction with the Sonoma County Counsel's Office. Attorney shall seek

pre-approval from the IOLERO Director or County Counsel for all extraordinary expenses before the same is incurred by Attorney. By way of example, extraordinary expenses shall include expenses for preparing complex motions, undertaking significant legal research or substantial drafting, retaining experts and Attorneys, and out-of-town travel.

10. Termination. This Agreement may be terminated by the County and/or IOLERO at any time, subject to equitable proportional payments due to Attorney. All files, written material, and documents will be transferred to IOLERO and the County upon such termination. Attorney will be available to consult with the IOLERO Director or with the Sonoma County Counsel's Office with respect to facts and circumstances of any matters previously worked on by Attorney for a reasonable period of time following such termination.

11. Withdrawal. Attorney may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.

12. No Suspension or Debarment. Attorney warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Attorney also warrants that it is 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 the Attorney becomes debarred, Attorney has the obligation to inform the County.

13. Status of Attorney. The parties intend that Attorney, in performing the services under this Agreement, shall be an independent contractor and shall control the work and the manner in which it is performed. Attorney shall acquire no rights or status in the service of County. Attorney is not to be considered an agent or employee of the County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits the County provides its employees. In the event the County or IOLERO exercise their right to terminate this Agreement pursuant to the terms herein, Attorney expressly agrees that Attorney shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

14. 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 Attorney and the County/IOLERO and by way of execution of a written modification to this Agreement.

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

16. Indemnity. Attorney agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release the County and IOLERO, and their 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 Attorney, arising out of or in connection with the negligent performance or willful misconduct of Attorney

hereunder, whether or not there is concurrent negligence on the part of the County and IOLERO, but excluding liability due to the sole or active negligence or due to the willful misconduct of the County and IOLERO. 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 Attorney or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. In addition, Attorney shall be liable to the County and IOLERO for any loss or damage to County and/or IOLERO property arising from or in connection with Attorney's negligent performance or willful misconduct hereunder.

17. Rules of Professional Conduct. Nothing contained herein shall be construed to relieve Attorney of Attorney's obligations under the Rules of Professional Conduct.

18. 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.

19. Taxes. Attorney agrees 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. Attorney agrees to indemnify and hold the County and IOLERO harmless from any liability which it may incur to the United States or to the State of California as a consequence of Attorney's failure to pay, when due, all such taxes and obligations. If the County or IOLERO are audited for compliance regarding any withholding or other applicable taxes, Attorney agrees to furnish the County and IOLERO with proof of payment of taxes on these earnings.

20. Conflict of Interest. Attorney covenants that Attorney presently has 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 and/or IOLERO deem that there is an actual or potential conflict of interest in Attorney representing another party in a matter, the County and/or IOLERO must waive any such actual or potential conflict before Attorney may represent such other party.

21. Nondiscrimination. Attorney 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.

22. 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.

23. 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 or by mail. Notices, bills, and payments sent by mail shall be addressed as follows:

For IOLERO: IOLERO, Attn: Karlene Navarro
2300 County Center Drive, Suite A211
Santa Rosa, CA 95403

Attorney: Carle, Mackie, Power, Ross, LLP
100 B St.
Santa Rosa, CA 95401

Copy to: County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

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.

24. No Waiver of Breach. The waiver by the County or IOLERO 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.

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

26. AIDS Discrimination. Attorney agrees 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.

27. 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.

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

ATTORNEY:

Dated: 5/27/21

By: 

Name: Dawn U. Potts

Title: Managing Partner

COUNTY OF SONOMA:

Dated: _____

By: _____

Robert H. Pittman
County Counsel

Dated: _____

APPROVED AS TO FORM FOR COUNTY:

By: _____

Tambra Curtis
Deputy County Counsel

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

Dated: _____

By: _____

Karlene Navarro
IOLERO Director

EXHIBIT A
RATES

1. COMPENSATION

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

A. Legal Fees:

Attorneys: \$265.00 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 Counsel's Office 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 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.

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 County Counsel's Office. County retains the right to approve or disapprove multiple attorney attendance at such events.

EXHIBIT B
INSURANCE REQUIREMENTS

With respect to performance of work under this Agreement, Attorney shall maintain and shall require all of its subcontractors, Attorneys, 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.

The County/IOLERO 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 Attorney 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 Attorney has 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 Attorney currently has no employees as defined by the Labor Code of the State of California, Attorney agrees 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 Umbrella Liability Insurance. If Attorney maintains higher limits than the specified minimum limits, County/IOLERO requires and shall be entitled to coverage for the higher limits maintained by Attorney.
 - 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 the County/IOLERO. Attorney is responsible for any deductible or self-insured retention and shall fund it upon the County/IOLERO's written request, regardless of whether Attorney has a claim against the insurance or is named as a party in any action involving the County or IOLERO.

- d. The County of Sonoma and IOLERO and their officers, agents and employees shall be additional insureds for liability arising out of operations by or on behalf of the Attorney 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 Attorney and include a "separation of insureds" or "severability" clause which treats each insured separately.
 - h. Required Evidence of Insurance:
 - i. 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 Umbrella Liability Insurance.
 - b. Insurance shall cover all owned autos. If Attorney currently owns no autos, Attorney agrees 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: \$1,000,000 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 the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
 - d. 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.
 - e. Required Evidence of Insurance: Certificate of Insurance.
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: IOLERO Conflict Counsel Legal Services Agreement.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Attorney agrees to maintain current Evidence of Insurance on file with the County/IOLERO 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 set forth above in section 23 of the Agreement.
- 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. Attorney 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.

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

8. Material Breach.

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