

Legal Services Agreement

This Agreement is made between the County of Sonoma ("County") and Colantuono, Highsmith & Whatley, PC ("Attorney" or "Attorneys"). This Agreement is required by Business and Professions Code Section 6148 and is intended to fulfill its requirements.

Recitals

Whereas, Attorneys have significant experience and recognized expertise in civil litigation and employee benefits; and

Whereas, County, through its County Administrator and County Counsel and as approved by the Board of Supervisors, have determined that Attorneys' experience and expertise would benefit the County for defense of litigation involving employee benefit challenges; and

Now, therefore, in consideration of the mutual covenants contained herein, the parties agree as follows:

Agreement

1. Services. Attorney will furnish legal services to County as follows: Provide legal representation of County, its Board of Supervisors, CAO, Human Resources Director and Auditor Controller – Tax Collector in regards to the case of *Luke v. Sonoma County and its Board of Supervisors, et al.*, SCV-261187, filed in the Sonoma County Superior Court, and any related matters and/or advice work on public law issues, including judicial proceedings, agreed to by County and Attorneys. Attorneys understand and agree that the County itself is the Client, acting by and through the Board of Supervisors and will consult with County Counsel should Attorneys' ethical obligations to the CAO, Human Resources Director and/or Auditor-Controller – Tax Collector impact its ability to take direction from the Board and County Counsel on any issue in this representation. Attorneys shall provide those legal services reasonably required to represent the County's interests in such matters.
2. Term. The term of this Agreement shall run from September 1, 2017 to September 1, 2020, unless otherwise renewed or extended.
3. 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 \$300,000 over the term of the contract. The rates set forth in Exhibit A shall not be adjusted without a formal amendment to this Agreement.
4. 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. Key personnel shall be as listed below:

Michael G. Colantuono, Esq.
Jon R. di Cristina, Esq. (currently a 6th year attorney)

5. Standard of Care. County 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 Agency of work performed by Attorney shall not operate as or be interpreted to be a waiver or release.
6. Billing and Timekeeping. A billing statement shall be provided on a monthly basis 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 the County."
7. 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 8 below or mileage at the IRS rate for travel from Attorneys' Grass Valley offices to court

or to the County's offices. Attorney time for travel shall be billed at one-half the time incurred.

- 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 the prior written approval of County.
 - f. Photocopying charges in excess of \$25.00 in any billing cycle without prior written approval of County.
 - 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 (except as stated in Paragraph 8. below).
 - k. Charges/fees for use of computer research programs (e.g. Lexis Nexis, WestLaw, etc.).
8. Direction and Extraordinary Expenses. Attorneys shall report directly to the Sonoma County Board of Supervisors. Attorney shall seek pre-approval from the Board, through its County Administrator's Office, 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.
9. Termination. This Agreement may be terminated by the County at any time, subject to equitable proportional payments due to Attorney. All files, written material, and documents will be transferred to the County Counsel upon such termination. Attorney will be available to consult with County Counsel or, should one be retained, with the County's new attorney with respect to facts and circumstances of any matters previously worked on by Attorney for a reasonable period of time following such termination.

10. Withdrawal. Attorney may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.
11. 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.
12. 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 County and is 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, Attorney expressly agrees that Attorney shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees but shall be entitled to compensation for services performed as provided in this Agreement.
13. 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 County and by way of execution of a written modification to this Agreement.
14. 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.
15. Indemnity. Attorney agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release 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 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, but excluding liability due to the sole or active negligence or due to the willful misconduct of the 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 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 for any loss or damage to County

property arising from or in connection with Attorney's negligent performance or willful misconduct hereunder.

16. Rules of Professional Conduct. Nothing contained herein shall be construed to relieve Attorney of Attorney's 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. 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 County 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 County is audited for compliance regarding any withholding or other applicable taxes, Attorney agrees to furnish the County with proof of payment of taxes on these earnings.
19. 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 County deems that there is an actual or potential conflict of interest in Attorney representing another party in a matter, County must waive any such actual or potential conflict before Attorney may represent such other party. County acknowledges that:
 - a. Attorneys represent the Bay Area Regional Energy Network, a collaboration of Bay area local governments under the auspices of the Association of Bay Area Governments that is staffed, in part, by the Sonoma County Regional Climate Protection Authority.
 - b. Attorneys represent the City of Santa Rosa on the pending annexation of the Roseland community to the City and on other matters.
 - c. Attorneys represent the City of Sonoma on public revenue matters.

The County warrants for the benefit of Attorneys that there are no pending adverse legal matters between it and the entities listed here that would require Attorneys to obtain the informed written consent of Attorneys to this representation and consents to Attorneys continued representation of these clients and other clients in Sonoma County on matters as to which the County does not have adverse interests. Attorneys will disclose any new representations of parties in Sonoma County to County Counsel and consult with him about any conflict or concerns that might arise before undertaking those new representations.

20. 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.
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 or by mail. Notices, bills, and payments sent by mail shall be addressed as follows:

County: Debbie F. Latham
Chief Deputy County Counsel
County of Sonoma County
Office of the County Counsel
575 Administration Drive, Rm 105A
Santa Rosa, CA 95403-2881

Attorney: Michael G. Colantuono
Colantuono, Highsmith & Whatley, LP
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

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 Agreement or for the breach thereof shall be brought or tried in the County of Sonoma.

25. 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. Statutory Compliance/Living Wage Ordinance. Attorney agrees to comply with, and to ensure compliance by its subcontractors, with 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, Attorney expressly acknowledges and agrees 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.

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. Signatures may be given by fax, pdf or other electronic means with the same force as originals.

In Witness Whereof, the parties hereto have executed this Agreement as of the Effective Date.

Dated: September __, 2017

County of Sonoma

By: _____
Shirlee Zane, Chair

Dated: September __, 2017

Colantuono, Highsmith & Whatley, LP

By: _____
Michael G. Colantuono

Certificates of Insurance on File:

By: _____
Michelle Arellano
Department Analyst

Dated: September __, 2017

Exhibit A

Colantuono, Highsmith & Whatley Rate Table

September 2017

Shareholders	\$350 per hour
Senior Counsel	\$350
9-year lawyers	\$340
8-year lawyers	\$320
7-year lawyers	\$315
6-year lawyers	\$310
5-year lawyers	\$280
4-year lawyers	\$265
3-year lawyers	\$255
2-year lawyers	\$225
1st-year Lawyers	\$195
Paralegals	\$160
Legal Assistants	\$125

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.

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 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 and District require 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 County. Attorney is responsible for any deductible or self-insured retention and shall fund it upon County'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.

- d. County of Sonoma, the Sonoma County Water Agency, and the Sonoma Valley County Sanitation District, 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: Sonoma County – 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 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, County Counsel's Office, Attn: Ali Ostello, 575 Administration Drive, Suite 105A, 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. 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. County, Counsel or District at their sole option, may terminate this Agreement and obtain damages from Attorney resulting from said breach. Alternatively, District may purchase the required insurance, and without further notice to Attorney, District may deduct from sums due to Attorney any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District or County.