

DRAFT Legal Services Agreement for Bond and Disclosure Counsel

This agreement (Agreement) dated as of _____, 2020 (Effective Date), is made by and between the County of Sonoma and Jones Hall, A Professional Law Corporation (Attorney). This Agreement is required by Business and Professions Code section 6148 and is intended to fulfill its requirements.

RECITALS

WHEREAS, Attorney specializes in work relating to the issuance of tax-exempt bonds and other types of public agency financing on behalf of California public agencies and has significant experience and recognized expertise in such work, and

WHEREAS, County Counsel is authorized to enter into legal service agreements on behalf of the County of Sonoma and affiliated entities pursuant to Concurrent Resolution No. 16-0102, dated March 15, 2016; and

WHEREAS, County Counsel has determined that Attorney's assistance is needed in connection with the potential issuance of bonds or other financial instruments to finance Sonoma County Water Agency activities and projects.

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

AGREEMENT

1. **Services.** Attorney will provide legal assistance to County Counsel and advisory and representation services to the Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, Sonoma Valley County Sanitation District, and South Park County Sanitation District (collectively referred to as "Sonoma Water") as set forth in Exhibit A. Such requests shall be made through County Counsel, and Attorney shall always keep County Counsel adequately informed of the matters Attorney is handling. Attorney shall keep County Counsel fully advised of the progress in each matter. Attorney shall provide County Counsel with periodic updates, as may be appropriate.
2. **Compensation.** Compensation to Attorney for services shall be at the rates set forth in Exhibit B provided, however, that total payments hereunder shall not exceed \$600,000. The rates set forth in Exhibit B shall not be adjusted without a formal amendment to this Agreement.

3. Term. The term of this Agreement shall commence upon the Effective Date and shall terminate on December 31, 2025.
4. Standard of Care. The County of Sonoma 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 County Counsel of work performed by Attorney 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 Water, 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 of Sonoma or Sonoma Water."
6. 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 7 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 the prior written approval of County Counsel.
 - f. Photocopying charges in excess of \$25 in any billing cycle without prior written approval of County Counsel.

- g. Office supplies, local telephone charges, per-page fax charges, conference call line charges, and routine mail.
 - 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 or fees for use of computer research programs (e.g. LexisNexis, WestLaw).
7. Direction and Extraordinary Expenses. All direction and control of Attorney's work for Sonoma Water will be by County Counsel and in conjunction with Deputy County Counsel Adam Brand. Attorney shall seek pre-approval from County Counsel for all extraordinary expenses before the same are 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.
 8. Termination. This Agreement may be terminated by County Counsel at any time, subject to equitable proportional payments due to Attorney. All files, written material, and documents will be transferred to County Counsel upon such termination. Attorney will be available to consult with County Counsel or, should one be retained, with Sonoma Water'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.
 9. Withdrawal. Attorney may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.
 10. 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 County Counsel.
 11. 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 the County of Sonoma or Sonoma Water. Attorney is not to be considered an agent or employee of the County of Sonoma or Sonoma Water and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits the County of Sonoma or Sonoma Water provides their employees. In the event County Counsel 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.

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 Attorney and Sonoma Water and by way of execution of a written modification to this Agreement.
13. 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 C, which is attached hereto and incorporated herein, by this reference.
14. 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 of Sonoma and Sonoma Water, 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, that are determined in a final, binding judgment against Attorney by a court of competent jurisdiction to have proximately resulted from professional negligence of Attorney in connection with its performance of legal services under this Agreement, whether or not there is concurrent negligence on the part of the County of Sonoma or Sonoma Water, but excluding liability due to the sole or active negligence or due to the willful misconduct of the County of Sonoma or Sonoma Water. 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 of Sonoma and Sonoma Water for any loss or damage to the County of Sonoma or Sonoma Water property arising from or in connection with Attorney's negligent performance or willful misconduct hereunder that are determined in a final, binding judgment against Attorney by a court of competent jurisdiction to have proximately resulted from professional negligence of Attorney in connection with its performance of legal services under this Agreement.
15. Rules of Professional Conduct. Nothing contained herein shall be construed to relieve Attorney of Attorney's obligations under the Rules of Professional Conduct.
16. 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.
17. 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 of Sonoma and Sonoma Water harmless from any liability that 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 requested by County Counsel or Sonoma Water, Attorney will provide proof of payment of taxes on these earnings.

18. 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 Counsel or Sonoma Water deems that there is an actual or potential conflict of interest in Attorney representing another party in a matter, Sonoma Water must waive any such actual or potential conflict before Attorney may represent such other party.
19. 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 of Sonoma's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
20. 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.
21. 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, U.S. mail, courier service, or electronic means. Notices, bills, and payments sent by mail shall be addressed as follows:

Sonoma Water: Attn: Lynne Rosselli
 Sonoma County Water Agency
 404 Aviation Boulevard
 Santa Rosa, CA 95403
 Email: Lynne.Rosselli@scwa.ca.gov

Attorney: Attn: Scott Ferguson
 Jones Hall, A Professional Law Corporation
 475 Sansome Street, Suite 1700
 San Francisco, CA 94111
 Email: sferguson@joneshall.com

Copy to: Attn: Adam Brand
 Office of Sonoma County Counsel
 575 Administration Drive, Room 105A
 Santa Rosa, CA 95403
 Email: Adam.Brand@sonoma-county.org

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.

22. No Waiver of Breach. The waiver by the County of Sonoma or Sonoma Water 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.
23. 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.
24. 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.
25. Statutory Compliance/Living Wage Ordinance. Attorney agrees to comply, and to ensure compliance by its subconsultants or 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.
26. 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.
27. Use of Appropriate Personnel. Within the law firm, research and minor discovery work shall 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 attorney.
28. Multiple Attorney Conferences/Attendance. The County of Sonoma or Sonoma Water shall not pay for attendance by more than one representative of the law firm at meetings, court appearances, conferences, or other similar events. County Counsel and Sonoma Water retain the right to approve or disapprove of multiple attorney attendance at such events.

29. Records. Consistent with Sonoma Water’s records retention policy, Attorney 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 Attorney’s own internal retention policy is for a period less than that provided under Sonoma Water’s retention policy, Attorney shall after expiration of its own internal retention period, forward the records to County Counsel for retention. In no event shall Attorney destroy or otherwise purge any records without providing Sonoma Water with at least thirty (30) days’ written notice. Records will be made available to Sonoma Water upon request for audit purposes. Attorney 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.)

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

Reviewed as to funds for Sonoma Water:

By: _____

Insurance Documentation is on file and approved:

By: _____
Adam Brand, Deputy County Counsel

Date: _____

SONOMA COUNTY COUNSEL'S OFFICE

By: _____
Bruce Goldstein, Sonoma County Counsel

Date: _____

Jones Hall, A Professional Law Corporation

By: _____

(Please print name here)

Date: _____

SONOMA COUNTY WATER AGENCY

By: _____
Grant Davis
General Manager

Exhibit A

Scope of Work

Attorney, as special counsel, shall perform the following legal services:

1. Advise Sonoma Water, County Counsel, financial consultant, and bond underwriter with respect to the types of financing mechanisms available to Sonoma Water.
2. Consult with Sonoma Water, County Counsel, financial consultant, and bond underwriter to establish a structure for a financing program and develop a list of steps required for implementation of the financing program when established.
3. Coordinate with Sonoma Water, County Counsel, financial consultant, bond underwriter, and underwriter's counsel to establish the terms, conditions, and legal structure for any and all types of public financing.
4. Draft and review necessary documents for the authorization, issuance, sale, and delivery of financial products, including enabling ordinances, and coordinate the authorization and execution of necessary documents.
5. Render necessary legal opinions on the validity and binding effect of financial products, the source of payment and security for financial products, and the excludability of interest on New Obligations from gross income for income tax purposes.
6. Assist Sonoma Water in seeking from other governmental authorities any approvals, permissions, or exemptions necessary or appropriate in connection with the authorization, issuance, sale, or delivery of financial products.
7. Assist Sonoma Water in presenting information relating to legal issues affecting financial products to bond rating organizations or credit enhancement providers.
8. Prepare transcripts of the any and all documents for necessary closing a financial transaction and delivery of those documents.
9. Perform necessary ancillary legal services and advice relating to the financing program.
10. Circulate documents to and coordinate services with County Counsel to the extent requested by Sonoma Water or County Counsel.

Sonoma Water uses the services of Sonoma County Counsel to render day-to-day and ongoing legal services to Sonoma Water. Attorney shall circulate documents to and coordinate its services with County Counsel to the extent requested by Sonoma Water or County Counsel.

Exhibit B

Rates and Fees

Fees shall be billed on a flat-rate basis for each bond transaction.

Fees include reasonable follow-up work done at the request of the issuer (Sonoma Water).

Fees and expenses are contingent upon the successful issuance of each series of bonds, and shall be payable from the proceeds of the bonds.

Bond Counsel. The fee for each series of bonds is based on the following formula:

- 0.50% of the principal amount of the Bonds to a principal amount of \$6,000,000; plus 0.125% of the principal amount of the Bonds in excess of \$6,000,000.

Disclosure Counsel. For serving as disclosure counsel for each series of the bonds, a flat fee ranging from \$25,000 to \$40,000, depending on the complexity and principal amount of the financing, to be negotiated between Sonoma Water and Attorney at time of request for Disclosure Counsel services.

Fee Cap. If serving concurrently as bond and disclosure counsel, the total combined fee shall be capped at \$100,000 per transaction.

Reimbursable Expenses:

Item	Rate
Bond closing costs, including shipping, delivery and courier services, transcript preparation, and publication costs	at cost
Reimbursable costs for each series of bonds	not to exceed \$3,000

Disclosure counsel fee is inclusive of reimbursable expenses; no additional amounts will be added for expenses for disclosure counsel services (whether or not concurrently serving as bond counsel).

Hourly Rates. (Not standard- used upon request from Sonoma Water for other work.)
\$500 per hour for partners, and \$350 per hour for associates.

Exhibit C

Insurance Requirements

With respect to performance of work under this Agreement, Attorney shall maintain and shall require all of its subcontractors, consultants, 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 Counsel 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.
 - e. 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 Commercial Umbrella Liability Insurance. If Attorney maintains higher limits than the specified minimum limits, County Counsel 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 County Counsel. Attorney is responsible for any deductible or self-insured retention and shall fund it upon County Counsel'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 of Sonoma or Sonoma Water.

- d. The County of Sonoma, Sonoma County Water Agency, 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: 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 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: \$1,500,000 per claim or per occurrence; \$1,500,000 annual aggregate.
 - 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 Counsel.
 - 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 Counsel 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 at its sole option, may terminate this Agreement and obtain damages from Attorney resulting from said breach. Alternatively, County Counsel may purchase the required insurance, and without further notice to Attorney, County Counsel may deduct from sums due to Attorney any premium costs advanced by County Counsel for such insurance. These remedies shall be in addition to any other remedies available to County Counsel.