

LEGAL SERVICES AGREEMENT

This Agreement dated as of July 1, 2020 ("Effective Date"), is made by and between the Sonoma County Counsel's Office on behalf of the Sonoma County Department of Health Services ("County") and Foley & Lardner LLP ("Attorney"). This Agreement is required by Business and Professions Code Section 6148 and is intended to fulfill its requirements.

RECITALS

WHEREAS, Attorney specializes in healthcare law, and has significant experience and recognized expertise in Medicare/Medi-Cal compliance, and

WHEREAS, the Sonoma County Counsel has determined that Attorney's assistance is needed in connection with legal advice to the Department of Health Service's Compliance Unit.

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 Department of Health Services. Attorney shall not perform work hereunder unless authorized verbally or in writing by the Office of the County Counsel. Attorney shall always keep the County Counsel's office adequately informed of the matters Attorney is handling. Attorney shall keep the County Counsel fully advised of the progress in each matter. Attorney shall provide County Counsel with periodic updates, as may be appropriate.
2. **Attorney's Key Personnel.** The parties identified in this section as the work team, project manager, or other professional providing 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. Except for matters requiring less than 3 hours of recorded time per personnel, Attorney shall assign no other personnel to this Project without the written approval of County Counsel. Key personnel shall be as follows: Judith A. Waltz, Diane Ung, Anil Shankar, Claire Marblestone, Adam Hepworth and Kristin O. Jenkins.
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 \$120,000, including \$50,000 for the period July 1, 2020 through June 30, 2021 and \$70,000 for the period July 1, 2021 through June 30, 2022. The rates set forth in Exhibit A shall not be adjusted without a formal amendment to this Agreement.
4. **Waiver of Conflicts.** Attorney currently represents, and in the future will represent, numerous clients who are currently adverse or, in the future, may be adverse to the County in matters unrelated to services being provided hereunder. These clients wish to maintain, or pursue, their attorney-client relationship with Attorney, and are willing to consent to Attorney's representation of the County provided that this representation does not interfere with Attorney's ability to represent current and future clients in current and future matters adverse to the County. Therefore, as a condition of this engagement, the

County hereby confirms that it waives any conflict of interest to the representation by Attorney of current and future clients, in current and future matters unrelated to the services provided hereunder, who are or may potentially be adverse to the County and/or who are or may be seeking permit approvals or other regulatory matters before the County, and agrees that the County will not seek to disqualify Attorney from representing such clients in connection with the following types of matters:

- a. Counseling, advice, and negotiation regarding agreements, rights, or obligations, and preparation of documents.
- b. Arbitration, litigation, or other contested proceeding.
- c. Advocacy before federal, state, and local governments and non-judicial governmental entities.
- d. Bankruptcy or insolvency proceedings in which the client may have an interest.
- e. Evaluation of intellectual property rights, such as claim scope analysis, infringement analysis, invalidity analysis, or analysis with respect to any other statutory or non-statutory requirement, participation in connection with contested and uncontested intellectual property proceedings before the USPTO, or prosecuting non-interfering IP for another client in a related technology.

Attorney agrees that Attorney will not handle directly adverse matters for other clients that are substantially related to any work the Attorney performs for the County.

This consent shall also permit the Attorney to represent in the future any other parties who are or become adversely involved in any matters in which the Attorney represents the County, provided that the matters in which the Attorney represents those other parties are not substantially related to any work the Firm performs for the County.

This representation does not extend to the District Attorney's Office for the County of Sonoma. Representation of individuals or entities in criminal matters handled by the District Attorney's Office will not be viewed as conflicts involving the work to be performed by Attorney under this Agreement, so long as those matters do not involve any civil action involving the District Attorney or County arising from the criminal case.

5. Term. The term of this Agreement shall be from July 1, 2020 to June 30, 2022, unless terminated earlier in accordance with the provisions of Article 10 (Termination).
6. Standard of Care. County Counsel 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.
7. Billing and Timekeeping. Duplicate billing statements shall be provided on a monthly basis, one copy to County Counsel and one copy to the Sonoma County Department of Health Services, 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.”
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 the prior written approval of County Counsel.
 - f. Photocopying charges in excess of \$25.00 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, 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 for the County will be by the Sonoma County Counsel's Office and in conjunction with Chief Deputy Phyllis Gallagher. Attorney shall seek pre-approval from the County Counsel'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.
10. 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 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.
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 the 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 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.
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 County Counsel 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 indemnify, the County, 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. 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 the County 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 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 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.
20. Conflict of Interest. Attorney covenants that Attorney presently has no present conflict of interest, as defined by the applicable Rules of Professional Conduct, that would prevent Attorney from performing the services hereunder. Subject to Paragraph 4 of this Agreement, Waiver of Conflicts, where the County deems that there is an actual or potential conflict of interest in Attorney representing another party in a matter, the County 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:

Sonoma County Department of
Health Services:

Emilia Gabriele
Assistant Director
County of Sonoma Department of
Health Services
1450 Neotomas Avenue, Suite 200
Santa Rosa, CA 95405
707-565-4774
emilia.gabriele@sonoma-county.org

Attorney:

Foley & Lardner LLP
555 California Street, Suite 1700
San Francisco, CA 94104
Attn: Judith A. Waltz

Copy to:

County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403
Attn: Chief Deputy Phyllis Gallagher

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 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. Statutory Compliance/Living Wage Ordinance. Attorney agrees 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, 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. Records. Consistent with the County' 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 the County' 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 the County with at least thirty (30) days written notice. Records will be made available to the County 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.)
29. 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.

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

Dated: July 1, 2020

Foley & Lardner LLP

By: _____
Judith A. Waltz

Dated: July 1, 2020

Sonoma County Counsel's Office

By: _____
Robert H. Pittman
Sonoma County Counsel

APPROVED AS TO FUNDS FOR
SONOMA COUNTY DEPARTMENT OF HEALTH SERVICES:

By: _____

Dated: _____, 20__

CERTIFICATES OF INSURANCE
ON FILE WITH AND APPROVED BY:

By: _____
Deputy County Counsel

Dated: _____, 20__

EXHIBIT A

RATES

<u>Attorney</u>	<u>Hourly Rate</u>
Judith A. Waltz	\$650.00
Diane Ung	\$630.00
Anil Shankar	\$540.00
Claire Marblestone	\$450.00
Adam Hepworth	\$415.00
Kristin O. Jenkins	\$295.00

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 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. Attorney is responsible for any deductible or self-insured retention

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- d. County of Sonoma, its 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. County’s execution of this Agreement constitutes approval of Attorney’s deductible.
 - 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.
- a. 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. Upon receipt, Attorney shall forward required Evidence of Insurance for any renewal or replacement of a policy that already exists. ,
 - 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, at its sole option, may terminate this Agreement and obtain damages from Attorney resulting from said breach. These remedies shall be in addition to any other remedies available to County.