

## LEGAL SERVICES AGREEMENT FOR COUNTY OF SONOMA

This Agreement dated as of March 30, 2021 ("Effective Date"), is made by and between the County of Sonoma ("County") and Colantuono, Highsmith & Whatley, PC ("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 specialize in public agency representation, and specifically that of public revenues, rate making and fee issues, and have significant experience and recognized expertise in that area, and;

WHEREAS, County, through its County Counsel Office and as approved by the Board of Supervisors, has determined that Attorneys' experience and expertise would benefit the County for defense of litigation involving challenges to license fees imposed and collected by the County;

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

### AGREEMENT

1. Services. Attorneys will furnish legal and other related services to the County, as follows: Provide legal representation to the County in regards to a Government Claim, and any subsequent related civil litigation, submitted by Costeaux French Bakery, through the Kabateck Law Firm, on behalf of itself and other similarly situated businesses or persons, alleging the County, and its Department of Health Services, Environmental Health Division, charged unconstitutional permit or license fees. Attorneys may also furnish legal advice regarding other public revenue or ratemaking issues involving the County. 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 Department of Health Services 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. Compensation. Compensation to Attorneys for services shall be at the rates and terms set forth in **Exhibit A** which is incorporated by this reference, provided however that total payments hereunder shall not exceed **\$100,000.00** for the contract term without the prior written approval of the County. 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 or pursuant to authority delegated by the Board.

3. Term. The term of this Agreement shall commence upon the Effective Date and shall terminate on **December 31, 2023** unless terminated earlier in accordance with the terms herein. Prior to the expiration of the initial term on December 31, 2023, the County may elect to extend the agreement for an additional two year period by giving notice, in writing, of the intent to exercise the

two year extension, at the same rate of compensation and subject to the contract cap set forth in Paragraph 2 above. This Agreement may be extended by amendment, with Board of Supervisors' approval and executed by the County Counsel.

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

5. Billing and Timekeeping. A billing statements shall be provided on a monthly basis to County Counsel. Additional terms are set forth in Exhibit A which is incorporated by this reference.

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

**Lead Attorney Team:**            **Michael G. Colantuono, Esq.**  
   **Matthew C. Slentz, Esq.**

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

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

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

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

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

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

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

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

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

15. Rules of Professional Conduct. Nothing contained herein shall be construed to relieve Attorneys of their 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. Attorneys agree to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Attorneys agree to indemnify, defend, and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Attorneys' failure to pay, when due, all such taxes and obligations. If County is audited for compliance regarding any withholding or other applicable taxes, Attorneys agree to furnish the County with proof of payment of taxes on these earnings.

18. Conflict of Interest. Attorneys covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services hereunder. Where the County deems that there is an actual or potential conflict of interest in Attorneys representing another party in a matter, the County must waive any such actual or potential conflict before Attorneys may represent such other party. County acknowledges that Attorneys serve as contract city attorney of the City of Sonoma, which has no interest in the subject matter of this representation different than the County's. Attorneys are aware of no adversity between the City and the County which would require informed written consent of the two for Attorneys to undertake this representation. County will promptly inform Attorneys should such a conflict arise.

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

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 or by mail. Payments shall be made within the normal course of County business after presentation of an invoice for services performed. Payments shall be made within 60 days only upon the satisfactory completion of the services as determined by the County. Notices, bills, and payments sent by mail shall be addressed as follows:

For County: County Counsel  
575 Administration Drive, Room 105A  
Santa Rosa, CA 95403  
Attn: Joshua Myers

For Attorneys: Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091  
Attn: Michael G. Colantuono

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

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

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

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.

*The remainder of this page has been intentionally left blank.*

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

ATTORNEYS:

Dated:\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

COUNTY OF SONOMA:

Dated:\_\_\_\_\_

By:\_\_\_\_\_

Robert H. Pittman  
County Counsel

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

Dated:\_\_\_\_\_

By:\_\_\_\_\_

Sonoma County Counsel's Office

## **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:**

Michael G. Colantuono:	\$350.00 per hour
Matthew C. Slentz:	\$350.00 per hour
Junior Associate, TBD:	\$210 to \$255 per hour
Paralegals:	\$160.00 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.

## 7. RESEARCH

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

## **EXHIBIT B INSURANCE REQUIREMENTS**

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

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

### **1. Workers Compensation and Employers Liability Insurance**

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

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

### **2. General Liability Insurance**

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

with, any insurance or self-insurance program maintained by them.

- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Attorneys and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### **3. Automobile Liability Insurance**

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

### **4. Professional Liability/Errors and Omissions Insurance**

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

### **5. Standards for Insurance Companies**

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

**6. Documentation**

- a. The Certificate of Insurance must include the following reference: **Legal Services Agreement with County March 30, 2021 to December 31, 2023.**
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Attorneys agree to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: **County of Sonoma, 575 Administration Dr., Santa Rosa, CA 95403.**
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Attorneys shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

**7. Policy Obligations**

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

**8. Material Breach**

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