

AGREEMENT FOR LEGAL SERVICES

The Humboldt County Association of Governments (“HCAOG”) and Colantuono, Highsmith & Whatley, PC (“Legal Counsel”) (together, the “Parties”) enter into this AGREEMENT for legal services as follows:

RECITALS

WHEREAS, HCAOG is a joint powers authority composed of the County of Humboldt and the Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, and Trinidad;

WHEREAS, HCAOG’s joint powers agreement and bylaws authorize it to employ or contract for professional or consulting services to carry out its functions;

WHEREAS, Legal Counsel has expertise in areas of public law relevant to the operation of HCAOG; and

WHEREAS, HCAOG wishes to retain Legal Counsel for general counsel services and Legal Counsel wishes to provide those services.

NOW, THEREFORE, the Parties agree as follows:

- I. Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in the recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement.
- II. Employment of Legal Counsel.** HCAOG agrees to engage Legal Counsel and Legal Counsel agrees to perform the services set forth in this Agreement.
- III. Intent of the Parties.** The parties intend that Legal Counsel shall perform the services determined necessary by HCAOG’s Board of Directors or its Executive Director.
- IV. Administrator of Agreement.** HCAOG’s Executive Director is its representative for purposes of administering this agreement. Conor W. Harkins of Colantuono, Highsmith & Whatley, PC is Legal Counsel’s representative for purposes of

administering this agreement and is Legal Counsel's HCAOG representative and contact person.

- V. Scope of Legal Counsel Services.** Legal counsel shall provide the following services:
- A. Legal Counsel will be on call to answer questions from HCAOG's Board of Directors, Executive Director, or agency staff, to provide legal advice, and to represent the HCAOG on an "as-needed" basis as requested by the Executive Director and/or HCAOG's Board of Directors.
 - B. Legal counsel will provide regular updates to the Executive Director and/or the Board of Directors regarding its representation of HCAOG when requested by the Executive Director and/or HCAOG's Board of Directors.
- VI. Compensation and Manner of Payment.** Legal Counsel will be compensated only for legal advice or legal representation performed at the express direction of the Executive Director or HCAOG's Board of Directors. Compensation shall include only labor and expenses, to be paid as follows:
- A. **Labor.**
 - 1. Legal Counsel shall bill the labor of its personnel at the rates in **Exhibit A** to this Agreement.
 - 2. Starting on January 1, 2024, and annually thereafter, Legal Counsel may raise the rates described in **Exhibit A** by an amount less than or equal to the consumer price index published by the United States Bureau of Labor Statistics; provided that no annual rate increase shall exceed five percent. If Legal Counsel elects to increase its rates, Legal Counsel shall provide notice to the Executive Director.
 - B. **Expenses.**
 - 1. HCAOG shall compensate Legal Counsel for its actual expenses for the following:

- A. Mileage at the IRS rate in effect when travel occurs;
 - B. Long-distance telephone calls;
 - C. Outgoing faxes at a rate of \$1 per page;
 - D. In-house photocopies at a rate of \$0.20 per page; and
 - E. Any other materials or expenses authorized by the Executive Director at the amount Legal Counsel actually incurs.
2. Legal Counsel shall not charge administrative or other markup on expenses for which reimbursement is sought from HCAOG.
- C. **Manner of Payment.** Payment shall be made in arrears pursuant to written invoices submitted to the Executive Director on a monthly basis. Payment shall be made within 30 days of receipt of invoices to the address provided in the “Notices” section of this Agreement. Such payment shall constitute full and complete payment for the period covered by the invoice.

VII. Files and Records.

- A. All legal files of Legal Counsel pertaining to HCAOG shall be and remain the property of HCAOG. Legal Counsel will control the physical location of such files during the term of this Agreement. Legal Counsel may, in its discretion, maintain all or part of HCAOG’s client file in electronic format. Legal Counsel may store part or all of HCAOG’s electronic documents using secure cloud storage services. If so, Legal Counsel will use all reasonable methods to maintain the confidentiality of HCAOG’s files, just as it does for HCAOG’s non-digital files. HCAOG’s data will be password protected and encrypted using currently available technology.
- B. Legal Counsel shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. If HCAOG asks Legal Counsel to deliver its file to HCAOG, delivery of an electronic version, together with any materials that cannot be saved electronically, satisfies

Legal Counsel's obligation to release all client papers and property to HCAOG. Three years after termination of the attorney-client relationship, and after reasonable notice, Legal Counsel will be free to destroy HCAOG's client file, including all electronic records. Legal Counsel may also discharge its obligation to maintain HCAOG's file prior to the expiration of three years by mailing a copy to HCAOG. "Reasonable notice" means Legal Counsel's mailing of a notice of our intent to destroy your client file to HCAOG.

- C. HCAOG shall have the right to access and examine records of Legal Counsel pertaining to HCAOG, without charge, during normal business hours upon written request, provided, however, that Legal Counsel may protect the confidences of its other clients in providing this information to HCAOG and otherwise comply with applicable law. HCAOG shall further have the right to audit such records, to make transcripts therefrom and to inspect all data, documents, proceedings, and activities upon written request, provided, however, that Legal Counsel may protect the confidences of its other clients in providing this information to HCAOG and otherwise comply with applicable law. Legal Counsel does not permit direct access to its files by clients, but will provide HCAOG access to Legal Counsel's records pertaining to HCAOG as provided herein and upon written request. This same procedure will apply to information stored in the cloud.

VIII. Interest of Legal Counsel

- A. Legal Counsel covenants that he/she 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 services required to be performed under this Agreement. Legal Counsel further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained under this Agreement.
- B. Legal Counsel is generally in the business of providing general and special counsel services to local governments in Humboldt County and elsewhere in California. Provided that Legal Counsel does not provide

services in Humboldt County which create a conflict under the Rules of Professional Conduct, Legal Counsel may continue its practice of providing legal services to local governments in Humboldt County without further consent of HCAOG. Legal Counsel shall not provide services in Humboldt County which create a conflict under the Rules of Professional Conduct without the informed, written consent of HCAOG.

C. Legal Counsel has informed HCAOG that it provides advisory or litigation services to the following entities:

1. Peninsula Community Services District
2. County of Humboldt
3. Humboldt County Community Services District
4. McKinleyville Community Services District
5. City of Fortuna

D. Legal counsel agrees to alert every client for whom consent is required to this conflict of interest provision and to include language in its agreement with said client which would enable Legal Counsel to comply fully with its terms.

IX. Financial Conflicts.

A. Legal Counsel represents that they presently have no material financial interest other than that which may be held by the general public and shall not acquire any interest, direct or indirect, in any contract or decision made on behalf of HCAOG which may be affected by the services to be performed by Legal Counsel under this Agreement. Legal Counsel further agrees that no person having any such interest shall be employed by them. If Legal Counsel or their employees acquire a direct or indirect personal interest, such interest shall be immediately disclosed to HCAOG, and the interested individual shall abstain from any contracts or decisions under this Agreement.

- B. No officer, member, or employee of HCAOG and no member of its governing body shall participate in any decision relating to this Agreement which affects his/her personal interest, or the interest of any corporation, partnership, or association in which he/she is directly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- X. **Resolution of Fee Disputes.** HCAOG is entitled to require that any fee dispute be resolved by binding arbitration in Sacramento County pursuant to the arbitration rules of the Sacramento County Bar Association for legal fee disputes. In the event that HCAOG chooses not to utilize the Sacramento County Bar Association's arbitration procedures, HCAOG agrees that all disputes regarding the professional services rendered or fees charged by Legal Counsel shall be submitted to binding arbitration in Sacramento County to be conducted by JAMS in accordance with its commercial arbitration rules.
- XI. **Applicable Law.** This Agreement shall be construed and interpreted according to the laws of the State of California
- XII. **Assignment.** Legal Counsel shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without prior written consent of HCAOG thereto. Provided, however, that claims for money due or to become due to Legal Counsel from HCAOG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to HCAOG. Any assignment requiring approval may not be further sub-assigned without HCAOG approval.
- XIII. **Changes.** HCAOG may, from time to time, require changes in the scope of the services of Legal Counsel to be performed hereunder. Such changes, including any increase or decrease in the amount of Legal Counsel's compensation, which are mutually agreed upon by and between HCAOG and Legal Counsel, shall be effective when incorporated in written amendments to this Agreement. This section does not affect Legal Counsel's right to increase its rates once annually as provided in this Agreement.

XIV. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

XV. Employees and Equipment. Legal Counsel shall secure at its own expense all employees or contractors and equipment required to perform the services required by this Agreement. All such services will be performed by Legal Counsel, or under Legal Counsel's supervision, by persons authorized by law to perform such services.

XVI. Entire Agreement. This Agreement represents the parties' final and mutual understanding. This Agreement supersedes any previous agreements, oral or written.

XVII. Equal Opportunity. Legal Counsel will not discriminate against any employee, or against any applicant for such employment because of age, race, color, creed, religion, sex, national origin, or any other unlawful basis. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

XVIII. Independent Contractor.

A. Legal Counsel and any agent, subcontractor, or employee of Legal Counsel shall act in an independent capacity and not as an officer or employee of HCAOG. HCAOG assumes no liability for Legal Counsel's action in performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for Legal Counsel. Legal Counsel shall not have authority to act as an agent on behalf of HCAOG unless specifically authorized to do so in writing by HCAOG Executive Director and/or the Board of Directors. Legal Counsel acknowledges that it is aware that, because it is an independent contractor, HCAOG is making no deductions from its fee and is not contributing to any fund on its behalf. Legal Counsel disclaims the right to fee or benefits except as expressly provided for in this Agreement.

- B. Legal Counsel shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of HCAOG, other than normal contract monitoring; provided, however, Legal Counsel shall possess no authority with respect to any HCAOG decision beyond rendition of such information, advice or recommendations unless authorized by the Executive Director and/or the Board of Directors.

XIX. Indemnification

- A. HCAOG and its agents, officers, and employees shall not be held liable for any claims, liabilities, penalties, fines, or forfeitures, or for any damage to the goods, properties, or effects of Legal Counsel or of any other persons whatsoever, nor for personal injury to or death of them, or any of them, caused by or resulting from any negligent act or omission of Legal Counsel or Legal Counsel's agents, employees, or representatives. Legal Counsel further agrees to indemnify, defend, and hold harmless HCAOG and its agents, officers, and employees, against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by HCAOG on account of any claim therefor.
- B. In the event that a court of competent jurisdiction should determine that Legal Counsel does not have the authority to provide by agreement for the provision of the hereinabove-set-forth professional service, Legal Counsel nevertheless agrees to assume the foregoing obligations and liabilities, by which it is intended by both parties that Legal Counsel shall indemnify and save HCAOG free and harmless from all claims arising by reason of any negligent act or omission of Legal Counsel.
- C. Legal Counsel shall exonerate, indemnify, defend, and hold harmless HCAOG from and against, and shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to Legal Counsel and Legal Counsel's employees engaged in performance of this Agreement.

XX. Insurance.

- A. Legal Counsel currently maintains in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Said insurance policy provides coverage to HCAOG for any damages or losses suffered by HCAOG as a result of any error or omission or neglect by Legal Counsel which arises out of the professional services required by this Agreement.
- B. Legal Counsel currently maintains workers' compensation insurance in accordance with Section 3700 of the California Labor Code.
- C. Legal Counsel agrees to notify HCAOG in the event the limits of its insurance should fall below the coverages stated in paragraph A or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

XXI. Interpretation. This Agreement shall be interpreted as though prepared by both parties.

XXII. Notice.

- A. Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

HCAOG: Beth Burks, Executive Director
Humboldt county Association of Governments
611 I Street, Suite B
Eureka, California 95501
(707) 444-8208
Email: Beth.Burks@hcaog.net

Legal Counsel: Conor W. Harkins
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140

Grass Valley, California 95945

(530) 798-2416

Email: CHarkins@chwlaw.us

Payment to: Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

B. Either party may alter its addresses for notice under this Agreement by written notice to the other party at any time.

XXIII. Partial Invalidity. If any part of this Agreement is found for any reason to be unenforceable, all other parts nonetheless shall remain in force.

XXIV. Subcontracts. None of the services covered by this Agreement shall be subcontracted or assigned without the prior written consent of HCAOG, provided however, that this provision shall not apply to secretarial, clerical, technical, and similar incidental services needed by Legal Counsel to assist in the performance of this Agreement. Legal Counsel shall not hire HCAOG employees to perform any portion of the work or services provided for herein including secretarial, clerical, technical, and similar incidental services except upon the written approval of HCAOG. Performance of services under this Agreement by associates or employees of Legal Counsel shall not relieve Legal Counsel from any responsibility under this Agreement.

XXV. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the HCAOG and Legal Counsel survive the termination of this Agreement.

XXVI. Term. This Agreement shall become effective on the date the last Party to execute the agreement does so and shall remain in full force and effect until terminated in accordance with Section XXVII.

XXVII. Termination. HCAOG has the right to terminate Legal Counsel's representation at any time, without cause, subject to an obligation to give notice in writing to Legal Counsel at least thirty (30) days prior to termination. Termination is effective thirty (30) days from the date of the written notice unless

otherwise specified therein. Legal Counsel has the same right, subject to Legal Counsel's ethical obligations to allow HCAOG sufficient notice prior to termination so that HCAOG will be able to arrange alternative representation. In either circumstance, HCAOG agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any action in which Legal Counsel may represent HCAOG. Legal Counsel agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of the Legal Counsel's representation, HCAOG will remain obligated to pay to Legal Counsel all fees and costs incurred prior thereto.

XXVIII. Time is of the Essence. Time is of the essence in the performance of this Agreement.

XXIX. Waiver. The waiver of any breach or any provision of this Agreement does not waive any other breach of that term, or any other term, in this Agreement.

XXX. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement as herein stated.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written.

**HUMBOLDT COUNTY
ASSOCIATION OF GOVERNMENTS**

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

By: _____
Beth Burks, Executive Director

By: _____
Jeffrey A. Walter, Vice-President

Date: _____

Date: _____

EXHIBIT A: RATES

Hourly Billing Rates

As of January 1, 2022

Shareholders, Senior Contract Attorneys, and 7 th Year Associates and more Senior Associates	\$355
6 th Year Associates	\$315
5 th Year Associates	\$300
4 th Year Associates	\$270
3 rd Year Associates	\$255
2 nd Year Associates	\$245
1 st Year Associates	\$235
Law Clerks	\$205
Paralegals	\$180
Legal Assistants	\$125–150