

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

County Counsel

| | |
|---|--|
| Department Contract Representative | <u>Robin Simon</u> |
| Telephone Number | <u>387-5456</u> |
| | |
| Contractor | <u>Kaplan, Kirsch & Rockwell</u> |
| Contractor Representative | <u>Thomas Bloomfield</u> |
| Telephone Number | _____ |
| Contract Term | <u>February 9, 2021 – February 8, 2024</u> |
| Original Contract Amount | <u>\$3,400,000</u> |
| Amendment Amount | _____ |
| Total Contract Amount | <u>\$3,400,000</u> |
| Cost Center | _____ |

IT IS HEREBY AGREED AS FOLLOWS:

This Agreement is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and Kaplan, Kirsch & Rockwell, hereinafter called Attorneys.

WHEREAS, County has determined that it is in the best interest of County to retain Attorneys to advise and assist in the representation of the County in administrative actions and civil actions (and the threat of same) in connection with administrative actions and civil actions (and the threat of the same) in connection with the groundwater contamination in the Chino Basin in the vicinity of the Chino Airport in response to the Cleanup and Abatement Order No. R8-2017-0011 and such other matters as may be assigned; and,

WHEREAS, Attorneys have special skills, knowledge, experience and expertise in the area of groundwater contamination and state law, including but not limited to Porter-Cologne Water Quality Act and federal law, including the Comprehensive Environmental Response, Compensation, and Liability

Act, negotiating agreements regarding treatment plant operations necessary to effectively advise, assist, possibly litigation, and otherwise represent the County on such matters.

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

1. **Representation of County.**

a. County hereby retains the services of Attorneys to advise, represent and assist in the representation of the County, its officers and employees in the matters referred to above in the first WHEREAS clause, and to provide such other advice, services and representation on other matters as may be assigned by the County Counsel.

b. It is understood that Attorneys, in Attorneys performance of any and all duties under this Agreement, except as otherwise specifically provided in this Agreement, have no authority to bind County to any agreements or undertakings.

c. In the performance of all services under this Agreement, Attorneys shall be, and acknowledge that Attorneys are, in fact and law, independent contractors and not agents or employees of County. Attorneys have and retain the right to exercise full supervision and control of the manner and methods of providing services to County under this Agreement. Attorneys retain full supervision and control over the employment, direction, compensation and discharge of all persons assisting Attorneys in the provision of services under this Agreement. With respect to Attorneys' employees, if any, Attorneys shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, whether federal, state or local, and compliance with any and all other laws regulating employment.

2. **Performance of Services and Hourly Rates.**

a. The Office of County Counsel values and appreciates the services provided by contract outside counsel, which augment and supplement our public service objectives. Attorneys shall adhere to County Counsel's "Outside Counsel Services and Billing Guidelines" set forth in Exhibit "B".

b. Attorneys shall prepare and submit case reports or other status reports and recommendations in the form and manner as requested by County Counsel. Attorneys understand that the County Counsel's Office uses Microsoft WORD ("WORD") for all written work products. In order that all written work products of Attorneys in regard to this Agreement are compatible with the County Counsel's system, Attorneys shall produce all written work products using the WORD version of a word processing system.

1. Case Management Plan for Litigation Matters. If Attorneys have been engaged to represent the County in a specific litigation matter(s), Attorneys shall prepare a thorough and complete case management plan ("Plan") substantially following the format set forth in Exhibit "C", Case Management Plan, for each specific matter they are handling. The Plan shall be completed and delivered to the County Counsel in signed hard copy and as a WORD document no later than thirty (30) calendar days (or such other time as mutually agreed by Attorneys and County Counsel) after approval of this Agreement. Thereafter, the Plan shall be reviewed and updated no less than every six (6) months (or such other time as mutually agreed) and any time Attorneys or the County Counsel determines that a significant change in the Plan should be made.

c. Attorneys shall only assign persons to perform services under this Agreement who are approved by the County Counsel and when feasible Attorneys will use lower compensated personnel in order to reduce the costs of services to County. Thomas A. Bloomfield shall be the lead attorney, supervise all Attorneys' work under this Agreement, and be the point of contact between the Attorneys and County Counsel on all matters under this Agreement. The persons listed in Exhibit "A", Standard Hourly Billing Rates, may perform services under this Agreement. The hourly rate for each of the listed attorneys and other persons who may be approved to work under this Agreement shall not exceed the rates listed on Exhibit "A", Standard Hourly Billing Rates. All travel time, including driving, riding, flying, etc., shall be billed to the County at one-half (1/2) the normal hourly rate for the biller involved, unless otherwise authorized by the County Counsel. The County Counsel may approve in writing other attorneys or other persons to work for Attorneys under this Agreement and authorize in writing changes to the rates listed on Exhibit "A", Standard Hourly Billing Rates.

d. Attorneys may charge County for the time spent on telephone calls relating to services under this Agreement, including calls with County Counsel, opposing counsel, court personnel, experts, attorneys and witnesses. Attorneys' legal personnel assigned to perform services under this Agreement may confer among themselves about the substantive legal, tactical, and strategic issues pertaining to the covered matters, with County personnel, and with attorneys and other persons who may have information regarding such matters, as required. When they do confer, each of the Attorneys' legal personnel reasonably required to so confer may charge for the time expended. Likewise, if more than one of the Attorneys' legal personnel is reasonably required to attend a meeting, court hearing, or other proceeding, each may charge for the time spent. Attorneys may charge for waiting time in court and elsewhere and for travel time, both local and out of town, provided that they do not charge the County for any such time when they are also providing services for other clients.

e. Attorneys shall not, without the consent of the County Counsel, communicate any information they reasonably believe is confidential information, whether designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive.

f. The total compensation payable under this Agreement shall not exceed \$3,400,000 absent the County's approved amendment of this Agreement to increase the compensation payable hereunder. The parties agree that Attorneys are not required to or expected to perform services under this Agreement for which they are not compensated.

g. All written and electronic communications with the County, including invoices and billings, shall be conspicuously marked "Confidential - Attorney Client Communication".

3. **Coordination of Services.** Attorneys shall consult with the County through the County Counsel concerning all substantive positions and procedural steps to be taken by Attorneys in the course of advice and representation pursuant to this Agreement. Please refer to Exhibit "B" for specific guidelines.

4. **Billing.** Attorneys shall submit monthly statements to County Counsel for fees and costs for services performed under this Agreement and each monthly statement shall include only that time worked during the calendar month period. Such monthly statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work

time spent, and costs and expenses for which payment is requested under this Agreement. Time charged for travel shall be a separate billing entry. Additionally, such statements requesting reimbursement for costs and expenses must include sufficient back-up documentation, such as invoices or receipts, to support the cost or expense claimed. In the event Attorneys perform services on more than one case or matter under this Agreement, Attorneys shall separately account for work time spent, and costs and expenses for each different case or matter. Fees will be charged in one-tenth hour increments. Subject to Paragraph 10, County's Legal Billing Review, County shall pay Attorneys' fees and expenses within a reasonable time after receipt of billings, not to exceed 60 days following resolution of any billing questions or disputes. Attorneys agree and understand that County is paying on an hourly basis and will not pay for items that are charged on a "value billing" basis. For purposes of this Agreement, value billing is defined as billing time or fees for a task on any basis other than the actual time that was worked by the biller, measured in tenths of an hour. Attorneys understand that County employees are public servants that do not require client development and Attorneys shall not charge County for any client development costs. Attorneys shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Attorneys' designated checking or other bank account. Attorneys shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

5. **Term and Termination.** The term of this Agreement commences on February 9, 2021, through February 8, 2024, and may be extended by mutual written agreement of the Parties for two additional one-year terms. This Agreement may be terminated before expiration as follows: County reserves the right in its sole discretion to terminate this Agreement at any time County Counsel deems necessary or advisable upon ten (10) days notice to the Attorneys. In order that the County may have sufficient time to obtain replacement counsel, Attorneys reserve the right in their sole discretion to terminate this Agreement at any time Attorneys deems necessary or advisable upon thirty (30) days notice to the County. Upon receipt or giving of such notice of termination, Attorneys shall provide no further services to County without specific request or authorization of the County Counsel. Services of Attorneys hereunder shall not be deemed terminated until Attorneys have had an opportunity to, and upon receipt or giving of such notice of termination Attorneys are hereby authorized to, obtain leave of court to withdraw from any court proceeding concerning which Attorneys are attorney of record for County. In the event of any termination of this Agreement, Attorneys shall immediately provide County Counsel with all materials, documents and work product related to services performed under this Agreement that have not previously been provided to County Counsel. All such materials, documents and work product related to services performed under this Agreement are and shall remain the property of the County. Unless otherwise directed by the County Counsel, Attorneys may retain copies of such items.
6. **No Assignment.** The experience, skill and expertise of Attorneys are of the essence to this Agreement. Attorneys shall not assign (whether by assignment or novation) this Agreement or delegate their duties hereunder in whole or in part or any right of interest hereunder without the prior written consent of County Counsel.
7. **Amendment.** This Agreement may be amended or modified only by agreement signed by each of the County Counsel and the Attorneys, and a failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.
8. **Prior Approval.** Unless otherwise instructed by County Counsel, Attorneys must obtain the prior approval of County Counsel concerning the following:

- a. Retention of any consultant or expert witness to assist with this matter;
 - b. Making any settlement proposal on County's behalf;
 - c. Filing any action, response or motion;
 - d. Scheduling any deposition;
 - e. Undertaking research of more than twelve (12) hours on any particular issue; and,
 - f. Any expense item exceeding Five Hundred dollars (\$500.00).
9. **Copies of Work Attorneys Will Provide to County.** Attorneys must promptly provide County Counsel with copies of all:
- a. Pleadings and legal memoranda prepared in connection with any County matter hereunder;
 - b. Court rulings; and,
 - c. Significant correspondence and information related to any County matter hereunder, specifically including, but not limited to responses to the County or independent auditors concerning pending or threatened litigation and/or unasserted claims and assessments.
10. **County's Legal Billing Review.** County shall have the right to review and audit all billing statements prior to or after payment to Attorneys. This review may include, but not be limited to County Counsel's:
- a. Determination that the hourly fee charged is consistent with this Agreement's approved hourly rate schedule;
 - b. Determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;
 - c. Determination that the bill is clearly divided into billing rate categories based on hours worked on each activity for each day by each attorney/person and costs which Attorneys have advanced to witnesses, consultants and experts, depositions, transcript expenses, and other reimbursable expenses; and,
 - d. Determination that each item charged is the usual, customary, and reasonable charge for the particular item. If County Counsel determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, County Counsel shall either return the bill to Attorneys with a request for explanation or adjust the payment accordingly, and give notice to Attorneys of the adjustment.
 - e. The County Counsel and other authorized County representatives shall have the absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of Attorneys in the delivery of services provided under this Agreement. Attorneys shall cooperate with the County Counsel and other authorized County representatives in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by the County Counsel and other authorized County representatives. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County Counsel and other authorized County representatives for a period of three years after final payment under the Agreement or until all pending County audits are completed, whichever is later.

11. **Costs and Expenses.** Attorneys shall bill for their costs and expenses on a pass-through basis as an advance by Attorneys and without any profit or other mark-up.

a. **Reimbursable ordinary costs and expenses** shall be limited to:

1. Deposition fees;
2. Transcript fees;
3. Process service;

b. **Reimbursable extraordinary costs and expenses** shall include charges for which Attorneys have obtained County Counsel's prior approval. Such expenses shall be limited to:

1. Consultants, investigators and experts, their travel, lodging and meals;
2. Witnesses, their travel, lodging and meals;
3. Attorneys out of local area travel, lodging and meals;
4. Any expense item estimated to equal or exceed Five Hundred dollars (\$500.00).

c. **Non-reimbursable costs and expenses** shall include, but not be limited to:

1. Rent, utilities, word processing, couriers, telephone charges, office supplies, support staff, local area travel, lodging and meal expenses, alcoholic beverages of any kind (beer, wine, etc.), Westlaw, Lexis or other provider charges for legal research, postage, faxes and photocopying/document reproduction costs of any type;

2. Charges for time spent to provide necessary information for monthly billing statements and County audits or billing inquiries; and,

3. Charges for work performed and otherwise reimbursable extraordinary costs and expenses which had not been authorized by County Counsel. Such work and costs/expenses shall be a gratuitous effort by Attorneys.

d. The "local area" is defined as any place within fifty (50) miles of any Attorneys' office.

12. **County Counsel's Authority.** Except as specifically limited herein to the County's Board of Supervisors or otherwise, the County Counsel shall have the authority to exercise all County rights and authority under this Agreement. Additionally, the Chief Assistant County Counsel and any Principal Assistant County Counsel may approve reimbursable costs and expenses under Subparagraph 11b, above.

13. **Notices.** All notices, demands, requests, consents, approvals, amendments, changes in assignments or other required communications shall be in writing, and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

Attorneys: Kaplan, Kirsch & Rockwell LLP
Thomas A. Bloomfield
1675 Broadway
Suite 2300
Denver, Colorado 80202

County: Michelle D. Blakemore, County Counsel
County Government Center
385 North Arrowhead Avenue, 4th Floor

or at such other address or to such other persons as either of the parties may from time to time designate by notice given as herein provided. Notice given by mail as required above shall be deemed delivered three (3) County business days after mailing.

14. **Conflicts.**

a. Attorneys shall not undertake the representation of any client in the pursuit of any claim against the County without first obtaining a waiver and consent from the County. Attorneys shall disclose any conflict circumstance to County Counsel and obtain any needed approval or waiver by County and its officers. Any document evidencing such disclosure and any document evidencing such approval or waiver shall be deemed to be a part of this Agreement.

b. Attorneys have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Attorneys agree that they are unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the County may immediately terminate this Agreement by giving notice thereof. Attorneys shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

15. **Insurance.**

a. Indemnification - Attorneys agree to indemnify, defend (with counsel reasonably approved by County Counsel) and hold harmless County and its authorized officers, employees, agents and volunteers ("Indemnitees") from any and all claims, actions, losses, damages, and/or liability (collectively, "Claim") arising out of the conduct of Attorneys under this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by County on account of any claim therefore, but only to the extent that such Claim arises out of a breach of the standard of care by Attorneys applicable to similarly situated professionals, and except where such indemnification is prohibited by law. Provided the Claim is otherwise within the scope of this indemnity as set forth in the prior sentence, attorneys' indemnification obligation applies to County's "active" as well as "passive" negligence but does not apply to County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. Attorneys shall have no defense, indemnity or hold harmless obligation for any Claim arising out of this Contract with respect to the actions of experts retained as subcontractors pursuant to this agreement. The defense, indemnity and hold harmless obligations in this paragraph shall not exceed \$100,000 in the aggregate, except to the extent such obligation is covered by insurance.

b. Insurance - Attorneys agree to provide insurance set forth in accordance with the requirements herein. If Attorneys use existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Attorneys agree to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the agreement services.

Without in any way affecting the indemnity herein provided and in addition thereto, Attorneys shall have a State approved Self-Insurance Program to the levels identified herein or shall secure and maintain throughout the Agreement the following types of insurance with limits as shown:

Workers' Compensation/Employer's Liability - A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code

of the State of California, including Employers' Liability with \$250,000 limits, covering all persons including volunteers providing services on behalf of Attorneys and all risks to such persons under this Agreement.

If Attorneys have no employees, Attorneys may certify or warrant to County that they do not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

Commercial/General Liability Insurance – Attorneys shall carry General Liability Insurance covering all operations performed by or on behalf of Attorneys providing coverage for both bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a) Premises operations and mobile equipment
- b) Products and completed operations
- c) Broad form property damage (including completed operations)
- d) Explosion, collapse and underground hazards
- e) Personal injury
- f) Contractual liability
- g) \$2,000,000 general aggregate limit

Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Attorneys are transporting one or more non-employee passengers in performance of agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Attorneys own no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Professional Liability – Professional Liability Insurance with limits of not less than one million dollars (\$1,000,000) per claim or occurrence and two million dollars (\$2,000,000) aggregate limits or Errors and Omissions Liability Insurance with limits of not less than

one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate limits or Directors and Officers Insurance coverage with limits of not less than one million dollars (\$1,000,000) shall be required for agreements with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

Additional Insured – All policies, except for the Workers’ Compensation, Errors and Omissions and Professional Liability policies shall contain endorsements naming County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for County to vicarious liability but shall allow coverage for County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights – Attorneys shall require the carriers of required coverages to waive all rights of subrogation against County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Attorneys and their employees or agents from waiving the right of subrogation prior to a loss or claim. Attorneys hereby waive all rights of subrogation against County.

Policies Primary and Non-Contributory - All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by County.

Severability of Interests – Attorneys agree to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Attorneys and County or between County and any other insured or additional insured under the policy.

Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A-VII”.

Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by Attorneys or County payments to Attorneys will be reduced to pay for County purchased insurance.

c. Proof of Coverage - Attorneys shall furnish Certificates of Insurance to the County evidencing the insurance coverage at the time the Agreement is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated

or expire without thirty (30) days written notice to County, and Attorneys shall maintain such insurance from the time it commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Attorneys shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

d. Insurance Review - Insurance requirements are subject to periodic review by County. The County's Risk Manager, or designee, is authorized, but not required, to reduce, waive, or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of County. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager, or designee, is authorized, but not required, to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Attorneys agree to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on part of County.

16. **Arbitration.** Arbitration shall be limited to any controversy or claim between the parties concerning Attorneys' billing for professional fees, costs and expenses, and shall be arbitrated under the system and procedures established for such arbitration pursuant to California Business and Professions Code sections 6200 et seq. Judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Such arbitration award will be final and binding upon the parties hereto.
17. **Legal Fees, Costs and Expenses.** If any arbitration or legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs, expenses and attorneys' fees. This paragraph shall not apply to those costs, expenses and attorneys' fees directly arising from any third party legal action against a party hereto and payable under paragraph 15, **Hold Harmless and Insurance.**
18. **Venue.** The parties acknowledge and agree that this Agreement was entered into and intended to be performed primarily in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.
19. **Former County Officials.** Attorneys agree to provide or has already provided information on former County administrative officials (as defined below) who are employed by or represent Attorneys. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals,

partners, associates or members of the business. The information also includes the employment with or representation of Attorneys. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

20. **Exhibits.** All exhibits referred to are attached to this Agreement and incorporated by reference.
21. **Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California without reference to any choice of laws provision.
22. **Improper Consideration.** Attorneys shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement or any contract awarded by County. The County, by notice, may immediately terminate this Agreement or any County contract if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the County with respect to the proposal and award process of this Agreement or any County contract. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement or any County contract has been awarded. Attorneys shall immediately report any attempt by any County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Attorneys. The report shall be made to the County Counsel, the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.
24. **Material Misrepresentation.** If during the course of the administration of this Agreement, the County determines that the Attorneys have made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.
25. **Licenses and Permits.** Attorneys shall ensure that they have all necessary licenses and permits required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations to perform the services under this Agreement. The Attorneys shall maintain these licenses and permits in effect for the duration of this Agreement. Attorneys will notify County immediately of loss or suspension of any such licenses and permits. Failure to maintain required licenses and permits may result in immediate termination of this Agreement.
26. **Consent.** Whenever consent or approval of either party is required that party shall not unreasonably withhold, condition or delay such consent or approval.
27. **Special Terms and Conditions.** None.
28. **Contract.** The above terms and conditions constitute the complete agreement between the parties hereto. This Agreement was jointly prepared by both parties and the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

IN WITNESS WHEREOF, the Attorneys have caused their name to be hereunto subscribed by their proper officer thereunto duly authorized.

COUNTY OF SAN BERNARDINO

Kaplan, Kirsch & Rockwell LLP

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address 1675 Broadway, Suite 3500

Denver, CO 80202

FOR COUNTY USE ONLY

Approved as to Legal Form
►
Kristina M. Robb, Supervising Deputy County
Counsel

Reviewed for Contract Compliance
►

Reviewed/Approved by Department
►
Michelle D. Blakemore, County Counsel

Date _____

Date _____

Date _____

Exhibit "A"

Standard Hourly Billing Rates

Partners:

| | |
|----------------------|------------|
| Thomas A. Bloomfield | \$395/hour |
| Eric Pilsk | \$395/hour |
| Nate Hunt | \$395/hour |

Associates:

| | |
|-----------------------|------------|
| Sara Mogharabi | \$355/hour |
| Samantha R. Caravello | \$335/hour |
| Sarah Judkins | \$335/hour |

Paralegals:

| | |
|---------------|------------|
| William Trull | \$175/hour |
|---------------|------------|

Consultants:

| | |
|-----------------|--|
| Nathan Advisors | Fees and Expenses not to exceed \$25,000 |
|-----------------|--|

EXHIBIT "B"

OUTSIDE COUNSEL SERVICES AND BILLING GUIDELINES

I. GENERAL LITIGATION MANAGEMENT

A. Case Assignment

When a matter is assigned to your firm, an attorney from the Office of County Counsel (OCC) will be your primary contact. All communications and correspondence with regard to the specific legal matter on which you are working should be directed to that attorney.

B. Keeping the OCC Informed

Open and continuous communication between your firm and the OCC is essential to an efficient and effective working relationship. You should keep us advised of significant developments in matters as they occur. Contact us immediately to inform us the results after a court appearance or hearing. You should notify us well in advance of significant motions, depositions, mediation or settlement conference dates, and as soon as trial dates are set. Your responsiveness to our requests and inquiries are critical. We want you to discuss with us in advance whether the following litigation activities are truly necessary, the likelihood of success, how these activities will advance the County's goals and objectives in the case, and whether there are other, more cost-efficient alternatives.

1. Pleadings: Upon receipt of the complaint, you should discuss with the OCC attorney assigned on the matter regarding the type of responsive pleading you recommend in filing (e.g., answer, demurrer, motion to dismiss, etc.) prior to preparing it and the basis for your recommendation. As a matter of practice, demurrers and motions to dismiss should only be filed when there is substantial likelihood that the Court would dismiss one or more causes of action or parties. All cross-complaints must be approved by County Counsel before filing. If the County is the plaintiff, you must discuss with the OCC attorney the appropriate causes of action and relief to be sought well in advance of the filing date. Any proposed Answers to the Complaint (including Amended Complaints, Demurrers, and Motions to Dismiss) must be provided to the OCC attorney with sufficient time in advance of the due date to review it.

2. Discovery: At the outset of the case, you should discuss the overall discovery strategy with us. It is important to propound discovery in a timely manner so you can evaluate the case as soon as possible and advise the County accordingly. Immediately provide the OCC attorney copies of discovery requests, subpoenas and notice of depositions in order to ensure timely response. Responsive records and information typically must be collected from various offices or divisions of the County which require sufficient advance notice. Witnesses who have been subpoenaed for deposition and employed by the County, may not be available on the dates noticed. Similarly, we expect you to advise us of any depositions which you intend to take before they are actually noticed as we may want to attend them. If you believe that a discovery motion should be filed, or if the County becomes the subject of a discovery motion where sanctions are requested against the County, please immediately notify the OCC attorney.

3. **Contact with County Employees:** You should not directly contact County employees regarding any matter assigned to your firm without first obtaining authority from the OCC. The OCC, in consultation with the client department, will determine the most effective and efficient manner of consultation between your firm and client department employees.

4. **Motion for Summary Judgment/Adjudication:** Prior to preparing the motion, you should make a recommendation as to whether a summary judgment motion should be filed, the basis for the motion, the likelihood of success, and the estimated cost. A motion for summary judgment/adjudication should be filed well in advance of the trial date so that it is heard by the Court at least 60 days before trial. By doing so, it will help avoid incurring costs associated with trial preparation prior to the Court's ruling on the summary judgment motion.

5. **Mediations and Settlement Conferences:** You should commence discussion with the OCC attorney as early as reasonably practicable and certainly before preparing a motion for summary judgment/adjudication whether the County should explore mediation or participating in a settlement conference or other alternative dispute resolution process. A pre-mediation or settlement conference report with a discussion of the facts of the case, an analysis of the claims and defenses, the likelihood of success at trial, the estimate for an adverse verdict, and your recommendation on settlement value must be provided at least 30 days prior to the date of the mediation or settlement conference.

6. **Trial:** When a trial date has been scheduled, you must inform the OCC attorney immediately. Once you have determined that a witness employed by the County will be needed to testify at trial, please advise the OCC attorney of this and ensure that the witness is kept apprised of the trial date and any changes to that date. In the months leading to the trial date, you should be engaged in discussions with the OCC attorney to prepare for the County's strategy at trial, necessity to retain experts, preparation of witnesses, etc. This dialogue should include a review of the affirmative defenses to be asserted at trial to ensure consistency with overall County policy, mission and public interest. Discuss whether a trial strategy meeting with the General Counsel should be scheduled at least 20 days before trial.

7. **Media Communications:** If you are approached by the media concerning a County legal matter you are handling, please contact the County Counsel or OCC attorney assigned to your case immediately. You may not speak on behalf of the County to the media unless and until you have obtained approval from the OCC.

C. Providing Copies of Documents Electronically

As a matter of course, please send us copies of all pleadings, motions, briefs, legal research memoranda, discovery, significant correspondence, etc. at the same time they are filed and/or served. Do not send us paper hard copies unless requested to do so. Please send them in electronic format (e.g. PDF via email, dropbox, etc.). When sending us drafts for our review, please send them in sufficient time to allow for a meaningful review by us. Please send unexecuted documents, briefs, memoranda, etc., as e-mail attachments in their native word processing formats. At the conclusion of each case, please send us an electronic copy of the entire file saved in a flash or thumb nail drive.

II. BUDGETING AND REPORTING

Case budgets and case status reports are required for all matters assigned to you by the County. You will need to provide us with a preliminary report and periodic updates as set forth below.

A. Preliminary Report & Budget

1. In matters not involving litigation, please provide a preliminary assessment or workplan and a budget within 30 days of assignment. We will pay up to two hours of attorney time for the preparation of the detailed case assessment and budget plan provided the total budget for the matter exceeds \$200,000. For matters where the total budget is less than \$200,000, we will designate the preparation we will pay for in the matter assignment letter to you.

2. In matters involving litigation, please provide a preliminary case assessment and a budget within 30 days of assignment. We will pay up to three hours of attorney time for the preparation of the detailed case assessment and budget plan provided the total budget for the matter exceeds \$200,000. For matters where the total budget is less than \$200,000, we will designate the preparation we will pay for in the matter assignment letter to you.

3. Case Budget: In preparing the budget, we realize that some events in litigation are beyond your control, so we view the case budget as a planning device, not a guarantee by you. Please give us your best cost estimates based upon the information in your possession. We do expect, however, that you will manage the case to the approved budget and seek adjustments in advance when unforeseen situations arise. To that end, please monitor your expenditures on a regular basis. If you anticipate that the matter will exceed the original budget, please notify us immediately and propose an updated budget with an explanation for the budget overrun for our approval. If you do not, we reserve the right to require you to absorb all or part of the previously unapproved budget overruns. Attorneys should be aware that if Board of Supervisors approval is required for the increased case budget it may take 6-8 weeks to place the item on the agenda.

4. Preliminary Report: It should include a litigation management/strategy plan (in letter format) explaining how you intend to accomplish the County's stated goals and objectives in the case, while disposing of the case as expeditiously and cost-efficiently as possible. It should also contain a risk analysis of the case that will quantify the potential exposure of the County including your best estimate of the County's financial exposure.

B. Periodic Updates

Every month, and no later than the 20th, you will need to send us a written status/progress report on a case, which should include an estimate (based on pre bills) of the amount of the fees and costs that were billed for the prior month and a forecast of the amount that will be billed in the current month. On certain matters as designated by your assigned OCC attorney, we will also request a status/progress report that contains the following information: i) any updated evaluations of potential recovery (where the County is the plaintiff), or potential liability/damages (in defense cases); along with any new facts or information which support your evaluations; ii) any changes in the procedural posture of the case (i.e., trial date), iii) any significant written discovery or any depositions anticipated in the next month; and iv) any motions, hearings, or court proceedings anticipated in the next month.

Send the status report via email and attach to the email an excel spreadsheet which contains the data described above. The cost of preparing this report is attributable to firm overhead and shall be non-billable. Please also advise us in the monthly reports (or sooner if appropriate) of any anticipated periods of intensive or concentrated activity as the case progresses, e.g., many depositions noticed for a short time frame, which might cause the legal expenses to increase sharply.

III. STAFFING AND EFFICIENCY ISSUES

In handling matters for the County, we expect you to staff the case and perform the work as efficiently and cost-effective as possible in the manner described below.

A. Staffing

We want your firm to staff all cases as leanly as possible. As a general rule, we want no more than two (2) attorneys and one (1) paralegal doing most of the work and billing most of the time on a case. We call these individuals the “core” billers. We want you to identify them for us in writing at the outset. They should be drawn from the group of individuals at your firm who have been pre-designated to handle our work. For larger, more complex cases, you need to propose if you need additional “core” billers on the case.

1. Change in Staffing: We also understand that other firm personnel may occasionally have to work on a case because of job departures, vacations, illnesses, schedule conflicts, etc. But we expect this to be the exception, not the rule. We do not expect to see these occasional billers recording more than ten percent (10%) of the total firm time on a case. Overly-fragmented staffing produces duplication of effort and inefficiencies.

2. Regular Staff: All billers at your firm who are working on County cases must be either members, full-time employees, or of counsel attorneys at your firm, unless you notify us in advance to the contrary. Contract, temporary, or part-time personnel, whether attorneys or otherwise, working on County cases may be billed at a reasonable mark-up over and above the hourly rate which they are being paid by your firm to reflect associated administrative and overhead costs. However, the amount of any such markup must first be approved by us; mark-ups shall not exceed 10%.

3. Outside Consultant or Expert: No outside consultants or experts should be retained by you on our behalf without our prior approval. You should list the outside consultants and experts you propose to use in the preliminary case assessment and strategy documentation or in your monthly case status report. The County will pay the reasonable cost of pre-approved consultants/experts, but there shall be no mark-ups by Attorneys.

B. Efficiency

We expect you to adhere to these guidelines unless we decide to waive or modify, in writing, some of the staffing and efficiency guidelines below, as the situation demands, after a discussion between your firm and the OCC attorney on the case.

1. Learning Time: We will not pay for “learning” time or “orientation” time as occasional billers become involved in a case and are brought up to speed on the facts and issues. We expect

you to write off such time on your own initiative. If new or inexperienced attorneys are going to be working on a case in any capacity, we will not pay for "training" time, i.e., time spent on research or other matters which would likely be within the knowledge of more experienced attorneys. If we are retaining your firm for its expertise in a given field, we do not want to have to pay for attorneys to learn that area of the law. We expect you to write off such time. When you deduct/write off such time, the billing statements you submit should reflect the deduction so we can appreciate your reductions.

2. **One Billing Attorney Per Task:** As a general rule, two or more billers should not be performing the same task or activity on a case when one biller is sufficient. We want to avoid unnecessary duplication of effort, but realize that this can sometimes be a judgment call in certain situations. When in doubt, please discuss such situations with us in advance. Generally, only one attorney should bill us for attending depositions, court appearances, and meetings. We expect you to advise us in advance and get prior approval from us before having two or more attorneys attend any meetings, depositions, court appearances, other proceedings in the case, or trial. We reserve the right to require you to absorb all or part of any charges for the involvement of more than one attorney without our prior approval.

3. **Attorney Conferences/Meetings:** While we are willing to pay for office conferences which relate to a given case, we expect to be billed only for the time spent by the most senior individual in attendance. The senior biller should indicate the other individuals in attendance in their time entry for the conference. Please do not bill us for the time spent by additional billers in office conferences by using alternative billing terminology, such as "strategize" or "analyze." Notwithstanding the above, in certain cases we may allow two billers to attend office conferences together, so long as we have pre-approved that practice on the case. If the amount of conferencing time appears out of proportion to the total firm time spent on the case, we will ask you to justify it.

4. **High or Excessive Billing:** If we see individual billers record more than 9 hours in a given day or more than 120 hours per month on a given case, we will expect you to justify that level of billing activity to us unless the matter is in trial or in a critical stage of the litigation. We will expect you to justify any document review charges which seem excessive or disproportionate for the particular task or activity involved, or which seem to involve too many billers without apparent explanation.

5. **Appropriate Biller:** We expect work to be assigned to those individuals who are most appropriate for the task in terms of their competency and experience. Whenever possible in your judgment, please assign a certain task or activity to an attorney billing at a lower hourly rate without loss of competency. For example, we expect that you make liberal use of paralegals for work which does not require an attorney's involvement. Also, a senior attorney should not perform work which can be handled by a more junior attorney. Detailed deposition summaries, e.g., page/line summaries for trial use, should be performed by paralegals, wherever possible.

6. **Non-Billable Work:** We consider clerical, secretarial, and administrative work to be part of law office overhead and non-billable, regardless of who performs it. However, we realize that sometimes billable and non-billable work may be intermixed, e.g., a paralegal who is examining evidentiary documents for privilege before production to the opposing party (billable activity) may simultaneously be sorting, bates-stamping, and labeling them (non-billable work). For such necessary "mixed" work we expect you to use less expensive staff than paralegals, so long as they

are not billing purely for clerical or secretarial work.

7. Research: When we ask you to research, analyze or brief a particular legal issue and report back to us, we require the clearest, most concise answer possible. The quicker the response, the better for our purposes. We should receive copies (in electronic form) of all of your completed written work product in this regard.

8. Email Communication: Unless we specifically ask you to provide a lengthy research memo via email, all email communication should be succinct and concise. We request that you include your professional contact information in your email whether it be sent from your desktop computer, laptop, tablet, cell phone or other device. It will be easier for us to contact you.

9. Technology Use: We expect each firm to identify means of utilizing information technology to make the provision of services to the County more efficient. Also, we expect the firm to cooperate with the County when it takes the initiative and proposes the introduction of efficiency-enhancing information technology. Because the County expects that all firms are introducing new information technology continuously for the general benefit of the firm, it would not pay for its use of such technology except where it was installed and utilized expressly for the County's benefit. In such case, the County must give its approval before such technology is purchased or installed if the firm expects repayment for the work or materials.

IV. AUDITS

The County reserves the right to audit and inspect your law firm, among other things, for compliance with (i) these guidelines; (ii) all other County policies and procedures; (iii) all ethical rules governing attorneys; and (iv) all applicable laws and regulations. The County further reserves the right to audit and inspect your law firm with respect to (i) the reasonableness and necessity of any fees or costs/disbursements billed to the County by your law firm or by any outside experts/consultants whom you retain on behalf of the County; (ii) the propriety of your firm's billing practices with the County; and (iii) your firm's professional liability insurance coverage, or self-insurance, for legal malpractice claims against your law firm. Any costs to your firm, including attorneys' or staff time will be borne by your firm and not billed to the County.

Exhibit "C"

CASE MANAGEMENT PLAN

SAN BERNARDINO COUNTY COUNSEL

DATE:

**CASE NAME:
CASE NUMBER:
COURT:**

**RESPONSIBLE CC DEPUTY:
LITIGATION CC DEPUTY:**

**FIRM NAME:
ADDRESS:
PHONE:
E-MAIL:
FISCAL CONTACT:**

**LEAD ATTORNEY:
DIRECT PHONE:
CELL PHONE:
E-MAIL:**

**OPPOSITION FIRM NAME:
ADDRESS:
PHONE:
E-MAIL:**

**OPPOSITION LEAD ATTORNEY:
DIRECT PHONE:
CELL PHONE:
E-MAIL:**

Please use as much space as needed to thoroughly and completely respond to the following questions. Add additional questions and responses as the case requires.

1. Please state a brief overview/summary of the case.
2. Please state your initial impression of the case based upon currently available information.

3. What is your recommended case strategy at this point?

4. Are there any apparent/potential cross actions to pursue? If so, indicate against whom and why.

5. Are there indications that early settlement should be pursued? If so, indicate why and upon what terms.

ESTIMATED CASE BUDGET

CASE NAME:

Please provide your best preliminary estimates to execute your case management plan in the following areas of activity.

PROJECTED ACTIVITY

TIMING

ESTIMATED COSTS

A. Initial Stages

1. Case evaluation.....
2. Answer and cross-complaints.....
3. Document review.....
4. Client contact.....
5. Expert consultation
6. Other (explain).....

B. Discovery

1. Depositions (including court reporters, witness fees, travel etc.)
2. Interrogatories (requests and responses).....
3. Document production and

- inspection (including travel)
- 4. Site inspection (including travel)
- 5. Other (explain).....

C. Legal Research

- 1. Indicate any special research projects your firm must do.
- 2. Indicate any special research projects required of other firms. Indicate recommended firm.

D. Experts/Consultants/Facilitator

- 1. Indicate any non-legal expert advice or testimony required.....
- 2. Indicate any alternative dispute resolution you would recommend

E. Trial

- 1. Indicate the pre-trial costs
- 2. Indicate the trial costs
- 3. Indicate the appeal costs

Total Time/Costs

F. Other Comments

Lead Attorney Signature _____

Date: _____

REVIEWED (Attach any comments.):

Responsible CC Deputy: _____

Date: _____

Litigation CC Deputy: _____

Date: _____