

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	Tom Bunton
Telephone Number	(909) 387-5455
Contractor	Law Offices of Stephenson Acquisto & Colman
Contractor Representative	Richard Lovich
Telephone Number	(818) 559-4477
Contract Term	Execution until terminated
Original Contract Amount	
Amendment Amount	
Total Contract Amount	
Cost Center	

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

This Agreement is entered into in the State of California by and between San Bernardino County on behalf of Arrowhead Regional Medical Center, hereinafter called the "County", and Law Offices of Stephenson Acquisto & Colman, 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 the recovery of, and where appropriate litigate, accounts referred to it by Arrowhead Regional Medical Center ("ARMC") for underpayment disputes with health plans and other payors and such other matters as may be assigned; and,

WHEREAS, Attorneys have special skills, knowledge, experience and expertise in the area of underpayment disputes with health plans and payors necessary to effectively advise, assist, litigate, 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 Office of County Counsel ("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. Legal action and lawsuits will not be commenced by the Attorneys without the approval of the County Board of Supervisors.

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 the County. Attorneys have and retain the right to exercise full supervision and control of the manner and methods of providing services to the 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 Payment.**

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

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 "B", 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 will not employ any procedures, methods or tactics inconsistent with the policies of the County and shall take no action that will reflect discredit upon County or ARMC's reputation.

d. Attorneys will be paid a contingency fee based on amounts the Attorneys actually recover for ARMC as set forth on Exhibit "C", Fee Schedule. 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.

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. With approval of the County Board of Supervisors, Attorneys will prosecute all necessary lawsuits, initiate such legal or equitable proceedings or other such action as the Attorneys may be directed by the County.

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

h. Attorneys understand that pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), the County is a Covered Entity under HIPAA and that in the course of Attorneys' representation of the County and provision of services under this Agreement, Attorneys may receive protected health information from the County. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Attorneys shall comply with the attached Business Associate Agreement (Exhibit "D", Business Associate Agreement). Attorneys further agree to comply with the requirements of other federal and state laws that apply to the information collected and maintained by Attorneys for services performed pursuant to this Agreement.

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 "A" for specific guidelines.

4. **Billing.** All recoveries that Attorneys obtain on behalf of ARMC under this Agreement shall be made payable to the County. Upon County's receipt of the funds from the recovery, Attorneys shall submit an invoice to the County for the contingency fees it is entitled to receive under Exhibit "C." The invoice must be accompanied by a reconciliation report that shall contain, but is not limited to, account number, name of customer, gross amount collected, reimbursable Legal Costs in accordance with Section 11, contingency fee, and the total amount to be remitted.

In the event that ARMC unilaterally cancels an account wherein court costs have been advanced by Attorneys, the County shall reimburse Attorneys for said costs upon receipt of an invoice for such costs by Attorneys. Attorneys shall maintain detailed case by case itemization of all costs incurred in handling each of the respective claims and shall provide such accountings as may be requested by the County. Attorneys are entitled to fees on claims not resolved as of the effective date of ARMC's unilateral cancellation of accounts or account, based on any amounts ultimately recovered by County/ARMC post cancellation unless the cancellation is due to Attorneys' breach of the terms of this Agreement.

Additionally, any invoices 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.

County shall pay Attorneys' fees and expenses within a reasonable time after receipt of invoices, not to exceed 60 days following resolution of any billing questions or disputes. 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.** This Agreement shall commence on the date it is approved by the County Board of Supervisors and shall remain in full force and effect until terminated 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 both the County Board of Supervisors 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, in addition to other provisions in this Agreement, 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. Commencing or filing any lawsuit, legal action, response or motion;
 - d. Scheduling any deposition;
 - e. Undertaking the representation of any client in the pursuit of any claim against the County;
 - f. Communicating any information Attorneys reasonably believe is confidential information to a third-party; and,
 - g. Incurring any reimbursable extraordinary legal costs, as set forth in Section 11(b).
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 invoices and 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 contingency fee charged is consistent with this Agreement's fee schedule;
 - b. Determination that the costs charged to the County are consistent with the backup documentation for such costs;
 - c. Determination that the necessary approvals were obtained prior to incurring reimbursable costs; and,
 - d. The County Counsel and other authorized County representatives shall have the absolute right to review and audit records, books, papers, documents, corporate minutes, and other documents related to the representation of County 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 his/her 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 related to the services rendered 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. **Legal Costs.** Attorneys shall deduct from any recovery their reimbursable legal costs on a pass-through basis as an advance by Attorneys and without any profit or other mark-up in accordance with this Section.
- a. **Reimbursable Ordinary Legal Costs** shall be limited to:
 - 1. Deposition fees;
 - 2. Transcript fees;
 - 3. Process service;
 - 4. Filing Fees to extent the County is not exempt from such fees;
 - 5. Court Costs including Motion fees to the County is not exempt from such costs.
 - b. **Reimbursable Extraordinary Legal Costs** 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 Legal Costs** 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 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 and any place within the southern California counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura.

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 extraordinary reimbursable costs and expenses under Subparagraph 11b, above.

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

Attorneys: Richard Lovich
Managing Partner
Stephenson, Acquisto & Colman
500 North Brand Blvd. Suite 1450
Glendale, California, 91203

County: Tom Bunton, County Counsel
County Government Center
385 North Arrowhead Avenue, 4th Floor
San Bernardino, California 92415-0140

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. **Hold Harmless and 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 arising out of the conduct of Attorneys under this Agreement, including the acts, errors or omissions of any person employed or retained directly by Attorneys, and for any costs or expenses incurred by County on account of any such claim except where such indemnification is prohibited by law. Attorneys’ indemnification obligation does not apply to claims arising out of County’s “active”, or or “passive” negligence, nor County’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

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) Personal injury
- e) Contractual liability
- f) \$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 for claims not arising from County negligence. 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 on claims not involving County negligence.

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. **Campaign Contribution Disclosures (SB1439).** Attorneys have disclosed to the County using Exhibit E - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the 12 months before the date this Agreement was approved by the County Board of Supervisors. Attorneys acknowledges that under Government Code section 84308, Attorneys are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer for 12 months after the County's consideration of the Agreement.

In the event of a proposed amendment to this Agreement, the Attorneys will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Attorneys or by a parent, subsidiary or otherwise related business entity of Attorneys.

19. **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, San Bernardino County, 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, San Bernardino County, San Bernardino District.
20. **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.
21. **Exhibits.** All exhibits referred to are attached to this Agreement and incorporated by reference.
22. **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.

23. **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. **Electronic Signatures. Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. Attorneys shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Attorneys providing an electronic signature agree to promptly execute and deliver to the other party an original signed Agreement upon request.
29. **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.

[SIGNATURE PAGE FOLLOWS]

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

SAN BERNARDINO COUNTY on behalf of Arrowhead
Regional Medical Center

►
Dawn Rowe, Chair, 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
San Bernardino County

By _____
Deputy

LAW OFFICES OF STEPHENSON ACQUISTO &
COLMAN

(Print or type name of corporation, company, contractor, etc.)

By ► *Richard Lovich*
(Authorized signature - sign in blue ink)

Name RICHARD LOVICH
(Print or type name of person signing contract)

Title MANAGING PARTNER
(Print or Type)

Dated: MAY 28, 2024

Address 500 N. BRAND BLVD
SUITE 1430, GLENDALE, CA
91203

FOR COUNTY USE ONLY

Approved as to Legal Form

►
Charles Phan,

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►
Tom Burton, County Counsel

Date _____

EXHIBIT “A”

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: Prior to initiating any legal action, approval of the San Bernardino County Board of Supervisors (“Board”) must be obtained in a closed session meeting. To facilitate that approval, you must provide to the OCC attorney the proposed Complaint, setting forth all relevant causes of action/claims, at least one month prior to the desired date for the closed session meeting. You must also provide any other information requested by the OCC attorney to determine whether the County should pursue the claims, including, but not limited to the anticipated recovery amount, the likelihood of success, and any foreseeable problems with the proposed lawsuit, such as any potential preemption or statute of limitations issues.

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

1. In matters not involving litigation, please provide a preliminary assessment or workplan

within 30 days of assignment.

2. In matters involving litigation, please provide a preliminary case assessment within 30 days of assignment.

3. 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 your best estimate of the potential recovery by the County.

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. 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.

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

1. 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.

2. 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. 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.

2. 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, related to the representation of County. The County further reserves the right to audit and inspect your law firm with respect to (i) the reasonableness and necessity of any 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 "B"
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.

Other Comments

Lead Attorney Signature _____

Date: _____

REVIEWED (Attach any comments.):

Responsible CC Deputy: _____

Date: _____

Litigation CC Deputy: _____

Date: _____

Exhibit “C”

Fee Schedule

Attorneys shall be compensated by County for its recovery efforts pursuant to the following arrangements:

- **COMMERCIAL INSURANCE CASES/HMO/PPO:** Review denied and disputed claims; follow-up and file administrative appeals for improperly paid or denied claims (including ERISA appeals); file legal action/arbitration if necessary.

Attorneys' fees are 20% of recovery for pre-litigation work or if there is an arbitration or legal action filed, then, 25% for the first \$1,000,000 recovered, 22% of the recovery above \$1,000,000 up to \$2,999,999.99, and 20% of all amounts recovered over \$2,999,999.99 plus reimbursable legal costs as set forth in Section 11 of the Agreement.

- **THIRD PARTY LIABILITY AND WORKERS' COMPENSATION ACCOUNTS:** Review assigned claims where a third party is responsible for payment; perfect appropriate liens; follow-up on such liens; follow-up on all legal proceedings by or on behalf of patient; file legal action if necessary.

Attorneys' fees are 20% of recovery for pre-litigation work or if litigation is filed, then 25% for the first \$1,000,000 recovered, 22% of the recovery above \$1,000,000 up to \$2,999,999.99, and 20% of all amounts recovered over \$2,999,999.99 plus reimbursable legal costs as set forth in Section 11 of the Agreement.

The abovementioned fees are not set by law, but have been negotiated between Attorneys and County.

After judgment, Attorneys will not represent County on any appeal, or in any proceeding to execute on the judgment, unless County and Attorneys agree that Attorneys will provide such services and also agree upon additional fees, if any, to be paid to Attorneys for such services. Services in any matter not described above or in this Agreement will require a separate written agreement.

EXHIBIT "D"
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the Agreement for Legal Services (Contract) by and between San Bernardino County on behalf of Arrowhead Regional Medical Center (hereinafter Covered Entity) and Law Offices of Stephenson Acquisto & Colman (hereinafter "Business Associate" or "Attorneys"). This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and includes the definition set forth in 22 California Code of Regulations (C.C.R.) § 79901(b).
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103, and includes the definition set forth in 22 C.C.R. § 79901(c).
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Detect(ed) shall have the same meaning given to such term under 22 C.C.R. § 79901(f).

6. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
7. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
8. Medical Information shall have the same meaning given to such term under 22 C.C.R. § 79901(l).
9. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
10. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
11. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
12. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

2. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

3. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

4. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

5. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 - a) Name and address of the facility where the breach occurred;
 - b) Date and time the Breach or suspected Breach occurred;
 - c) Date and time the Breach or suspected Breach was discovered or Detected;
 - d) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved, including the person who performed the Breach, witnessed the Breach, used the Medical Information, or the person to whom the disclosure was made;
 - e) Name of patient(s) affected;
 - f) Number of potentially affected Individual(s) with contact information;
 - g) Description of how the Breach or suspected Breach allegedly occurred; and
 - h) Description of the Medical Information that was Breached, including the nature and extent of the Medical Information involved, including the types of individually identifiable information and the likelihood of re-identification.

- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - b) The unauthorized person who had access to the PHI;
 - c) Whether the PHI was actually acquired or viewed; and
 - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
 - c) The risk assessment and investigation documentation provided by BA to CE shall, at a minimum, include a description of any corrective or mitigation actions taken by BA.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes

of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

12. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

15. Direct Liability

BA may be held directly liable under HIPAA and California law for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI and Medical Information, including without limitation, any Breach of PHI or Medical Information, or any expenses incurred by CE in providing required Breach notifications under federal and state laws.

17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

C. Obligations of CE

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
 - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

D. General Provisions

1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality, privacy, and breach notification obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")) and 22 C.C.R. § 79001 et seq. If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI/Medical Information and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI/Medical Information shall survive the termination of the Contract or this Agreement.



EXHIBIT "E"

Campaign Contribution Disclosure (SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. All references to "Contractor" in this Exhibit refer to Attorneys. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: Law Offices of Stephenson, Acquisto & Colman
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
 Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5 No ☒
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: Melanie Joy Stephenson
Laws
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):
 -
N/A
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
N/A	

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
N/A		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):
N/A		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☒ If **no**, please skip Question No. 10.

Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Agreement, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Agreement is being considered and for 12 months after a final decision by the County.