

**UPPER VALLEY WASTE MANAGEMENT AGENCY
AGREEMENT NO. _____**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into effective as of April 20, 2020, by and between the UPPER VALLEY WASTE MANAGEMENT AGENCY, a joint powers agency organized and existing under the laws of the State of California pursuant to Government Code sections 6500 et seq., on the one hand, hereinafter referred to as "the AGENCY," and the law firm of COLANTUONO HIGHSMITH WHATLEY, a California professional corporation, whose business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091, hereinafter referred to as "CONTRACTOR." The AGENCY and CONTRACTOR may be referred to hereinafter variously as "Party" or "Parties."

RECITALS

WHEREAS, the AGENCY wishes to obtain specialized legal services, as authorized by Government Code section 31000 and the JPA Formation Agreement between the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville, to wit: General Counsel services for the AGENCY.

WHEREAS, CONTRACTOR is willing, qualified, and able to perform legal services for the AGENCY; and

WHEREAS, on April 8, 2020, the governing Board of the AGENCY unanimously authorized and directed the AGENCY's Manager or the Board Chair to negotiate and enter into this Professional Services Agreement with CONTRACTOR after four firms submitted proposals in response to AGENCY's request for proposals (RFP).

TERMS

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions contained herein, the adequacy of which is hereby acknowledged by the Parties, the AGENCY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve the AGENCY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall be one (1) year commencing on the effective date first above written and shall automatically extend for additional one (1) year terms thereafter up to a maximum of four (4) additional years, unless terminated in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the Parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to the AGENCY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs

15 (Confidentiality), 20 (Taxes), 21 (Access to Records/Retention), and 27 (Other Representations).

1.1 **Option to Renew.** AGENCY and CONTRACTOR may mutually agree in writing to renew this Agreement for additional terms beyond those described in paragraph 1 above.

2. **Scope and Performance of Services.** CONTRACTOR shall provide the AGENCY those services described in the RFP, attached as Exhibit "A" and hereby incorporated by reference (the "Scope of Services"). The Scope of Services shall be performed by Gary Bell and/or Ryan Reed and other attorneys of CONTRACTOR from time to time with the prior consent of the AGENCY Manager or the AGENCY Board, which shall not be unreasonably withheld.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, the AGENCY shall pay CONTRACTOR for the Services at the rates set forth in CONTRACTOR's proposal dated February 12, 2020, attached as Exhibit "B" and hereby incorporated by reference. The total amount of compensation paid to CONTRACTOR shall not exceed Fifty Thousand Dollars (\$50,000.00) in any one-year term without a written amendment to this Agreement signed by both CONTRACTOR and the AGENCY Manager.

(b) Expenses. No travel expenses will be reimbursed by the AGENCY, except as otherwise provided in CONTRACTOR's proposal. The AGENCY will reimburse CONTRACTOR for other reasonable expenses necessarily incurred by CONTRACTOR in performing the Services, including reasonable photocopying, postage, delivery, court filing, and process serving costs. Computer research costs shall be reimbursed only if prior written consent (by email or letter) is obtained by CONTRACTOR from the AGENCY's Manager authorizing such computer research and charges. No charge or cost in excess of \$300, including engagement of consultants, should be incurred by CONTRACTOR for which CONTRACTOR intends to seek reimbursement from the AGENCY without obtaining written consent from the AGENCY's Manager in advance.

(c) Annual Appropriation of Funds. CONTRACTOR acknowledges that the term of this Agreement may extend over multiple fiscal years. In the event the governing Board of the AGENCY does not appropriate sufficient funds for work and compensation under this Agreement, the governing Board of the Agency or CONTRACTOR may terminate this Agreement by giving prior written notice of such termination to the other Party specifying the effective date thereof at least thirty (30) days prior to the effective date. If this Agreement is terminated by either Party under this paragraph 3(c), CONTRACTOR shall be paid for all work performed up to and including the effective date of termination.

4. **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to the AGENCY of an itemized billing invoice in a form acceptable to the AGENCY'S Auditor staff, which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of

the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. To the extent this Agreement provides for expense reimbursement, requests for reimbursement shall also describe the nature and cost of the expense and the date incurred. CONTRACTOR shall submit invoices not more often than once per month to the AGENCY's Manager identified in paragraph 13 below. AGENCY's Manager will review the billings and, if acceptable, approve the invoices and forward them for payment to the AGENCY's Auditor, no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that the AGENCY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the AGENCY Counsel upon request in a form satisfactory to the AGENCY's Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, the AGENCY's employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that the AGENCY may monitor the work performed by CONTRACTOR. The AGENCY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the Parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, the AGENCY, in addition to any other rights or remedies which the AGENCY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) **Workers' Compensation insurance.** If and to the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement;

including but not limited to, coverage for workers' compensation and employer's liability, and shall provide AGENCY with certification of all such coverage upon request by AGENCY's Manager.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverage, issued by a company licensed (admitted) to transact business in the State of California and/or having an A.M. Best rating of A VII or better:

1. General Liability. Commercial or comprehensive general liability [CGL] insurance coverage (personal injury and property damage) of ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence and aggregate, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, subcontractor, agent, or employee of CONTRACTOR under this Agreement.

2. Professional Liability/Errors and Omissions. Professional liability insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount of ONE MILLION DOLLARS (\$1,000,000) per claim or occurrence.

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage which shall be filed by CONTRACTOR with the AGENCY Manager prior to commencement of performance of any of CONTRACTOR's duties; shall be kept current during the term of this Agreement; shall provide that AGENCY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the insurance coverage referenced in 7(b)(1), the certificate of insurance or endorsements attached thereto shall also name AGENCY, its officers, employees, and volunteers as additional insureds; shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of AGENCY shall pertain only to liability for activities of CONTRACTOR under this Agreement; and shall provide that the insurance provided is primary coverage to AGENCY with respect to any insurance or self-insurance programs maintained by AGENCY. Upon request of AGENCY's Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the relevant insurance policies.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be approved by, AGENCY's Manager, which approval shall not be unreasonably denied. AGENCY's execution of this Agreement shall constitute approval of deductibles or self-insured retentions previously declared by CONTRACTOR.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this

Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless the AGENCY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all negligent, wrongful or willful acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering the Services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of the AGENCY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold the AGENCY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's negligent, reckless, or wrongful actions in this regard.

9. Termination for Cause. If either Party shall fail to fulfill in a timely and proper manner that Party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other Party describing the nature of the breach, the non-defaulting Party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting Party in the manner set forth in Paragraph 13 (Notices). With the prior consent of the governing Board of the AGENCY, the AGENCY's Manager or designee is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of the AGENCY for cause.

10. Other Termination. This Agreement may be terminated by either Party for any reason and at any time by giving prior written notice of such termination to the other Party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by the AGENCY unless an opportunity for consultation is provided prior to the effective date of the termination. With the prior consent of

the governing Board of the AGENCY, the AGENCY's Manager or designee is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of the AGENCY for the convenience of the AGENCY.

11. Disposition of, Title to and Payment for Work upon Expiration or Termination.

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a Party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to the AGENCY, the AGENCY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains the AGENCY data on those portions of digital software hosted by CONTRACTOR and not controlled by the AGENCY ("AGENCY's data"), CONTRACTOR shall promptly return the AGENCY's data to the AGENCY's Manager in a format designated by the Manager and shall subsequently purge the AGENCY's data from CONTRACTOR's systems upon confirmation from the AGENCY that the copy of the data provided to the AGENCY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of the AGENCY, the property of and shall be promptly returned to the AGENCY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only the AGENCY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that the AGENCY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which the AGENCY is a Party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to the AGENCY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by the AGENCY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to the AGENCY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to the AGENCY for damages sustained by the AGENCY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and the AGENCY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to the AGENCY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either Party desires to give the other Party shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

AGENCY

Steve Lederer, Manager
Upper Valley Waste Mgt. Agency
c/o Napa County Public Works
1195 Third St., Room 101
Napa, CA 94559

CONTRACTOR

Gary B. Bell, Esq.
Colantuono, Highsmith & Whatley, PC
420 Sierra College Dr., Ste. 140
Grass Valley, CA 95945-5901

15. **Confidentiality.**

(a) **Maintenance of Confidential Information.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to the AGENCY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of the AGENCY, expressed through its Manager. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to the AGENCY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by the AGENCY.

(b) **Protection of Personally Identifiable Information and Protected Health Information.**

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of the AGENCY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative

safeguards are in place to protect the confidentiality of the AGENCY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to the AGENCY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify the AGENCY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of the AGENCY's Protected Information, or its unauthorized access to or disclosure of the AGENCY's Protected Information, including, but not limited to, mitigation of the breach, cost to the AGENCY of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

16. No Assignments or Subcontracts.

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of the AGENCY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for the AGENCY to withhold its consent to assignment. For purposes of this subparagraph, the consent of the AGENCY may be given by the Manager.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. Amendment/Modification. Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both Parties. In particular, only the AGENCY, through its Manager or designee, or through its governing Board, in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of the Services prescribed herein. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. Interpretation; Venue.

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County

of Napa, a unified court. The venue for any legal action in federal court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of the AGENCY by the State of California pursuant to agreement between the AGENCY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to the AGENCY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall

include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold the AGENCY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that the AGENCY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish the AGENCY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** The AGENCY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after the AGENCY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and the AGENCY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The Parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to the AGENCY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as the AGENCY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of the AGENCY relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, the AGENCY may terminate this Agreement immediately upon giving written notice without further obligation by the AGENCY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that the AGENCY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office"

Statements of Economic Interest as a "consultant", as defined in section 18700.3(a)(2) of Title 2 of the California Code of Regulations.

24. **Non-Solicitation of Employees.** Each Party agrees not to solicit for employment the employees of the other Party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other Party, except that nothing in this Paragraph shall preclude either Party from publishing or otherwise distributing applications and information regarding that Party's job openings where such publication or distribution is directed to the public generally.

25. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

26. **Attorney's Fees.** In the event that either Party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing Party in such litigation shall be entitled to all costs and reasonable attorney's fees actually incurred in connection with such action.

27. **Other Representations.** The AGENCY acknowledges that CONTRACTOR currently represents the Town of Yountville, a member agency of AGENCY. CONTRACTOR is not aware, and the AGENCY hereby represents and warrants that it is not aware, of any past or present adverse interests between the AGENCY and the Town of Yountville that would prevent CONTRACTOR from performing the Scope of Services commencing on the effective date of this Agreement. The AGENCY and CONTRACTOR agree to notify the other promptly of any potential or actual adverse interests between the AGENCY and the Town of Yountville that may arise hereafter. In such an event, AGENCY hereby consents: (a) to CONTRACTOR withdrawing from representing the AGENCY under this Agreement or otherwise, and (b) to CONTRACTOR's continued representation of the Town of Yountville including, but not limited to, in matters related to the AGENCY but unrelated to work previously performed by CONTRACTOR for the AGENCY, provided CONTRACTOR refrains from disclosing to the Town of Yountville confidential communications obtained from the AGENCY during CONTRACTOR's performance of the Scope of Services.

28. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

29. **Compliance with AGENCY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following Napa County policies (which AGENCY generally follows and requires its contracting parties to follow), copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this

Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

30. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

31. **Agreement No. 200103D.** The prior agreement between the AGENCY and the CONTRACTOR entered into on June 17, 2019 and subsequently amended twice, for the review of the AGENCY's franchise agreements, shall terminate upon the effective date of this Agreement, except that the obligation of the AGENCY to pay CONTRACTOR for services rendered thereunder prior to the effective date of this Agreement shall continue in full force and effect. All remaining work to be performed under the prior agreement, as amended, shall be performed under the terms and conditions of this Agreement.

32. **Counterparts/Facsimile Signatures.** This Agreement may be signed in counterparts, which taken together shall constitute one and the same Agreement, and which may be signed and transmitted by facsimile or e-mail. Once this Agreement has been fully executed by both Parties, any signed counterpart shall be equivalent to a signed original for all purposes.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

COLANTUONO-HIGHSMITH WHATLEY, PC

By *Gary Bell*
Gary Bell, Shareholder

"CONTRACTOR"

UPPER VALLEY WASTE MANAGEMENT AGENCY, a
Joint Powers Agency

By *Margie Mohler*
Margie Mohler, Chair

"AGENCY"

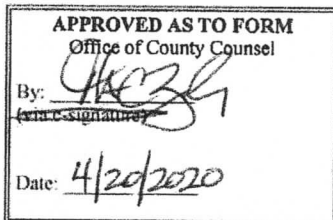


EXHIBIT A
(Agency's RFP)

Request for Proposals

Upper Valley Waste Management Agency Counsel Services General and Liability Legal Services

Contact: Steven Lederer, Agency Manager
Phone: 707-253-4351 Email: steven.lederer@countyofnapa.org

Deadline for Submittal is 4:00 P.M, February 13, 2020

**Upper Valley Waste Management Agency
Request for Proposals
Counsel Legal Services**

The Upper Valley Waste Management Agency (UVA) invites interested legal firms or individual practitioners to submit written proposals to provide legal services for the Agency.

The Agency seeks either a law firm that can provide an individual associated with the firm or an individual to serve as the part-time Counsel for the agency, as well as provide diverse legal services to the organization on a part-time contractual basis.

Proposals from interested legal firms or individual practitioners are due by **4 P.M. Thursday, February 13, 2020.**

UVA Background Information

The Upper Valley Waste Management Agency (UVA) was founded in 1993 as a Joint Powers Authority (JPA) with purpose of setting waste hauling and landfill fees and development of recycling and other diversion programs that are required to meet the mandates of AB 939 (adopted in 1989), and other waste management regulations and mandates subsequently issued. The members of the Agency are the Town of Yountville, the cities of St. Helena and Calistoga, and Napa County. The Agency has a 5 member Board (two members from the County, one for each of the other members), and is staffed primarily by employees from Napa County. The current Agency Manager is Steven Lederer, who is also the County's Public Works Director. The Agency primarily accomplishes its mission through two longstanding Franchise Agreements, one with Upper Valley Disposal Services (UVDS) for collection of waste and recycling, and a separate agreement with Clover Flat Landfill, which owns and runs the only operating landfill in Napa County. The Agency is funded by a \$7.50/ton surcharge on waste disposed of at the landfill and runs an annual operating budget of approximately \$300,000/year.

Counsel services have been provided by Napa County County Counsel for the life of the Agency. The UVA Board has stated that, in the interest of good government, a periodic review and competitive process would be worthwhile to ensure we are providing best value for the tax payer. County Counsel remains in good standing with the Agency and is eligible to reply to this solicitation for services. The current general legal services budget is approximately \$30,000 which does not include litigation and special services costs. We are a small agency that meets 6-8 times per year on average.

Please refer to the Agency's website for more detailed information.
(<https://www.countyofnapa.org/1534/Upper-Valley-Waste-Management-Agency>)

What is the Agency looking for from its Counsel?

The Agency seeks a dynamic and involved Counsel to serve as legal advisor to the Board and staff to support them in the delivery of high quality services consistent with AB 939, other relevant legislation and regulations, and our Franchise Agreements.

The majority of the Agency's anticipated legal services work includes that of legal advisor in Board meetings, and management of the Agency's legal issues as they arise. There is no current or anticipated litigation that the Agency is involved in.

Scope of Service Requested

The Agency is soliciting the interest of qualified professional law firms or an individual to provide a full range of waste related legal services on a part-time contractual basis. The period of contract will be one year, with automatic annual renewals contemplated based on a mutually agreeable working relationship.

The Counsel works for the Board at the general direction of the Agency Manager. The successful applicant must be licensed to practice law in the State of California. A strong generalist background in solid waste services is preferred.

The successful Counsel will be expected to provide the following services, including but not limited to:

1. Represent and advise the Board, Agency Manager, and staff in all matters of pertaining to their role in the organization. Give advice or opinion on the legality of all matters under consideration.
2. Attend and represent the Agency's legal interests at Agency meetings and workshops. Regular meetings are held on the third Monday of every other month in the Yountville Town Hall at 1:30 p.m. On occasion, a meeting may be added or cancelled. The 2020 Agency meeting calendar can be found on the Agency's website.
3. Provide legal opinions, advice, assistance, consultation, and training to the Agency Board, Agency Manager and Agency staff. The range of services routinely include, but are not limited to the following areas of municipal law:
 - a) The Brown Act,
 - b) The Public Records Act,
 - c) Conflicts of interest
 - d) Contracts and franchises
 - e) Real estate and property transactions
 - f) Land use and environmental law (CEQA)
 - g) Enforcement of laws and regulations relating to Solid Waste and Landfills

- h) Pending and current state and federal legislation and court decisions
- i) Fees, rates, taxes, assessments, Propositions 26 and 218

The Agency Counsel will provide assistance to the Agency with regard to litigation and special services. On an as needed basis may be directed to recommend, manage, and monitor performance of selected outside special counsel to provide litigation or other special services.

Submittal Guidelines:

All parties interested in submitting proposals **must** provide specific and succinct answers to **all** questions and requests for information. Please answer the questions in the format and order presented. (Submissions of resumes alone will not be considered responsive to any specific question)

A. Your Qualifications to Provide Services.

In a cover letter, please describe the overall capabilities, qualifications, training, and areas of expertise for the partners/principals and associates that may be assigned to work with the Agency. Include in your response:

1. Name of individual(s) with resumes
2. Length of employment with firm
3. Specialization
4. Legal training
5. Scholastic honors and professional affiliations
6. Date of admittance to California Bar
7. Years of practice
8. Municipal, Solid Waste, or other local public sector experience (include billing summaries for the past five years if appropriate)
9. Knowledge of, and experience with applicable regulations relating to solid waste, waste hauling, recycling, landfills, and related fields.
10. Litigation experience and track record
11. Knowledge and practice of law relating to land use and planning, CEQA, environmental issues, hazardous waste and other related law
12. Experience in the area of contracts and franchises; preparation and review of ordinances and resolutions

13. Experience in the area of the Public Records Act and Brown Act

14. Experience establishing rates for collection and landfill services

15. If the firm, or any of the Counsels employed by the firm, have ever been successfully sued for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information on the nature of the incident, the dates on which the matter began and was concluded, and the results of the situation.

B. Approach to providing Legal Services. Please include a written response which includes answers to the following questions:

1. Specify the individual that you propose for appointment as the Agency Counsel.
2. Specify the individual(s), if any, that you would propose as Assistant or Deputy Counsel and/or who would be designated as competent, substitute/backup legal representation for the agency in the event of the absence or unavailability of the Counsel.
3. Explain your proposed communication structure. Define the standard time frames for response by the Counsel to direction and/or inquiry from the Agency. (E-mail, text message, and phone call).
4. Specify intended office location and information regarding accessibility including hours and days of week for both emergency and regular contact.
5. The Agency utilizes a paperless agenda process using Granicus and Agenda net (a locally developed tool) that Counsel will need to utilize. Please confirm the connectivity of your office to allow this connection.
6. The Agency will require the firm/individual with which a contract is established, prior to commencement of work, to provide evidence of appropriate professional liability insurance, errors and omissions insurance, and workers compensation insurance coverage as needed. Describe how you would provide same and in what coverage amounts.

C. Your Current Practices/Conflict of Interest

1. Please list any political contributions of money, in-kind services, or loans made to any member of the Agency or its Member jurisdictions within the last three years by the applicant law firm and all of its Counsels, (including the Counsel being proposed to represent the Agency).
2. Please list all public clients for which you or your firm currently provide services, or are under retainer.

3. Please list all public clients for which you or your firm previously provided services over the last five years.
4. For the firm and/or the proposed Counsel, please specify current or known future professional commitments in order that the Agency may evaluate your continuing availability for providing legal services to the Agency.

D. Your Professional References

Please provide three professional and three personal references for the individual recommended for appointment. Include with each, the name, address, and work telephone number of the reference.

E. Your Proposal for Compensation to Provide Services

1. It is anticipated that the firm/individual will provide a system wherein basic services are provided under an hourly rate. Please provide alternative compensation structure if not proposing this type of approach.
2. Please include in your proposal the following:
 - a) Proposed hourly rate
 - b) Specific expenses for which firm will claim reimbursement including type and unit rate (i.e. rate for mileage, reproduction of documents, travel expenses, conference registration, if any, etc.)
 - c) Any additional charges or costs
3. The Agency utilizes a standard contract template for Professional Services. A copy is attached. Please identify if you have any exceptions to the proposed terms and conditions.

Evaluation and Selection Process

All proposals are due by 4:00 p.m. on Thursday, February 13, 2020.

1. Proposals will be carefully evaluated for:
 - a) Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government solid waste operations in a small municipal agency setting.
 - b) Capability to perform legal services promptly and in a manner that permits the Agency and staff to meet established deadlines and to operate in an effective and efficient manner.
 - c) Degree of availability and process for quick response to inquiries that arise out of day-to-day operating questions or problems.
 - d) Degree of availability for on-site meetings in a timely manner.
 - e) Degree to which firm and individual Counsels/counsel stay current through continued professional development and active communication with members of the municipal law field.
 - f) Inclusion of the all of the information and documents requested in RFP.
 - g) Written communication skills.
 - h) Proactive Approach to risk avoidance, training and consultation.
 - i) Cost of services.
2. Qualifications and references of the top candidates based upon proposal responses will be verified.

Selection Process

Prescreening will be conducted by Agency Staff, and the most qualified firms will interview with the Agency Board at a public meeting. These interviews are anticipated for March or April. Participation in this interview process will be at no cost to the Agency.

The Agency will utilize an Ad Hoc committee and the Manager to negotiate the terms and conditions of a contract outlining duties and compensation with the selected party, which must then be approved by formal Board action. The Agency Board will formally select the winning candidate. The Agency may terminate the appointment at any time, with or without cause.

Legal services are anticipated to begin on or shortly after May 1, 2020.

Submittal Deadline

Your response to this proposal must be submitted electronically to Steven Lederer, Agency Manager at steven.lederer@countyofnapa.org. Proposals must be received electronically by **4:00 p.m. on Thursday, February 13, 2020**. Late proposals will not be accepted. All proposals received will be confidential and retained by the Agency as appropriate.

The Agency reserves the right to reject all proposals, to request additional information concerning any proposals for purposes of clarification, to accept or negotiate any modification to any proposal, following the deadline for receipt of all proposals, and to waive any irregularities, if such would serve the best interest of the Agency, as determined by the Board.

The Board wishes to retain latitude in its ability to change Counsels and/or law firms should that become necessary. The individual(s) appointed shall serve solely at the pleasure of the Board. The Counsel is not an employee and may be terminated at any time by the Board, with or without cause.

All inquiries regarding this Request for Proposals and current legal services of the Agency should be directed to Steven Lederer, Agency Manager, telephone at (707) 253-4351 or (preferably) by e-mail at steven.lederer@countyofnapa.org.

On behalf of the Agency Board, thank you for your consideration and efforts in responding to our RFP.

Steven Lederer
Agency Manager

EXHIBIT B

(Contractor's Proposal dated February 12, 2020)

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Voice (530) 432-7357
Fax (530) 432-7356

COLANTUONO
HIGSMITH
WHATLEY, PC

Gary B. Bell
(530) 208-5346
GBell@chwlaw.us

February 12, 2020

VIA E-MAIL (steven.lederer@countyofnapa.org)

Mr. Steven Lederer, Director
Upper Valley Waste Management Agency (UVA)
1195 Third Street
Napa, CA 94559

Re: Proposal to Provide General and Liability Legal Services

Dear Board of Directors and Mr. Lederer:

Thank you for the opportunity to propose our services for general and liability legal services for the Upper Valley Waste Management Agency (UVA). We and everyone at Colantuono, Highsmith & Whatley are very pleased to do so.

Enclosed with this cover letter is a formal proposal that addresses the requirements of the Request for Proposals and expands on some of the information provided here. Our Firm is prepared to provide the full range of services identified in the Scope of Service Requested and any other legal services we may be called upon to provide. We propose providing general and liability legal services at the rate of \$215 per hour for general services, \$275 per hour for special services (labor and rate services), and \$315 per hour for litigation, as discussed in more detail in our enclosed proposal. With an annual budget of approximately \$30,000 for legal services, we anticipate these rates to be within the Agency's current budget for legal services excluding litigation.

Names of Individuals with Resumes. We propose my services as the Agency's lead counsel as well as those of Ryan Reed as assistant counsel. Our resumes are included in the enclosed proposal as Attachment E.

Length of Employment with Firm. I am a Shareholder of Colantuono, Highsmith & Whatley, PC and have been employed with the Firm for four and a half years. Ryan is an associate and has been employed with the Firm for one and a half years.

Mr. Steven Lederer

February 12, 2020

Page 2

Specialization. The Firm includes California's leading experts on local government revenues, including Propositions 13, 218, and 26, with a particular focus on setting and defending solid waste, water, sewer, and electricity rates. My specializations include local government revenues, contracts, labor and employment law, conflicts of interest, constitutional law, land use, planning, CEQA, the Brown Act, and the Public Records Act. Ryan's specializations include contracts, labor and employment law, land use, planning, CEQA, the Brown Act, and the Public Records Act.

Legal Training. I currently serve as Town Attorney for Yountville and City Attorney for Auburn as well as general and special counsel for a number of special districts and public agencies throughout California. I graduated from the UC Davis School of Law and, since graduating, have represented California's local governments almost exclusively. I am also actively involved in the continuing education efforts of statewide local government associations. For the past three years, I have served as an editor of Section IV of Chapter 6 (Municipal Services and Utilities: Franchises) of the California Municipal Law Handbook (Cal CEB).

Ryan currently serves as Assistant Town Attorney for Yountville and Assistant City Attorney for Grass Valley, Auburn, and Lakeport. Ryan graduated from the Georgetown University Law Center.

Scholastic Honors and Professional Affiliations. While in law school, I served as staff editor of the **UC Davis Business Law Journal**, a research assistant in constitutional law, and a law clerk in the Governor's Office of Legal Affairs. Prior to law school, I served as a Senate Fellow for the California State Senate in Sacramento, where I staffed the Senate Local Government Committee and worked on legislation of interest to California's local governments. I graduated with Highest Honors from UC Santa Cruz with a B.A. in Psychology.

Ryan graduated from Georgetown University Law Center *cum laude*, receiving the International Academy of Trial Lawyers award for his work in the Georgetown Public Policy Clinic. While in law school, Ryan also served as staff of the **Georgetown Environmental Law Review** where his student note, titled *PACE-Ing Flood Resilience*, was published.

We are both members of the State Bar and the Nevada County Bar Association. I am also a member of the Public Law Section of the State Bar.

Date of Admittance to California Bar. I was admitted to the California Bar in December 2012 and Ryan was admitted in November 2018.

Years of Practice. I have been practicing law for eight years and Ryan has been practicing for one and a half years.

Municipal, Solid Waste, or Other Public Sector Experience (Include Billing Summaries for the Past Five Years if Appropriate). A list of our current general and special counsel clients is included in the enclosed proposal as Attachment A. We have deep experience representing cities, counties, special districts, joint powers authorities, and other local government agencies on a wide range of legal issues. In my capacity as City Attorney for Auburn, I advise regarding its exclusive solid waste franchise, including solid waste rates, franchise fees, and its franchise agreement. In my capacity as both Town Attorney for Yountville and City Attorney for Auburn, I regularly advise regarding rates and revenues for water and sewer. We can advise the Agency on any issue that may arise based on our demonstrated public sector knowledge and experience. We can provide billing summaries for representative clients upon request.

Knowledge of, and Experience with Applicable Regulations Relating to Solid Waste, Waste Hauling, Recycling, Landfills, and Related Fields. We have deep experience advising our general counsel clients — including the cities of Auburn, South Pasadena, Sierra Madre, Ojai, Lakeport, Grass Valley, and Calabasas — regarding the interpretation, enforcement, and amendment of their solid waste franchise agreements. Additionally, we have specifically:

1. Negotiated and drafted a solid waste franchise agreement for the City of Grass Valley.
2. Negotiated and drafted a solid waste franchise agreement for the City of Alameda;
3. Advised the City of Auburn regarding rates in its solid waste franchise agreement and management of its now-closed landfill;
4. Advised the County of San Benito regarding its solid waste franchise agreement with the City of Hollister, the City of San Juan Bautista, and a private hauler for recyclables, organics, and solid waste collection services;

5. We are currently negotiating and drafting an amended agreement between San Benito County and Waste Connections, Inc. under which WCI operates the County' land fill;
6. We are currently negotiating and drafting a solid waste franchise agreement for the City of Lakeport;
7. Advised the City of Richmond regarding its electric and gas franchise, including negotiating a new franchise with PG&E;
8. We are currently defending the City of Santa Barbara's franchise with SCE for the use of its rights-of-way to provide electric services on remand from our victory for the City in the California Supreme Court under Proposition 26 in *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248.
9. Advised the City of Auburn regarding the assignment of its telecommunications franchise agreement; and
10. Drafted numerous ordinances regarding solid waste, telecommunications, and public utility franchises (gas and electricity).

Most recently, I have advised the Agency on recommendations and potential revisions to its franchise agreements for solid waste collection and the landfill.

Litigation Experience and Track Record. A list of our current and past litigation matters is included with the enclosed proposal as Attachment B. In addition to advisory work in all areas of interest to a public entity, our Firm also represents public entities in litigation matters, as needed, from simple code enforcement to complex, cutting edge law impacting public agencies on a statewide basis. Our litigators have broad experience in public-sector litigation and such private-sector topics as general commercial litigation, employment law, and unfair competition. We have a successful litigation track record at all levels, including an extensive practice in the California Courts of Appeal and the California Supreme Court.

Knowledge and Practice of Law Relating to Land Use and Planning, CEQA, Environmental Issues, Hazardous Waste and Other Related Law. We regularly advise our general counsel clients — including the cities of Auburn, Chico, South Pasadena, Sierra Madre, Ojai, Lakeport, Grass Valley, Calabasas, and the Town of Yountville — on all aspects of land use and planning including general plans, zoning ordinances, use

permits, variances, zoning code applications to state and county activities, CEQA, and, when needed, represent these and other clients in litigation regarding these matters. Our attorneys also attend and represent planning commissions and councils at meetings regarding these matters. I have specifically advised the City of Auburn on state and federal laws regarding its now-closed landfill and the remedial measures required by the Central Valley Regional Water Quality Control Board (e.g., the Porter-Cologne Water Quality Control Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

Experience in the Area of Contracts and Franchises; Preparation and Review of Ordinances and Resolutions. In addition to our work regarding franchises mentioned above, I regularly review and draft public works contracts, employment agreements, memoranda of understanding with represented employee groups, and other contracts and releases for my general counsel clients. In my capacity as Town Attorney for Yountville and City Attorney for Auburn, I draft all ordinances proposed or adopted by these agencies. My knowledge and experience drafting ordinances and resolutions include those addressing land use, planning, and zoning, massage establishments, tobacco and alcohol retailers, short- and long-term real property rentals, cannabis, wireless telecommunications facilities, and water, sewer, and solid waste collection and franchises, to name a few.

Experience in the Area of the Public Records Act and Brown Act. I have extensive experience advising on all aspects of the Public Records Act and the Brown Act. For the Public Records Act, I regularly advise my general counsel clients regarding responses and exemptions from disclosure. For the Brown Act, I regularly advise my general counsel clients regarding agendas and agenda descriptions, ad hoc and standing committees, and communications outside agendaized meetings (e.g., emails, social events, public events sponsored by third parties), as well advice during agendaized meetings. Our Firm has also represented many clients in litigation regarding these matters. I am qualified to and routinely provide ethics, Brown Act, and AB 1234 training as well as orientation and best management training for elected and appointed officials.

Experience Establishing Rates for Collection and Landfill Services. We routinely provide advice to our general counsel clients — including the cities of Auburn, Chico, South Pasadena, Sierra Madre, Ojai, Lakeport, Grass Valley, and Calabasas, and the Town of Yountville — regarding solid waste, water, and sewer rates under Propositions 13, 218, and 26, with a particular focus on establishing and defending these rates. Michael Colantuono, the Firm's Managing Shareholder, recently chaired the League of California

Cities Committee that wrote the League's Propositions 26 and 218 Implementation Guide. Our deep knowledge and experience in establishing and defending rates allows us to advise the Agency from the first proposal through litigation if needed.

If the Firm, or any of the Counsels employed by the Firm, Have Ever Been Successfully Sued for Malpractice, Been the Subject of Complaints Filed with the State Bar, or Had Discipline Imposed by the State Bar, Please Provide Information on the Nature of the Incident, the Dates on Which the Matter Began and Was Concluded, and the Results of the Situation. No member of the Firm has been the subject of discipline imposed by the State Bar. The Firm has never been sued for malpractice. Michael G. Colantuono has been the subject of two complaints to the State Bar.

The first was regarding the representation of the City of Calabasas prior to 2004, where an attorney active in Calabasas politics and a condo owners' association accused him of writing *him* rather than the association's counsel of record on a matter. The State Bar closed the matter the same year without action after Mr. Colantuono demonstrated that he reasonably believed that both attorneys represented the association.

The second was while running in an election for judge to the Nevada County Superior Court in 2006, when a Judge of the Nevada County Superior Court who had endorsed his opponent for that bench complained that Mr. Colantuono had used a photo of himself in the robes of a judge *pro tem* (part-time judge) in campaign literature. A confidential opinion of the California Judges Association -- available only to its members -- opined that doing so was a privilege limited to full-time bench officers. When Mr. Colantuono learned of the [secret] opinion, he destroyed the remaining literature and reprinted it with a new photo. The State Bar did not pursue the complaint.

Conclusion. The other talented and dedicated attorneys at the Firm will also be available to assist the Agency. This includes the Firm's founding partner, Michael Colantuono, who is perhaps the state's leading expert on local government revenues, including financing and Propositions 13, 218, and 26. This also includes Terri Highsmith, another Shareholder, who has extensive experience in labor and employment law. Indeed, our Firm currently provides contract legal services to ten cities, numerous special districts, and other public agencies throughout California and is known for our depth of expertise in public revenues, land use and planning, elections, labor and employment, post-redevelopment, housing, public works contracting, utility services, CEQA, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and Local Agency Formation Commissions, cannabis regulation, special districts, public safety and


Mr. Steven Lederer
February 12, 2020
Page 7

police issues, code enforcement, conflicts of interests and the Political Reform Act, and open meetings and records laws among others.

Our core commitment is to provide advice our clients find helpful, understandable, and fairly priced. If we can provide any further information to assist your review of this proposal, please let us know. Thank you for the opportunity to propose our services.

Very truly yours,

A handwritten signature in cursive script that reads "Gary B. Bell".

Gary B. Bell 

GBB:gbb
Enclosures

**COLANTUONO
HIGHSMITH
WHATLEY, PC**

**General Proposal
for
Upper Valley Waste Management Agency's
Counsel for
General and Liability Legal Services**

February 12, 2020

Gary B. Bell, Shareholder
Ryan A Reed, Associate
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945
Voice (530) 432-7357
Fax (530) 432-7356

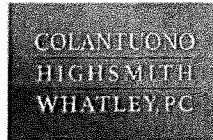
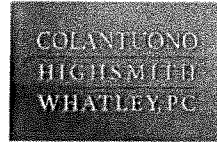


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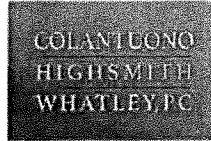
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Grass Valley, CA 95945-5091
(530) 432-7357 | www.chwlaw.us



790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109
(213) 542-5700 | www.chwlaw.us

Attachments

- Attachment A — Public Agency Client List
- Attachment B — Significant Appellate Representations
- Attachment C — Firm Newsletter
- Attachment D — Representative Invoice
- Attachment E — Resumes for Gary B. Bell and Ryan A. Reed



Introduction and Firm Qualifications

Providing Personalized Legal Service to Public Agencies in California

Public agencies throughout California rely on Colantuono, Highsmith & Whatley, PC, to handle all their legal needs. (See Attachment A, Public Agency Client List; Attachment B, Significant Appellate Representations).

Founded in 2002, with offices in Pasadena and Grass Valley, the Firm prides itself on providing understandable, practical, helpful, and fairly priced legal advice. Working almost exclusively with public agencies and drawing on our deep well of public law experience, we handle the full range of legal issues confronting California's cities, counties, and other public agencies. Our core commitment is to provide advice our clients find helpful, understandable, and fairly priced.

We build relationships with our clients that allow us to give our clients ethical, creative, affirmative and intelligent advice and representation, as well as anticipate and find solutions to potential problems. Our experience spans all facets of public agency law facing public agencies, including the Brown Act, the Public Records Act, franchises and rates, election law, conflicts of interest law, land use and planning, public revenues and financing, labor and employment, redevelopment, including the redevelopment dissolution process, the California Environmental Quality Act and any related litigation.

We have advised cities, counties, and other public agencies on all aspects of solid waste franchises from drafting and enforcing franchise agreements to proposing, adopting, and defending rates. We have deep experience forming and advising joint powers agencies through drafting and amending joint powers agreements and working with member agencies to achieve common goals.

Our labor and employment law practice includes advice (including negotiation of MOU's with various bargaining units), training, representation in administrative proceedings, and litigation in a wide variety of matters, including wrongful termination, disability, discrimination, and discipline matters.

Our Approach: Advice Tailored with Your Goals in Mind

We strive to understand the needs of our clients so we can tailor our advice to help them achieve their goals. We can devise creative solutions to complex issues, helping to find the best path to accomplish their objectives. We focus on preventative law directed at addressing legal problems before resorting to time-consuming and expensive

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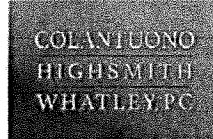
litigation. Often, we find that a matter can be resolved with a shrewd, legally negotiated solution that takes into account and meets the goals of our client and those of the other parties. If litigation is required, however, we are well equipped to vigorously represent our clients' interests in court. At the same time, we look for opportunities to settle litigation and thereby reduce our clients' costs. In working with the Board of Directors, Director, and other Agency staff, we define our role as a member of the team working to help the Agency achieve its goals.

Efficient Team and Modern Resources, Allowing Easy Integration with the Agency

Providing these services is our team that includes 26 attorneys, working from both our Pasadena and Grass Valley offices, both remotely and on-site as needed by our clients. Our offices are staffed Monday through Friday from 8:30 a.m. until 5:30 p.m. each day. The Firm employs paralegals and legal secretaries who specialize in both litigation and transactional matters. Our paralegals support litigation matters in a variety of ways, including preparing documents for discovery responses, managing and preparing exhibits for hearings and trials, and supporting depositions and trials. Our legal secretaries are trained to provide word processing and other support, including use of our sophisticated macro packages to simplify document development. We do not, however, charge for word processing or secretarial overtime. We do not anticipate changes in our staffing if awarded this contract.

We operate on a cloud-based computing system allowing each of our attorneys access to their computer desktop and our firm document library from anywhere with an internet connection. The Firm maintains a comprehensive electronic library of legal memoranda, training materials, and agreements including franchise agreements, ordinances, and documents of every kind which have been prepared for its various public agency clients.

Unlike some firms which charge a flat rate for the firm's work product, we recycle this extensive body of knowledge, charging the client only to update and customize the existing work and pass on the savings to you.



Awards and Recognitions

U.S. News and World Report named the Firm's municipal law practice in its Best Law Firms rankings for 2019. Best Lawyers and Super Lawyers of Northern California has recognized the Firm and individual lawyers for their work. The Daily Journal regularly honors our attorneys as being among the top 25 municipal lawyers in California.

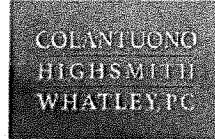
We also value public service. Our attorneys serve in leadership positions with organizations such as the League of California Cities, the International Municipal Law Association, the State Bar, and the Commission on Local Governance for the 21st Century.

Wide-Ranging Municipal Law Experience

As part of our everyday practice, we have drafted legislation on every imaginable topic of interest to a public entity, as well as supporting staff reports. We regularly review and draft simple and complex agreements including but not limited to franchise agreements, agreements pertaining to real property (whether for acquisition or regulation), construction and subdivision agreements, professional services agreements, memoranda of understanding with represented employee groups, and public works project bidding documents. We also regularly advise cities and other public agencies on election law issues, from advising clients on initiatives and referendums, to preparing ballot measures, arguments for and against and, of course, impartial analyses.

The Firm also maintains a labor and employment team, of which Ms. Terri L. Highsmith is lead counsel with assistance as needed from Ms. Holly O. Whatley and Mr. Matthew T. Summers in both transactional and litigation matters. Ms. Highsmith has more than 25 years of experience advising public agency clients regarding all aspects of public employment law. Our labor and employment law practice includes advice, training, and representation in administrative proceedings and litigation in a wide variety of matters, including wrongful termination, disability and other discrimination, discipline, and leaves. We have also advised clients through alternative dispute resolutions for labor matters, including complex employee discipline cases subject to binding arbitration.

The Firm includes California's leading experts on local government revenues, including Propositions 13, 26, and 218. Michael Colantuono, the Firm's managing shareholder, leads the team on all public financing matters, with a particular focus on setting, defending, and challenging retail and wholesale water, sewer, and electricity



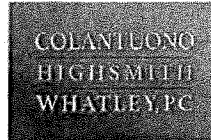
rates. He recently chaired the League of California Cities Committee that wrote the League's Propositions 26 and 218 Implementation Guide.

In addition to advisory work in all areas of interest to a public entity, our firm also represents public entities in litigation matters as needed, from simple code enforcement to complex, cutting edge law impacting cities on a statewide basis. Our litigators have broad experience in public-sector litigation and such private-sector topics as general commercial litigation, employment law, and unfair competition. We have a successful litigation track record at all levels, including an extensive practice in the California Courts of Appeal and the California Supreme Court. (A list of examples of some of the Firm's significant appellate representations is included as Attachment B.)

Our attorneys are among a small number of attorneys in private practice with deep expertise in LAFCo law, the Cortese-Knox-Hertzberg Act. We have advised clients on annexations, the creation of subsidiary districts, spheres of influence and municipal service reviews, as well as handling a number of significant LAFCo-related litigation matters. Although we do not serve as "bond counsel," we are experienced in drafting components of Official Statements and in interpreting bond covenants and purposes.

Proposed Team for Legal Services

We propose Gary Bell as lead counsel. He has specialized in representing public agencies for his entire legal career and currently serves as Town Attorney for Yountville and City Attorney for Auburn, as well as general and special counsel for a number of special districts and other local public agencies. He is an experienced legal advisor at public agency meetings and is well poised to advise on all aspects of the Agency's operations. He would be supported by Ryan Reed as assistant counsel. Complete resumes for Gary and Ryan are included as Attachment E. Information about these and all of our other talented attorneys that will be available to assist the Agency can be found on our website at: <http://chwlaw.us/attorneys>. In the unlikely event both Gary and Ryan are unavailable to assist, David Ruderman, Senior Counsel in our Grass Valley office, will be available to do so.



The following are brief summaries of the training and experience of the team:

Gary B. Bell — Proposed Lead Counsel

- *Specialization:* Municipal and public law, including public finance, rates and revenues, land use, CEQA, public works contracting, contracts, waste collection franchises and agreements, labor and employment law, constitutional law, code enforcement, conflicts of interest, the Brown Act, the Public Records Act, and post-redevelopment issues.
- *Legal Training and Education:* J.D., 2012, UC Davis School of Law
- B.A., Psychology, 2008 (Highest Honors), UC Santa Cruz
- *Scholastic Honors and Professional Affiliations:* Member, State Bar of California; Municipal Law Handbook 2016, 2017 & 2018 editions; Member, Nevada County Bar Association; Member, Public Law section of the State Bar of California
- *Date of Admittance to California Bar:* 2012 | *Years of Public Law Practice:* 8

Ryan A. Reed — Proposed Assistant Counsel

- *Specialization:* Municipal and public law, including contracts, labor and employment law, land use, planning, CEQA, the Brown Act, and the Public Records Act.
- *Legal Training and Education:* J.D., 2018 (*cum laude*), Georgetown University Law Center
- B.A., History, 2015, UC Davis
- *Scholastic Honors and Professional Affiliations:* Member, State Bar of California; Municipal Law Handbook 2019 edition; Executive Committee, Nevada County Bar Association Legislative Committee, California Association of Local Agency Formation Commission
- *Date of Admittance to California Bar:* 2018 | *Years of Public Law Practice:* 1.5



Structuring the Working Relationship

We see our relationship with the Board of Directors and other decision-makers to be that of a counselor and service provider. We do not attempt to direct policy decisions, but rather, offer solutions to help you reach the desired outcome. We identify the various options and risks involved with each choice. We understand that the Agency Counsel is not a policy maker or a manager but rather assists those in these positions with accurate, timely, and helpful advice. We often work closely with management and staff. That said, our client is the Board of Directors and the duty of loyalty resides there.

Accessibility and Timely Response Time

Accessibility is of vital importance in the relationship between the Board of Directors, the Director, and the Agency Counsel. We have a policy of returning all client calls within 24 hours or less. Gary is easily accessible via smartphone for telephone calls and emails. He will make himself available on an as-needed basis for any in-person meetings, in addition to all Board meetings.

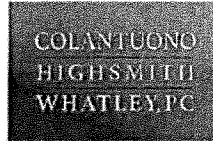
Communication from Boardmembers and the Director are of the highest priority and are addressed as soon as possible.

Assignments are logged and tracked not only by the Agency Counsel but by the legal assistant to ensure that assignments are responded to in a timely manner.

Project Reporting

We provide regular status reports including immediate updates on any significant legal developments, and quarterly or monthly reports on pending matters such as major projects or litigation. We can also provide a monthly significant activities report, apprising the Board of Directors and Director on the status of major projects. More importantly, we strive to have regular personal contact with staff and Boardmembers so that the written information our clients receive never comes as a surprise.

We also regularly communicate in writing with our clients and management by email and memoranda as projects progress, legislation develops, and new cases are decided. When significant new cases are issued, we provide updates to the Board of Directors and Director describing the case, its impact, and required or recommended changes in the Agency's practice. A recent example of this was the Supreme Court's decision in 2017 finding that emails on non-agency servers were nonetheless public



records if sent or received by public officials. We had warning via the Supreme Court's tracking system, of the impending opinion the day before, advised our clients to complete pending records request responses that day under the old regime, then on the day the case came down, advised clients on immediate next steps to implement the ruling.

We work to anticipate when the Board of Directors may need to act on a matter and advise on the relevant options as early as possible. Additionally, the Firm publishes a quarterly newsletter addressing various issues of interest to our clients. (Attachment C). Typically, this includes articles of interest relating to developments and trends in case law and legislation on land use, employment law, CEQA development, and public financing. The newsletter is provided at no cost.

Keeping Policy Makers Informed

We track the progress of legislation likely to impact public agencies, as well as significant case law developments and forward this information to our clients on a "shared cost" basis for those clients for which the information is relevant. We provide these legislative updates and significant case law developments as they become applicable. Generally, the Agency would receive legislative updates by or before the first quarter of the year when most new legislation is applicable.

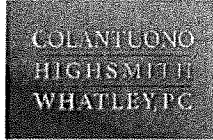
Office Location, Staffing and Accessibility

Gary and Ryan both work from our Grass Valley office and will be the primary handling attorneys for the Agency. The Firm has a team of 26 attorneys, working from the Pasadena and Grass Valley offices, both remotely and on-site as needed by our clients. While attorneys from the Pasadena office may work on an occasional project, attorneys in the Grass Valley office will provide primary support services.

Our offices are staffed Monday through Friday from 8:30 a.m. until 5:30 p.m. each day. Gary and Ryan, and other attorneys, are available for calls any time of day, including weekends.

The Firm employs paralegals and legal secretaries who specialize in both litigation and transactional matters. Our paralegals support litigation matters in a variety of ways, including preparing documents for discovery responses, managing and preparing exhibits for hearings and trials, and supporting depositions and trials. Our legal secretaries are trained to provide word processing and other support, including use of

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our sophisticated macro packages to simplify document development. We do not, however, charge for word processing or secretarial overtime.

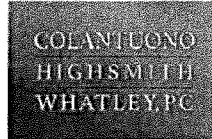
We do not anticipate changes in our staffing if awarded this contract.

We operate on a cloud-based computing system allowing each of our attorneys access to their computer desktop and our firm document library from anywhere with an internet connection. Our system allows for access to Granicus and Agenda net, for the Agency's agenda processing needs. The Firm also maintains a comprehensive electronic library of legal memoranda, training materials, and agreements, ordinances, and documents of every kind which have been prepared for its various public agency clients. Unlike some firms which charge a flat rate for the Firm's work product, we recycle this extensive body of knowledge, charging the client only to update and customize the existing work and then pass on the savings to the client.

As for office hours, we are available to provide on-site services before regularly scheduled meetings or at other times if the Agency wishes. Depending on the needs of the Agency, other arrangements can be made to address in-person advice.

Insurance Coverage

The Firm carries insurance coverage at standard appropriate limits amenable to all clients. We maintain in full force and effect a professional liability insurance policy, including non-owned automobile coverage, professional errors and omissions insurance, and workers' compensation insurance in accordance with Section 3700 of the California Labor Code. Coverage limits are as follows: \$2,000,000 per occurrence and \$2,000,000 aggregate for non-owned and any-auto automobile coverage, and \$4,000,000 professional errors and omissions. The Agency will be included as additional insured, and the Firm agrees to notify Agency in the event the limits of its insurance should fall below the required coverages or if the insurance policies are allowed to lapse or materially changed and substitute insurance is not obtained. We will provide certificates of insurance or other proof as required by the Agency should we be selected.



Transmittal of Assignments

We are adept at working together with our clients remotely, using email, Dropbox, and other online systems to assist with preparation and review of agenda items and staff reports, warrants, contracts, and other legal documents. We are familiar with and have used Granicus, the Agency's agenda management software.

We find that emailing assignments to the Agency Counsel and their support staff allows for the work to be completed in the most expedient manner. As our relationship becomes established, additional methods of transmission can be created.

Meeting Participation Style

We aim to tailor our services based on the need. When speaking at a Board meeting, for example, we attempt to explain a complex legal issue in layman's terms at a public meeting so your constituents can understand, while providing enough reasoning to ensure comprehension and the basis for our opinion. Or, when speaking with opposing counsel in a contested hearing we adapt our tone and language to match. In Board and other public meetings, Gary generally speaks only as necessary, respecting the advisory role of the attorney and to avoid wading into a policy-making role. However, he also takes his cues from the Boardmembers, adjusting to the unique needs of each body. An effective meeting begins well before the agenda is published, and Gary works to ensure he is on the same page as Boardmembers and staff. Some meetings require the counsel to be an active parliamentarian while others need only a legal question or two answered.

Political Contributions and Potential Conflicts of Interest: None Identified

Neither the Firm nor any of its attorneys have made political contributions of money, in-kind services, or loans to any member of the Agency or its member jurisdictions (County of Napa, Town of Yountville, City of St. Helena, City of Calistoga) or any of their elected or appointed officials or staff. The Firm also has a policy of not providing political contributions to current or prospective members of legislative bodies which we represent. Several members of the Firm have provided contributions to candidates in state and federal races, but none involve local elected officials.

We are not aware of any foreseeable conflicts of interest between the Agency and our current clients, with the exception of our representation of the Town of Yountville. If



selected, we anticipate no difficulty securing a consent to joint representation and any other required documentation so we may represent both agencies. As new matters arise for our existing clients or potential new clients, we complete a comprehensive conflict check for each proposed new client or matter to identify any possible conflicts of interest, then either refuse the representation or secure client consent to the representation, as appropriate for each matter. Further, while we may occasionally represent a private client, we have only done so when we can be certain that the private matter cannot pose a potential conflict of interest with any of our public clients. Accordingly, we can also state that we have no private clients which could potentially pose a conflict of interest should we represent the Agency.

The Firm is not engaged in any litigation on behalf of any other client relating to any contractor/franchisee with the Agency. The Firm is not aware of any representation of any current or former clients where a conflict of interest has been identified. In the event that a conflict should arise, the Firm will work to inform all parties of the potential conflict and work towards appropriate resolution, including withdrawal from representation as it pertains to such matter(s) if necessary or required.

Current Clients

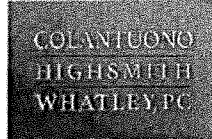
The Firm represents public entity clients almost exclusively. The Firm currently serves as City Attorney for the following California municipalities: the cities of Auburn, Chico, Grass Valley, Yountville (Town), Barstow, Calabasas, Ojai, Sierra Madre, and South Pasadena.

A more comprehensive list of the Firm's public agency clients, both current and within the past five years, is provided in Attachment A. The clients marked with an asterisk (*) are those for whom we provide general counsel services. All others receive specialized legal services. To protect client confidentiality, we do not generally disclose the nature of the specialized services we provide for specific clients unless that information is public. If there is a particular client for whom you would like to know the nature of our work, we will provide that information if public, or seek their consent.

On-Going Commitments

In his role as Town Attorney for Yountville, Gary attends meetings on the first and third Tuesday of each month. In his role as City Attorney for Auburn, Gary attends meetings on the second and fourth Monday of each month. His other general and special

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counsel clients do not require regular meeting attendance. Thus, no current or known future professional commitments exist which would preclude the ability of Gary, Ryan, or the Firm from providing the Agency with the legal services contemplated under this Request for Proposal including attendance at the Agency's regular meetings on the third Monday of every other month and special meetings.

References

Although our firm is well known in local government, the following professional references are especially familiar with Gary's work:

City of Auburn

Robert Richardson, City Manager
1225 Lincoln Way
Auburn, CA 95603
Email: RRichardson@auburn.ca.gov
Telephone: (530) 823-4211

Town of Yountville

Steven Rogers, Town Manager
6550 Yount Street
Yountville, CA 94599
Email: SRogers@yville.com
Telephone: (707) 944-8851

City of Grass Valley

Tim Kiser, City Manager
125 East Main Street
Grass Valley, CA 95945
Email: timk@cityofgrassvalley.com
Telephone: (530) 274-4312

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Additionally, the following personal references are provided:

Justine Lescroart Kastan
Rutan & Tucker
3000 El Camino Real Suite 200
Palo Alto, CA 94306
Email: JKastan@rutan.com
Telephone: (650) 320-1506

Joshua Kastan
201 Spear Street, Ste. 1100
San Francisco, CA 94105
Email: JNK@dkmlawgroup.com
Telephone: (415) 226-7400

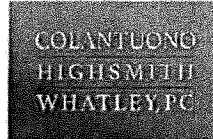
Corrie Manning
League of California Cities
1400 K Street
Sacramento, CA 95814
Email: cmanning@cacities.org
Telephone: (916) 658-8200

We would be happy to provide additional references upon request. If you would like to speak to elected officials with whom we have worked, let us know and we can provide additional names and contact information for that purpose.

Compensation and Proposed Agreement

We have no exceptions to the Agency's proposed agreement. We propose providing all legal services, with the exception of special services and litigation mentioned below, at the rate of \$215 per hour including those services listed in the Request for Proposals:

1. Represent and advise the Board, Agency Manager, and staff in all matters pertaining to their role in the organization including advice and opinions on the legality of all matters under consideration;



2. Attend and represent the Agency's legal interests at Agency meetings and workshops (including regular meetings on the third Monday of every other month and other meetings as requested);
3. Provide legal opinions, advice, assistance, consultation, and training to the Agency Board, Agency Manager and Agency staff on the following issues as well as any others requested:
 - a. The Brown Act,
 - b. The Public Records Act,
 - c. Conflicts of interest,
 - d. Contracts and franchises,
 - e. Real estate and property transactions,
 - f. Land use and environmental law,
 - g. Enforcement of laws and regulations relating to solid waste and landfills, and
 - h. Pending and current state and federal legislation and court decisions.

We propose providing the following special services at the rate of \$275 per hour:

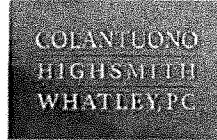
1. Labor and employment advice and representation, and
2. Fees, rates, taxes, assessments, and Propositions 13, 218, and 26.

Finally, in the event needed, we propose providing litigation services at the rate of \$315 per hour.

Cost Control and Monitoring

The Firm is very sensitive to the need to control costs, recognizing that public money and public trust are at stake. We develop cost management strategies in cooperation with our public clients to ensure the most effective and efficient use of our services.

In our periodic reports on work we handle for the Agency, we will identify opportunities and strategies to contain costs, such as by providing a template for staff to use in completing routine contracts, rather than drafting a bespoke contract each time. These reports will assist the Agency in determining how best to dispose of work and avoid the common situation where matters are allowed to flow along, generating bills for



the Agency, well past the point where a considered judgment should be made regarding the settlement or disposition of the matter. Managing the cost of legal services requires a team effort and we will make every effort to provide the Agency with the information needed to help control the cost of legal services, whether provided by our firm or other counsel.

The Firm also frequently shares costs among our many municipal clients throughout the State of California. For example, we provide annual and periodic legislative updates, as well as important and relevant case law updates and direction to our public agency clients, with each agency paying a proportionate fraction of the total cost of research and preparation of the memoranda. Further, we keep legal bills to a minimum by utilizing research and documents previously drafted, and only billing for the time spent in updating and tailoring a matter to the particular client's needs.

Specific Expenses

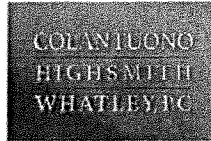
We will not charge the Agency for travel for general legal services but propose to do so for litigation including traveling to and from court appearances. We charge 20 cents per page for in-house photocopies, one dollar per outgoing page for facsimile transmissions and mileage at the IRS rate. As to other costs, we simply pass on to the Agency, without mark-up, the costs of any expenses incurred, such as outside copying, Federal Express charges, etc. We do not charge for word processing or secretarial overtime. Moreover, the Firm does not charge additional fees for basic computer-assisted research or investigation. In the event a separate fee is charged to the firm for unusual research, we would pass that expense on to the Agency without mark-up and only with the prior approval of the Agency. We will also agree not to charge the agency for office support services and similar operational costs.

Invoicing and Statements

The Firm shall submit to the Agency, within thirty (30) days after the end of each calendar month, an itemized statement of the professional services provided and the time expended to provide those services in the form customarily submitted by the Firm to clients. An example of such invoice is provided as Attachment D.

Additional reporting in concert with risk management staff is typically done on a quarterly basis to discuss current and future handling of cases. Annual reports are also typically provided to auditors based on such quarterly reports.

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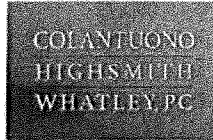


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Litigation or Settlement Assessment

Deciding whether to settle a lawsuit early or fight vigorously through the Court of Appeal depends on the Agency's goals. We advise clients on the likelihood of success, the options and risks of various strategies, and the larger implications for cases and possible settlements. Each case is different, of course, but some cases call out for quick settlement and others are worthy of fighting. We often recommend settlement when litigating a case to conclusion is unlikely to benefit the Agency at a sufficient level to justify the costs of litigation. Further, if litigation is necessary, we recommend the Agency authorize us to provide a biannual detailed report on all outstanding litigation matters which shows legal costs to date, the status of settlement discussions, and the status of the litigation. This is a powerful tool to make sure that litigation files do not "sleep" or drag on well past the point when the Agency's budget would be better served to settle.

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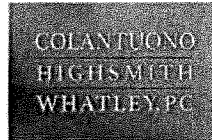


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Attachments

- Attachment A — Public Agency Client List
- Attachment B — Significant Appellate Representations
- Attachment C — Firm Newsletter
- Attachment D — Representative Invoice
- Attachment E — Resumes of Primary Handling Attorneys

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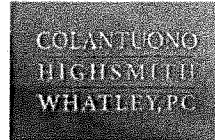
Attachment A

Public Agency Client List

The Firm is general counsel to those agencies marked with an asterisk (*)

- Anaheim, City of
- Antioch, City of
- * Auburn Urban Development Authority
- * Auburn, City of
- * Barstow Redevelopment Agency/Successor Agency
- * Barstow, City of
- Belmont, City of
- Benicia, City of
- Brentwood, City of
- Broad Beach Geologic Hazard Abatement District
- Burbank, City of
- * Calabasas, City of
- Calaveras County Local Agency Formation Commission (LAFCo)
- Calleguas Municipal Water District
- * Camarillo Health Care District
- Central Coast Water Authority
- * Chico, City of
- Coachella Valley Water District
- Norwalk Basin Water Conservation District
- ChangeLab Solutions (formerly Public Health Institute)
- Chula Vista, City of
- Cupertino, City of
- * East Norwalk Valley Consortium dba "LA Works"
- El Cajon, City of
- El Dorado Irrigation District
- Escondido, City of
- First Five Yuba
- Fresno, City of
- * Garden Valley Fire Protection District
- Glendale, City of
- Goleta, City of

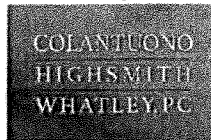
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- Goleta Water District
- Goleta West Sanitary District
- * Grass Valley, City of
- * Higgins Fire Protection District
- Humboldt, City of
- Huntington Beach, City of
- Huntington Park Oversight Board
- Imperial Irrigation District
- Incorporate Olympic Valley
- * Lakeport, City of
- Lakewood, City of
- Lathrop, City of
- Livermore, City of
- Lodi, City of
- Long Beach, City of
- Los Angeles, City of
- * Los Medanos Community Healthcare District
- Marin Municipal Water District
- Marina, City of
- Mariposa County
- Midpeninsula Regional Open Space District
- Modesto Irrigation District
- Montecito Water District
- Monterey, City of
- Monterey County Local Agency Formation Commission (LAFCo)
- Monterey Peninsula Water Management District
- Mountain View, City of
- Nevada County
- Newhall County Water District
- Newport Beach, City of
- North San Juan Fire Protection District
- Ocean Avenue Association
- * Ojai, City of
- * Ophir Hill Fire Protection District
- Orange County Mosquito and Vector Control District
- Orange County Local Area Formation Commission (LAFCo)

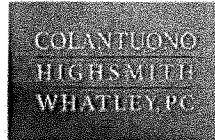
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- * Orangeline Development Authority (Eco-Rapid Transit)
 - Oxnard, City of
 - Pacific Grove, City of
 - Pajaro Valley Water Management Agency
 - Palo Alto, City of
 - Paramount, City of
 - Pasadena, City of
 - Pico Rivera, City of
 - Pomona Oversight Board
 - Poway, City of
 - Redding, City of
 - Rialto Oversight Board
 - Richmond, City of
 - Riverside, City of
 - Riverside County
- * Rough & Ready Fire Protection District
 - San Benito County
 - San Bernardino County
 - San Bernardino Local Agency Formation Commission (LAFCo)
- * San Bernardino Oversight Board
 - San Diego, City of
- * San Diego County Local Agency Formation Commission (LAFCo)
 - San Diego County Water Authority
 - San Diego Unified Port
- * San Gabriel Oversight Board
 - San Juan Capistrano, City of
 - San Jose Water Company
 - San Luis Obispo, City of
 - San Luis Obispo County Local Agency Formation Commission (LAFCo)
 - San Marcos, City of
 - Santa Ana, City of
 - Santa Barbara, City of
 - Santa Fe Springs, City of
 - Santa Maria, City of
 - Sausalito, City of
- * SELACO Workforce Investment Board, Inc.

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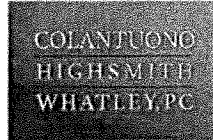


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- Shasta County Local Agency Formation Commission (LAFCo)
- * Sierra Madre CRA Successor Agency
- * Sierra Madre, City of
- SMUD
- Solano County Local Agency Formation Commission (LAFCo)
- * South Pasadena, City of
- * Tahoe Forest Hospital District
- Temple City Oversight Board
- Torrance, City of
- Truckee Fire Protection District
- Tulare, City of
- Turlock Irrigation District
- Ukiah Sanitation District
- Union Sanitation District
- Vallejo Sanitation & Flood Control District
- Vallejo, City of
- Ventura County
- Ventura, City of
- Vernon, City of
- Vista, City of
- Watsonville, City of
- Yolo County
- Yolo County Local Agency Formation Commission (LAFCo)
- * Yountville, City of
- Yuba, City of
- * Yuba County Local Agency Formation Commission (LAFCo)

The Firm also represented numerous cities in a lawsuit over property tax administration fees (PTAF) against the County of Los Angeles. In addition, the Firm represented approximately 40 cities in defense of a claim for a refund of telephone users' taxes which was filed against approximately 130 cities statewide, and 13 cities in a lawsuit against the Department of Finance and other state agencies challenging certain provisions of AB 1484 (redevelopment dissolution legislation).

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Attachment B

Significant Appellate Representations

Ninth Circuit

Hardesty v. Sacramento Metropolitan Air Quality Management District, Case Nos. 18-15772, 18-15773 (to be argued late 2019) appeal from judgment imposing punitive damages against County officials for alleged civil rights violations in enforcement of mining ordinances)

California Supreme Court

Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (pending), Case No. S247095 (does California Rule protecting pension benefits invalidate PEPRA reduction in retirement benefits?) (counsel for amicus)

American Civil Liberties Union Foundation of Southern California v. Superior Court (City of Los Angeles) (2017) 3 Cal.5th 1032 (automated license plate reader data exempt from disclosure under Public Records Act unless anonymized) (counsel for amicus)

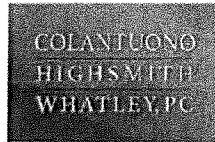
Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176 (inadvertent release of attorney-client privileged documents on public records request did not waive privilege)

Ardon v. City of Los Angeles (2011) 52 Cal.4th 241 (class action challenge to local taxes, assessments and fees permitted by California Government Claims Act but may be barred by claiming ordinance)

Bighorn-Desert View Water Agency v. Verjil (2006) 39 Cal.4th 205 (Prop. 218 applies to metered water rates; initiative to reduce water rates prohibited to extent it would require voter approval of subsequent rate increases) (counsel for amici)

Bonander v. Town of Tiburon (2009) 46 Cal.4th 646 (general validation procedure for public agency action does not apply to actions to contest assessments under Municipal Improvement Act of 1915) (counsel for amici)

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California Cannabis Coalition v. City of Upland (2017) 3 Cal.5th 924 (Prop. 218 requirement that general taxes appear on ballots with Council or Board seats does not apply to initiative tax proposal) (counsel for amici)

Citizens for Fair REU Rates, Feefighter, LLC v. City of Redding (2018) 6 Cal.5th 1. (PILOT transfer from electric utility to City's general fund did not violate Prop. 26 because wholesale revenues were sufficient to fund the PILOT)

City and County of San Francisco v. UC Regents (argued Apr. 3, 2019), Case No. S242835 (power of cities and counties to tax parking fees imposed by UC on campus visitors) (counsel for local government amici)

City of Alhambra, et al. v. County of Los Angeles, et al. (2012) 55 Cal.4th 707 (counties misapplied property tax administration fees to taxes received in lieu of Vehicle License Fees and sales taxes under the VLF Swap and Triple Flip)

City of Hayward v. Board of Trustees of the California State University, Case No. S203939 (2015) (reviewed granted, held for lead case, and vacated and remanded) (duty of CSU to seek funding to make feasible mitigation of impacts of expansion of CSU East Bay on fire services of City) (author of amicus support for review)

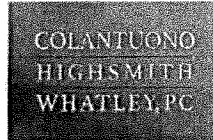
City of Oroville v. Superior Court (California Joint Powers Risk Management Authority), Case No. S243247 (argued June 5, 2019) (inverse condemnation liability for sewer flooding cause by plaintiff's failure to install back water valve required by Uniform Plumbing Code)

City of Pasadena v. Superior Court (Mercury Casualty Co.) (2014) 228 Cal.App.4th 1228 (unsuccessful petition for review) (inverse condemnation liability for fallen tree)

City of San Buenaventura v. United Water Conservation District (2017) 3 Cal.5th 1191 (groundwater augmentation charge subject to Proposition 26, not 218)

City of San Buenaventura v. United Water Conservation District (review pending) Case No. S255205) (further appeal in Prop. 26 challenge to groundwater augmentation charges which favor agriculture)

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Greene v. Marin County Flood Control & Water Conservation District (2010) 49 Cal.4th 277 (property owner ballots on property related fees under Prop. 218 not subject to ballot secrecy)

Haas v. County of San Bernardino (2002) 27 Cal.4th 1017 (County counsel's unilateral selection of temporary administrative hearing officers on an ad hoc basis violates due process) (counsel for amici)

Hamilton v. Yates (review denied) Case No. S252914 (requisites of collateral order doctrine as to appealability) (principal author for amicus California Academy of Appellate Lawyers amicus support for review)

Howard Jarvis Taxpayers Ass'n v. City of La Habra (2001) 25 Cal.4th 809 (continued imposition and collection of a utility user's tax without voter approval was an ongoing or continuous violation of Proposition 62, with statute of limitations beginning anew with each collection) (counsel for amici)

In re Transient Occupancy Cases (2016) 2 Cal.5th 151 (bed taxes do not apply to full priced charged by on-line resellers of hotel rooms) (counsel for local government amici)

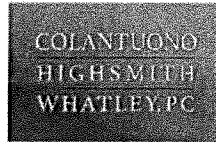
Jacks v. City of Santa Barbara (2017) 3 Cal.5th 248 (supplemental franchise not a tax even though passed through to utility customers if reasonably related to value of right of way made available)

Jameson v. Desta (2018) 5 Cal.5th 594 (right of indigent civil litigants to subsidized reporter's transcript) (amicus)

Kurwa v. Kislinger (2017) 4 Cal.5th 109 (application of final judgment rule to appeal from case in which some claims were voluntarily dismissed and subject to tolling agreement) (counsel for amicus California Academy of Appellate Lawyers)

Leider v. Lewis (2017) 2 Cal.5th 1121 (no taxpayer standing to enforce criminal laws in challenge to confinement of elephants in LA Zoo) (counsel for local government amici)

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Marina Coast Water District v. California Public Utilities Commission (review pending) Case No. S253585 (unusual original writ of review of PUC decision certifying EIR for desalination project)

McClain v. Sav-On Drugs (2019) 6 Cal.5th 951 (no consumer remedy for erroneous collection of sales tax) (counsel for amicus)

McWilliams v. City of Long Beach (2013) 56 Cal.4th 613 (Government Claims Act preempts local tax and fee claiming ordinances and allows class claims)

People ex rel. Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal.4th 707 (tobacco company's distribution of free cigarettes violated statute regulating non-sale distribution of cigarettes) (counsel for amici)

Plantier v. Ramona Municipal Water District (2019) 7 Cal.5th 372 (exhaustion of administrative remedies not required in Prop. 218 challenge to sewer rate classification) (counsel for amici)

Richmond v. Shasta Community Services Dist. (2004) 32 Cal.4th 409 (increased capacity charge and fee for fire suppression imposed on applicants for new service connections was not an "assessment" subject to Proposition 218)

San Diego Unified Port District v. California Coastal Commission (review denied) Case No. S252474 (2019) (scope of Coastal Commission review of master port plan under statute, separations of powers and charter city home rule power)

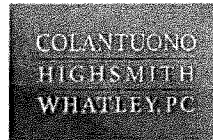
Wilde v. City of Dunsmuir (fully briefed; awaiting argument) Case No. S252915 (availability of referendum to challenge water rates) (counsel for amici)

Court of Appeal for the First Appellate District

Brooktrails Township CSD v. Board of Supervisors (2013) 218 Cal.App.4th 195 (successfully requested publication on behalf of League of California Cities)

Brown v. City of San Rafael (pending) Case No. A156261 (appellate defense of judgment on demurrer to challenge to pension benefits based on statute of limitations)

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Building Industry Association v. City of San Ramon (2016) 4 Cal.5th 62 (citywide Mello-Roos District to fund supplemental municipal services to new development complied with statute) (counsel for amicus League of California Cities)

City of San Rafael v. Valley Baptist Church (pending) Case No. A156171 (application of religious exemption from property taxes to special parcel tax)

City of Scotts Valley v. County of Santa Cruz (2011) 200 Cal.App.4th 97 (calculation of no- and low-property tax city subvention) (counsel for amici)

City of Vallejo v. NCORP4, Inc. (2017) 15 Cal.App.5th 1078 (City properly limited marijuana dispensary licenses to those who complied with its earlier tax)

Green Valley Landowners Association v. City of Vallejo (2015) 241 Cal.App.4th 425 (effort to enjoin sale of part of City water utility subject to successful demurrer without leave to amend as seeking to enforce an implied contract and to compel subsidized water rates in violation of Prop. 218)

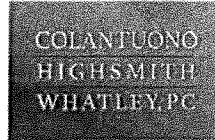
Kahan v. City of Richmond (2019) ___ Cal.App.5th ___, 2019 WL 2225041 (May 23, 2019) (collection of delinquent trash fees on tax roll does not violate Prop. 218)

Luke v. County of Sonoma (pending) Case No. A155286 (appellate defense of judgment on demurrer dismissing challenge to pension benefits awarded in 2002 claiming failure to satisfy statutory notice requirements)

Luke v. City of Sonoma (pending) Case No. A156997 (appellate defense of judgment on demurrer dismissing conflict of interest and Brown Act challenge to decision to hire outside counsel to defend pension benefits for Supervisors and County Counsel)

Paland v. Brooktrails Township CSD Bd. of Directors (2009) 179 Cal.App.4th 1358 (monthly minimum water service fee for account inactivated for non-payment not subject to assessment provisions of Prop. 218) (counsel for amici)

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Walker v. Marin Municipal Water District (unpublished), Case No. A152048 (amicus brief for local government associations; exhaustion of administrative remedies not required in Prop. 218 challenge to water rates)

Court of Appeal for the Second Appellate District

AB Cellular LA, LLC v. City of Los Angeles (2007) 150 Cal.App.4th 747 (City's decision to implement federal law to expand cell tax to cover all airtime was a tax "increase" requiring voter approval under Proposition 218 but earlier instructions to carriers enforceable to require payment of tax)

Arcadia Redevelopment Agency v. Ikemoto (1991) 16 Cal.App.4th 444 (agency challenge to application of property tax administration fees to tax increment) (counsel for amici)

Birke v. Oakwood Worldwide (2009) 169 Cal.App.4th 1540 (pervasive outdoor secondhand smoke may form the basis for private nuisance claim) (counsel for amicus California Chapter of the American Lung Association) (filed amicus brief and argued)

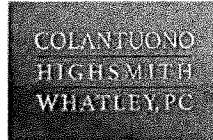
Broad Beach GHAD v. All Persons Interested (unpublished) Case Nos. B293494, B296304 (writ review of summary judgment and motion to strike document from administrative record in action to validate GHAD assessment)

City of Glendale v. Superior Court (Glendale Coalition for Better Government) Case Nos. B270135, B283819 (2016) (alternate writ issued to reverse order allowing discovery in water rates case limited to administrative record)

City of Pasadena v. Medical Cannabis Caregivers (2018) 21 Cal.App.5th 1086 (affirmance of preliminary injunctions against unpermitted marijuana dispensaries and related judgment upholding zoning ordinance)

City of San Buenaventura v. United Water Conservation District (unpublished) Case No. B251810 (remanding to respondent district for further record-making in Prop. 26 challenge to 3:1 ratio of agricultural to municipal & industrial fees for groundwater replenishment services) (on remand from California Supreme Court)

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Glendale Coalition for Better Government v. City of Glendale (unpublished) Case Nos. B281994, B281991 (largely upholding Prop. 26 challenge to transfer from electric utility to general fund)

Glendale Coalition for Better Government v. City of Glendale (unpublished) Case No. B282410 (largely upholding tiered water rates against Prop. 218 challenge)

Goleta Ag Preservation v. Goleta Water District (unpublished), Case No. B277227 (successful defense of Proposition 218 challenge to tiered water rates and notice to customers not property taxpayers)

Hill RHF Partners v. City of Los Angeles, Mesa RHF Partners, LP v. City of Los Angeles (pending), Case Nos. B288356, B295315 (defense of business improvement district assessments against Prop. 218 challenge by affordable housing provider)

Newhall County Water District v. Castaic Lake Water Agency (2016) 243 Cal.App.4th 1430 (successful challenge to wholesale water rates based on use of groundwater not managed by wholesaler)

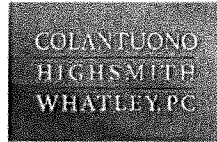
Re-Open Rambla, Inc. v. Board of Supervisors (City of Malibu) (1995) 39 Cal.App.4th 1499 (county's title to closed road vested in city upon incorporation despite city's effort to avoid accepting the street)

Ruskey v. Goleta Water District (unpublished), Case No. B275856 (successful appellate defense of successful demurrer for lack of standing in Prop. 218 challenge to water rates)

Schmeer v. County of Los Angeles (2013) 213 Cal.App.4th 1310 (plastic bag ban ordinance provision for \$0.10 fee on paper bags was not a tax under Prop. 26 because proceeds did not fund government) (counsel for local government amici)

Sipple v. City of Hayward (2014) 225 Cal.App.4th 349 (standing and claiming defenses to quasi-class refund claim for allegedly overpaid telephone taxes) (petition for review denied)

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Court of Appeal for the Third Appellate District

Auburn Police Officers Association v. City of Auburn (unpublished), Case No. C067972 (2013) (stipulated reversal regarding availability under Meyers-Milias-Brown Act of writ review of City Council's denial of grievance from exercise of escape clause from salary increases pursuant to MOU)

City of Auburn v. Sierra Patient & Caregiver Exchange, Inc. (unpublished), Case No. C069622 (2013) (upholding preliminary injunction against medical marijuana dispensary opened in violation of zoning and business license ordinances)

City of Bellflower, et al. v. Cohen, et al. (2016) 245 Cal.App.4th 438 (self-help provisions of post-redevelopment legislation violate Prop. 22's protection for local government revenues)

City of Chula Vista, et al. v. Sandoval (pending), Case No. C080711 (defense of trial court victory in challenge to County's calculation of post-RDA RPPTF revenues)

City of Fountain Valley v. Cohen, et al. (unpublished) Case No. C081661 (representation of taxing agency in Successor Agency's unsuccessful appeal of post-RDA dispute with Department of Finance over recognized obligations)

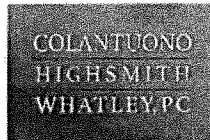
City of Grass Valley v. Cohen, et al. (2017) 17 Cal.App.5th 567 (contract with County Transportation Commission to fund freeway interchange likely a recognized obligation of former RDA)

City of Grass Valley v. Superior Court, (unpublished) Case No. C088316 (2018) (writ review of Pitchess motion for disclosure of police personnel records)

City of Lakewood v. Cohen, et al., (unpublished) Case No. C078788 (2018) (appeal of post-RDA dispute with Department of Finance over recognized obligations)

City of Sacramento v. Wyatt (pending), Case No. C089702 (appeal from trial court ruling that voter approval insufficient to protect general fund transfer from water, sewer, and trash enterprise funds under Prop. 218)

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County of Nevada v. Superior Court (unpublished), Case Nos. C076851, C082927 (interlocutory writ review of trial court writ of mandamus overturning use permit conditions for ridge-top residence; appeal from judgment pending)

Davies v. Martinez, (unpublished), Case No. C078986 (2018) (appeal dismissed as to our defense of summary judgment for attorney in breach of fiduciary duty claim by incarcerated former client suing in pro per)

Howard Jarvis Taxpayers Ass'n v. City of Roseville (2002) 97 Cal.App.4th 637 (in-lieu franchise fee charged to water and sewer utilities for benefit of general fund violated Prop. 218) (counsel for amici on request for rehearing)

Inyo County LAFCo v. Southern Mono Healthcare District (pending) Case No. C085138 (defense of trial court victory in dispute involving LAFCo power to regulate out-of-boundary service by healthcare district)

Lockyer et al. v. County of Nevada et al. (unpublished), Case No. C075249 (2014) (successful appellate defense of land use permits for cell tower)

Court of Appeal for the Fourth Appellate District, Division 1 (San Diego)

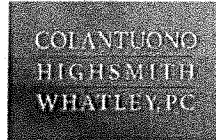
California Taxpayers Action Network v. City of San Diego (unpublished) Case No. D072987 (2018) (successful defense of dismissal on demurrer of challenge to business improvement district assessment)

Howard Jarvis Taxpayers Ass'n v. City of San Diego (1999) 72 Cal.App.4th 230 (BID assessment on businesses collected as surcharge on business license tax neither levy on real property nor special tax within meaning of Proposition 218) (counsel for amici)

Jentz v. City of Chula Vista (unpublished) Case No. D055401 (2010) (consistency of specific plan with slow-growth initiative)

La Jolla Benefits Assn. v. City of San Diego (pending) Case No. D075191 (consulting support for appellate defense of judgment for City in Prop. 218 challenge to assessment for lack of standing)

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Plantier v. Ramona Municipal Water District (2017) 12 Cal.App.5th 856 (rev. granted) (exhaustion of administrative remedies defense to Prop. 218 challenge to sewer rates) (counsel for local government amici)

Reid v. City of San Diego (San Diego Tourism Marketing District) (2018) 24 Cal.App.5th 343 (tourism marketing assessment subject to 30-day statute of limitations, equal protection does not require registered voter election on assessment)

San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District) (unpublished) Case No. D072181 (successful appeal from award of catalyst attorney fees in unsuccessful challenge to tourism assessment)

San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District) (unpublished) Case Nos. D064817 (2013), D065171 (2014), D068022 (2015), D069965 (2016) (writ review of denial of demurrer to Prop. 26 challenge to renewal of tourism marketing district, re discovery of plaintiff association's members, discovery of computer of late founder of plaintiff association, and discovery of extra-record evidence for use on the merits)

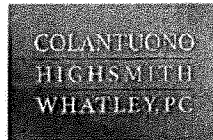
San Diegans for Open Government v. City of San Diego (57 Municipal Assessment Districts) (unpublished), Case No. D065929 (2015) (successful defense of trial court dismissal of challenge to MADs for lack of standing; petition for review pending; successful defense of petition for review)

Webb v. City of Riverside (2018) 23 Cal.App.5th 244 (challenge to general fund transfer from electric utility barred by 120-day statute of limitations; change of use of rate proceeds was not an "increase" triggering Prop. 26)

Court of Appeal for the Fourth Appellate District, Division 2 (Riverside)

Bailey v. City of Riverside (unpublished) Case No. E070235 (appellate writ to challenge ex parte decisions setting trial on 12 days' notice and refusing neutral venue in dispute between City and its Mayor over application of his veto power to City Manager's contract renewal)

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Beutz v. County of Riverside (2010) 184 Cal.App.4th 1516 (Landscaping and Lighting assessment engineer's report insufficient to satisfy Prop. 218)

City of Barstow v. Fortune (settled on appeal), Case No. E035595 (2005) (implementation of decree adjudicating Mojave River)

Crystaplex Plastics, Ltd. v. Redevelopment Agency (2000) 77 Cal.App.4th 990 (supplier may recover against agency for amount of check where subcontractor received and negotiated check without knowledge, consent, or endorsement of supplier even though Agency made check to both subcontractor and supplier)

Inland Oversight Committee v. City of Ontario (2015) 240 Cal.App.4th 1140 (sustaining dismissal of Prop. 26 challenge to Tourism Marketing District Assessment for lack of standing and due to untimely appeal) (counsel for amici)

Mission Springs Water District v. Verjil (2013) 218 Cal.App.4th 892 (suit to bar initiative repeal of water rates from ballot subject to SLAPP, but SLAPP motion properly denied because evidence showed initiative would violate District's statutory duty to fund adequate water supply) (counsel for amici)

San Bernardino Public Employees Association v. City of Barstow (settled on appeal), Case No. E032858 (2003) (City refusal to implement bargained for pension enhancement due to bargaining conduct of self-interested City negotiator)

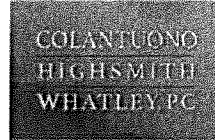
Trask v. Riverside City Clerk (unpublished), Case No. E065817 (2016) (defense of election challenge to proposed charter amendment; remanded for dismissal as moot)

Court of Appeal for the Fourth Appellate District, Division 3 (Santa Ana)

Citizens Ass'n of Sunset Beach v. City of Huntington Beach (2012) 209 Cal.App.4th 1182 (Prop. 218 does not apply to extension of City taxes into annexation area)

City of El Cajon v. San Diego County LAFCo (unpublished), Case No. G041793 (2010) (DCA upheld challenge to denial of island annexation)

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City of San Juan Capistrano v. Capistrano Taxpayers Association (2015) 235 Cal.App.4th 1493 (inclining block conservation rates failed under Prop. 218, but recovery of recycled water program costs from all customers permissible)

Wetlands Restoration v. City of Seal Beach, et al. (unpublished), Case No. G010231 (1991) (defense of City's housing element)

Court of Appeal for the Fifth Appellate District

Citizens for Constitutional Government v. Board of Supervisors of Mariposa County (pending), Case No. F074986 (defense of trial court victory in Prop. 218 challenge to fire suppression benefit assessment)

City of Clovis et al. v. County of Fresno (2014) 222 Cal.App.4th 1469 (interest rate applicable to repayment of PTAF following *Alhambra v. Los Angeles County*) (argued for amicus League of California Cities)

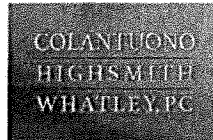
Foster Poultry Farms, Inc. v. City of Livingston, Case No. F059871 (appeal dismissed by City following recall of Council majority) (procedures for increase in water rates under Proposition 218) (co-author of amicus brief)

Howard Jarvis Taxpayers Ass'n v. City of Fresno (2005) 127 Cal.App.4th 914 (transfer from utility enterprise to general fund pursuant to voter-approved charter provision as payment in lieu of property taxes violated Proposition 218's restrictions on use of property related fees)

Neilson v. City of California City (2005) 133 Cal.App.4th 1296 (flat-rate parcel tax not an unconstitutional general tax, but rather a special tax dedicated to specific purposes; equal protection does not entitle absentee landowners to vote) (counsel for amici)

Vagim v. City of Fresno Case Nos. F068541 (2014), F068569 (2014), F069963 (2014) (multiple writs re initiative to lower water rates)

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Court of Appeal for the Sixth Appellate District

Award Homes v. County of San Benito (pending) Case No. H044894 (pending) (defense of trial court victory and new trial motion in dispute as to development fees)

BMC Promise Way, LLC v. County of San Benito (pending) Case No. H046707 (pending) (defense of trial court victory and new trial motion in dispute as to development fees)

Citizens for Responsible Open Space v. San Mateo County LAFCo (2008) 159 Cal.App.4th 717 (rejecting procedural challenges to annexation to open space district) (ghost-writer of amicus brief for CALAFCo)

County of San Benito v. Scagliotti Case No. H045887 (pending) (recoupment of costs to defend former Supervisor in conflict of interest case in which he was found to have engaged in knowing misconduct)

Eiskamp v. Pajaro Valley Water Management Agency (2012) 203 Cal.Ap.4th 97 (challenge to groundwater charge barred by res judicata effect of earlier settlement) (successfully opposed review and depublication)

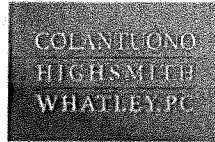
Griffith v. Pajaro Valley Water Management Agency (2013) 220 Cal.App.4th 856 (successful defense of Proposition 218 challenge to groundwater augmentation charges)

Holloway v. Showcase Realty Agents, Inc. (2018) 22 Cal.App.5th 758 (taxpayer had standing to assert Government Code § 1090 claim against Water District and former director)

Holloway v. Vierra, Case Nos. H044505, H044800 (unpublished) (defense of taxpayer's Political Reform Act claims against former Water District director; appeal of attorney fee award)

Monterey Peninsula Taxpayers Assn v. Monterey Peninsula Water Management District (unpublished), Case No. H042484 (2018) (appeal from successful defense of District's refusal to place referendum on ballot to repeal water supply charge)

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Attachment C

Firm Newsletter

COLANTUONO
HIGHSMITH
WHATLEY, PC

Update on Public Law What's Up with Prop. 13?

By Michael G. Colantuono

Proposition 13 is back in the news in a somewhat confusing way. A measure on the March 2020 ballot bears that number, but has nothing to do with property taxes. It authorizes \$15 billion in bonds for capital facilities for California school districts and universities. Two measures that do affect the 1978 ground-breaking constitutional amendment capping property taxes are in discussion, however.

The November 2020 ballot is now slated to include "The California Schools and Local Communities Funding Act of 2018," measure 17-055, to would impose a "split roll" valuing property for tax purposes differently as between commercial and other property. Proposed by a coalition of labor and social-justice groups, it would end Prop. 13's practice of assessing commercial property based on historic sales prices, adjusted for the lesser of inflation (or deflation) or 2 percent per year. Unlike natural persons, business entities can transfer title to property without a recorded sale (as by selling stock in a holding company) and, as a result, some business properties have escaped reappraisal for decades. This has distorted markets, with a news story reporting that two adjacent Beverly Hills hotels paid very different property tax bills.

However, perhaps because the measure polled badly, its framers are circulating an alternative. The changes suggest the political challenges the earlier initiative faced.

Measure No. 19-0008A1 achieved the 25-percent-signature threshold by December 14, 2019 and is still in circulation. It:

- Applies the local control funding formula to distribute school funding;
- Allocates city, county and non-school special district funding using AB 8 shares — which replicate the shares of property taxes agencies received in the 3 years before Proposition 13;

(Continued on page 3)

WELCOME ANDREW JARED AND CHICO

CH&W is pleased to welcome the City of Chico to the ranks of its 10 general counsel cities. Chico City Attorney Andrew L. Jared joins us after 14 years as a City Attorney and Deputy City Attorney and brings a BS in Geology from UCLA, an MS in Environmental Management from the University of London, and a JD from Pepperdine. He teaches planning and environmental management at CSU Northridge.

Chico is the largest City in Butte County, made larger by the influx of those displaced by the Paradise fire. It is a full-service city providing police, fire, solid waste, wastewater and other services, including historic Bidwell Park, one of America's largest city parks at 3,670 acres. It is a charter city with a council-manager form of government and 7-member Council with a rotating mayor and vice mayor.

Andrew is based in our Pasadena office and will support our work for our Southern California clients, including the City of South Pasadena.

Welcome Andrew and Chico!

Snuffing Vaping?

By Nikhil S. Damle

Electronic cigarettes ("e-cigarettes") have become a hot button issue. They entered the marketplace around 2007 and are now the tobacco product youth most commonly use. These are battery-operated devices, often resembling cigarettes, using flavored tobacco to emit a nicotine-containing aerosol. They are frequently referred to as e-cigs, hookah pens, vapes and vape pens.

According to the Centers for Disease Control and Prevention, middle- and high-school students reporting use of tobacco products increased 36% between 2017 and 2018 from 3.6 million to 4.9 million students — driven largely by e-cigarette use.

Federal Regulation. Tobacco, smokeless tobacco and other tobacco products are subject to the Family Smoking Prevention and Tobacco Control Act (FSPTCA). In 2016, the FDA deemed e-cigarettes to be "tobacco products." This allowed the FDA to regulate e-cigarettes just as traditional tobacco products are. In January 2020, the FDA issued guidance banning flavored e-cigarette products that appeal to children, including fruit and mint flavors.

State Regulation. California's smoke-free laws govern e-cigarettes, which are prohibited in most workplaces and many public spaces, but allowed where smoking is. Governor Newsom signed an executive order directing the Department of Public Health to fund the development of recommendations for warning signs about the health risks of vaping, increased enforcement as to illegal sales, and establishing nicotine and packaging standards.

Local Laws. The FSPTCA allows local governments to adopt vaping regulations more stringent than federal law. California cities and counties have done so, banning e-cigarettes in many places. These vary in scope and approach. Beverly Hills has prohibited any sale of tobacco products in the city. Palo Alto limits sale of flavored tobacco to retailers that generate more than 60 percent of revenue from the tobacco

sales, do not sell food or alcohol for consumption on-site, and exclude those younger than 21.

Cities and counties considering regulating e-cigarettes may revise smoking ordinances or separately regulate e-cigarettes. The law in this area changes rapidly. As always, we'll keep you posted!

For more information on this subject, contact Nikhil at NDamle@chwlaw.us or (213) 542-5709.

Webinars!

CH&W is offering webinars on (i) SB 1421 and AB 748, recent statutes granting greater public access to police personnel record, (ii) new laws governing zoning control of accessory dwelling units (ADUs), and (iii) new limits on utility fees for ADUs.

A webinar allows agency management and counsel advice and guidance and Q&A in an attorney-client-privileged setting.

The fee is \$1,000 per agency. To schedule a webinar, contact Bill Weech at BWeech@chwlaw.us or (213) 542-5700.

California Water Wars' Latest Chapter

By Conor W. Harkins

City of Santa Maria v. Adam, filed in 1997, recently completed its third trip to the Court of Appeal. It seeks to adjudicate groundwater rights in the Santa Maria Valley Groundwater Basin.

The trial court found disputed Twitchell Reservoir flows were "salvage water," not groundwater. The Bureau of Reclamation holds a State Water Resources Control Board license to collect seasonal flow from the Cuyama River in that reservoir and works with the Santa Maria Water Conservation District to distribute water by recharging the basin. Though it distributes water via the basin, the water remains salvaged surface water, not groundwater. The public agencies also proved a right to "return flows" from imports they store in the basin.

Public water providers stipulated with some basin landowners to waive prescription claims. A prescriptive right is an entitlement to use someone else's groundwater because one used it thinking it was her own and because the owner failed to act to protect his rights. The non-stipulating landowners would have to prove the public agencies had not prescribed against their rights.

The trial court also found the public agencies had prescribed against non-stipulating landowners. Those landowners appealed, seeking determination of the scope of their rights — if the public agencies prescribed rights to 7,000 acre-feet-per-year, how much groundwater do we have, they asked? The Basin is not in overdraft, so the Court concluded there was not yet need to make that determination.

Water law disputes are complex. The groundwater management required by the Sustainable Groundwater Management Act may provide opportunities to resolve such disputes by political negotiation. It might foment more water-rights litigation. Time will tell.

For more information on this subject, contact Conor at CHarkins@chwlaw.us or (530) 798-2416.

Prop. 13 (cont.)

It remains to be seen whether significant demographic changes since 1978 will carry this measure to success or whether California remains more conservative as to government funding than might appear.

- Exempts residential and agricultural property;
- Exempts smaller commercial and industrial parcels (i.e., those worth \$3m or less);
- Allows reassessments to be phased in by statute (so as not to overwhelm County Assessors, who have not appraised market values in decades).

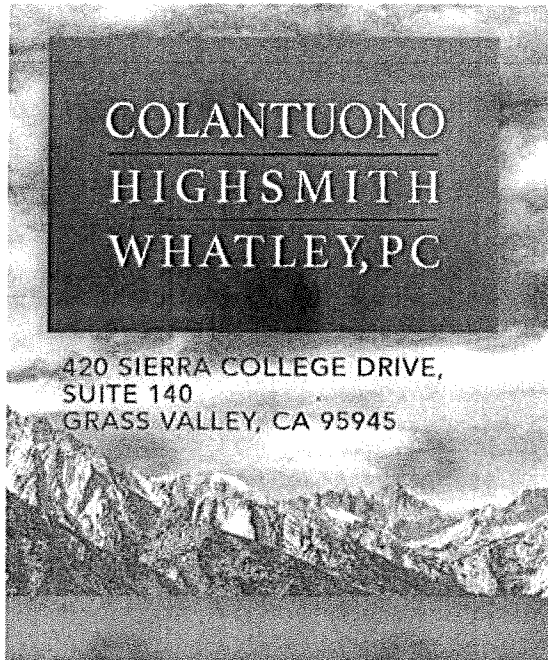
The measure seems likely to qualify. If so, the earlier measure will be withdrawn.

This will likely generate a political battle royale, with significant funding from business and real estate interests against the proposal and support from unions and progressive interests. The measure would generate billions of dollars in new funding for local governments and schools.

The measure would not change Proposition 13's protections for agricultural, small business and residential properties — single-family or multifamily.

It remains to be seen whether the significant demographic and political changes since voters approved Proposition 13 in 1978 will carry this measure to success or whether California remains more conservative as to government funding than might appear from the Democratic sweep of statewide offices and Democratic super-majorities in the Legislature.

For more information on this subject, contact Michael at MColantuono@chwlaw.us or (530) 432-7357.



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Name _____ Title _____

Affiliation _____

Address _____

City _____ State _____ Zip Code _____

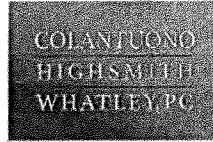
Phone _____ E-mail _____

☐ Mail ☐ E-Mail ☐ Both

Our newsletter is available as a printed document sent by U.S. Mail and as a PDF file sent by e-mail. Please let us know how you would like to receive your copy.

The contents of this newsletter do not constitute legal advice. You should seek the opinion of qualified counsel regarding your specific situation before acting on the information provided here.
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Attachment D
Representative Invoice

Colantuono, Highsmith & Whatley, PC

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

(530)432-7357

Invoice submitted to:

Upper Valley Waste Management Agency
Jeffrey M. Richard, Chief Deputy County Counsel
County of Napa
1195 Third Street
Napa, CA 94559

Invoice Number: 41130
Invoice Date: January 15, 2020
Federal EIN: 75-3031545

In reference to: FRANCHISE AGREEMENT ADVICE

51003.0002

Billing Summary for services through
December 31, 2019

Total fees	\$3,325.00
Total disbursements	0.00
Total charges this bill	\$3,325.00
Client Trust Funds/credit balance applied	\$0.00
Please Pay this Amount	\$3,325.00

Privileged and Confidential - Do not store with publicly accessible documents

Colantuono, Highsmith & Whatley, PC420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

(530)432-7357

*Invoice submitted to:*Upper Valley Waste Management Agency
Jeffrey M. Richard, Chief Deputy County Counsel
County of Napa
1195 Third Street
Napa, CA 94559Invoice Number: 41130
Invoice Date: January 15, 2020
Federal EIN: 75-3031545*In reference to:* FRANCHISE AGREEMENT ADVICE

51003.0002

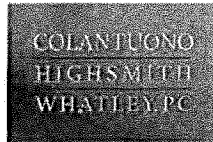
Professional Services

	<u>Hours</u>	<u>Amount</u>
12/17/2019 GBB CONFERENCE WITH BOARD MEMBER REGARDING REVISIONS TO FRANCHISE AGREEMENTS	0.20	70.00
12/19/2019 GBB REVIEW AND ANALYSIS OF SUMMARIES OF MEETING OF FRANCHISEE REGARDING REVISIONS TO FRANCHISE AGREEMENTS; PREPARE NOTES REGARDING SAME	0.70	245.00
GBB ATTEND BY TELECONFERENCE MEETING WITH BOARD MEMBERS AND MR. LEDERER REGARDING REVISIONS TO FRANCHISE AGREEMENTS	0.80	280.00
GBB PREPARE AMENDED AND RESTATED FRANCHISE AGREEMENT	1.60	560.00
12/20/2019 GBB REVIEW AND ANALYSIS OF RATE STUDY; EXCHANGE MEMORANDA WITH BOARD MEMBER REGARDING SAME	0.10	35.00
GBB PREPARE AMENDED AND RESTATED FRANCHISE AGREEMENT	3.30	1,155.00
12/26/2019 GBB LEGAL RESEARCH AND ANALYSIS REGARDING AMENDED AND RESTATED FRANCHISE AGREEMENT; REVIEW AND ANALYSIS OF CURRENT FRANCHISE AGREEMENTS; PREPARE NOTES REGARDING SAME	1.70	595.00
12/30/2019 GBB PREPARE AMENDED AND RESTATED FRANCHISE AGREEMENT	1.10	385.00
SUBTOTAL:	[9.50	3,325.00]
For professional services rendered	9.50	\$3,325.00

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Name	Timekeeper Summary	Hours	Rate	Amount
Gary B. Bell		9.50	350.00	\$3,325.00
Total billed to date on this matter (fees and costs):				\$19,861.40

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Attachment E
Resumes for Gary B. Bell and Ryan A. Reed

GARY B. BELL

420 Sierra College Drive, Suite 140, Grass Valley, CA 95945
GBell@chwlaw.us — (530) 208-5346

EXPERIENCE

COLANTUONO, HIGHSMITH & WHATLEY, PC, Grass Valley, CA, July 2015-Present

Shareholder

Serve as Town Attorney of Yountville, City Attorney of Auburn, and Assistant City Attorney of Grass Valley. Attend and advise clients during Council, Successor Agency, Oversight Board, Authority, and LAFCo meetings. Draft legal memoranda, client correspondence, ordinances, resolutions, and court documents. Primary practice areas include governance issues and Brown Act, conflicts of interest and Political Reform Act, code enforcement, litigation and Government Claims Act, personnel and labor matters, public contracting, land use and planning, and First, Fourth, and Fourteenth Amendments issues. Review and analyze pending legislation and regulations affecting cities and local governments.

LOZANO SMITH, Fresno, CA, March 2014-June 2015

Associate Attorney

Served as City Attorney of Firebaugh and Assistant City Attorney of Clovis, Fowler, Sanger, Lemoore, and Coalinga. Advised and represented school districts. Primary practice areas as above.

MCMURCHIE LAW, Folsom, CA, 2011-2014

Associate Attorney (2012-2014); Law Clerk (2011-2012)

Advised and represented statewide association of special districts.

GOVERNOR'S OFFICE OF LEGAL AFFAIRS, Sacramento, CA 2010

Law Clerk

Reviewed and drafted memoranda regarding parole grants by Board of Parole Hearings in accordance with applicable judicial decisions. Made recommendations regarding same.

PLACER COUNTY SUPERIOR COURT, Roseville, CA 2010

Judicial Extern

CALIFORNIA STATE SENATE, Sacramento, CA 2008-2009

California Senate Fellow

Education

UC DAVIS SCHOOL OF LAW, J.D., 2012

- Staff Editor, *UC Davis Business Law Journal*
- Research Assistant, *Constitutional Law*

UC SANTA CRUZ, B.A. Psychology (Highest Honors), 2008

Bar Admissions

Admitted to practice in California and U.S. District Court for Eastern/Northern Districts of California

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945

Ryan A. Reed

(530) 270-9490
RReed@chwlaw.us

Education

- Georgetown University Law Center** (Washington, D.C.) 2015 – 2018
- *Cum Laude*; GPA: 3.66
 - International Trial Lawyers Award
- University of California, Davis** (Davis, CA) 2013 – 2015
- Bachelor of Arts in History, Minor in Professional Writing
 - GPA: 3.65; UC Davis University Honors Program

Experience

- Colantuono, Highsmith & Whatley Associate** (Grass Valley, CA) August 2018 – Present
- Assistant City Attorney for Auburn, Chico, Grass Valley; Assistant Town Attorney for Yountville
 - Assistant General Counsel for various special districts
 - Advise clients on municipal law issues, including Brown Act, Public Records Act, & Conflicts of Interest
 - Draft legal memoranda, client correspondence, ordinances, and resolutions for client needs
- USAID, Office of the General Counsel Law Clerk** (Washington, D.C.) January 2018 – May 2018
- Write memos and briefs for Agency litigation, with a focus on procurement
 - Provide legal advice to Agency development missions
 - Assist in drafting MOUs and other legal agreements for field missions
 - Participate in meetings with clients and contractors
- Dentons, LLP Summer Associate** (Washington, D.C.) June 2017 – August 2017
- Compose memos on a range of substantive legal areas, including products liability
 - Assist in drafting briefs for different stages of litigation
 - Examine trends and upcoming legislation in the law for corporate clients
 - Engage in policy analysis for issues relevant to clients
- Harrison Institute: Public Policy Clinic Climate Change Team** (Washington, D.C.) August 2016 – May 2017
- Identify and analyze best land use policies for state and local climate change adaptation
 - Perform legal research on state and local legal authority to implement policy options
 - Interact with clients in order to understand their project goals
 - Participate in legal skills training sessions, including legal writing and client presentation skills
- U.S. Office of Special Counsel: Disclosure Unit Law Clerk** (Washington, D.C.) May 2016 – May 2017
- Independently manage a lengthy docket of federal whistleblower cases
 - Speak with whistleblowers to gather claim information and to assess witness credibility
 - Perform legal research on whistleblower claims, including examining provided documentation
 - Write closure letters to mark the end of a case or claim letters to refer allegations to Executive Agencies

Additional Activities

- Legislative Committee, California Association of Local Agency Formation Commission
- Executive Committee, Nevada County Bar Association