



AGENDA ITEM NO.  
**c21**

# COUNTY OF HUMBOLDT

For the meeting of: July 31, 2018

Date: July 25, 2018  
To: Board of Supervisors  
From: Jeff Blanck, County Counsel *JSB*  
Subject: Agreement for Legal Services with Banks & Watson

RECOMMENDATION(S):

That the Board of Supervisors: Execute the attached agreement for legal services with Banks & Watson for the provision of services regarding State Bar inquiries, and ethics and risk management issues that may arise from time to time.

SOURCE OF FUNDING: Liability Fund

DISCUSSION:

From time to time, issues regarding State Bar inquiries, ethics, and risk management issues arise. This is a specialized area of the law in which County Counsel occasionally needs assistance. The Board has authority to employ counsel to assist the County Counsel pursuant to Government Code section 25203. County Counsel requests that the Board authorize and execute the attached contract for provision of these services as needed.

FINANCIAL IMPACT: As stated in the attached contract.

Prepared by Jeff Blanck CAO Approval *[Signature]*  
REVIEW: Auditor \_\_\_\_\_ County Counsel *JSB* Human Resources \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_  
Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
Upon motion of Supervisor *Fennell* Seconded by Supervisor *Wilson*  
Ayes *Fennell, Wilson, Bass, Sundberg*  
Nays \_\_\_\_\_  
Abstain \_\_\_\_\_  
Absent *Bohn*

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *7/31/18*  
By: *[Signature]*  
Kathy Hayes, Clerk of the Board

OTHER AGENCY INVOLVEMENT: NA

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board could choose not to enter into the attached contract with Banks & Watson, however, this is not recommended because it could delay County Counsel's efforts to obtain time-sensitive advice and guidance from attorneys with subject matter expertise in the areas of legal ethics and risk management.

ATTACHMENTS: Agreement for Legal Services

## **AGREEMENT FOR LEGAL SERVICES**

This Agreement for Legal Services is made by Banks & Watson ("B&W") and County Counsel of Humboldt County ("Client") as of the date set forth below.

This Agreement for Legal Services (the "Agreement") will serve to explain our billing policies and procedures. The Agreement serves as the written agreement between the parties. Client should review the Agreement carefully and ask any questions or request any clarifications that may facilitate Client's understanding of this Agreement.

### **SCOPE OF AGREEMENT**

Client retains B&W to provide representation regarding State Bar inquiries, and ethics and risk management issues that may arise from time to time.

#### **1. DUTIES OF ATTORNEY AND CLIENT**

##### **ATTORNEY DUTIES**

We shall provide those legal services reasonably required to represent Client in the matter described above. We will keep Client informed of significant developments and respond to Client's inquiries.

We may delegate work to other attorneys, paralegals, law clerks and office personnel within our office when we determine that such delegation is appropriate in representation of Client's interests. If Client requests, Client will be notified prior to any delegation and a decision will be made in consultation with Client.

We may, but only with Client's prior consent, select and hire attorneys, investigators, consultants and experts to assist in the preparation and presentation of Client's case. While these persons will report exclusively to B&W, they are employed by Client.

We are not obligated to perform any services for Client until our receipt of the executed Agreement for Legal Services together with any advance deposit required by Paragraph 5.

##### **CLIENT'S DUTIES**

Client shall be truthful and cooperate with us, keep us informed of developments, perform the obligations Client has agreed to perform under this Agreement, pay statements in a timely manner, and keep us apprised of its address, telephone number and whereabouts.

#### **2. FEES AND HOURLY RATES**

Our practice is to charge for legal services, based primarily on the amount of time, including travel time, devoted to a matter at hourly rates for the particular professionals



involved. Client agrees to pay for legal services at the rates set forth in the attached Schedule of Rates. These rates are subject to adjustment at the beginning of each calendar year. We will give written notice of rate adjustments at least thirty (30) days prior to the effective date thereof, and the new rates will be instituted only in consultation with Client. Our rates are based principally on experience, specialization and training.

We bill time in increments of .10 per hour and normally charge for all activities undertaken in providing legal services to you under this Agreement, including but not limited to the following: preparing for and participating in conferences; preparation and review of correspondence and other documents; legal research; court and other appearances, including preparation and participation; and telephone calls, including calls with you, other attorneys and/or persons involved with this matter. The legal personnel assigned to your matter may confer amongst themselves about the matter as required. When they do confer, each person may charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each may charge for the time spent, although we will take steps to minimize multiple participants' attendance at such proceedings unless absolutely necessary. We will charge for travel time, both local and out of town.

### **3. COSTS AND EXPENSES**

Whenever practical, Client shall directly pay for major costs and expenses by either advancing such costs or expenses to B&W, or by paying third parties directly. Upon demand, Client shall advance funds to B&W or directly pay third parties as specified by B&W. B&W will not incur any cost in excess of \$500.00 on Client's behalf without first obtaining Client's consent.

In all other cases, Client shall reimburse B&W for all costs and expenses incurred by B&W including, but not limited to, the following: costs of serving pleadings, filing fees and other charges assessed by courts and other public agencies, court reporters' fees, jury fees, photocopying, parking, mileage, travel expenses, lodging, meals, ground transportation, research, investigation expenses, consultants' fees, expert witness fees, and other costs as those costs are incurred. Those costs will be itemized on Client's invoice after they have been incurred and will thereafter be paid by Client in accordance with this Agreement.

### **4. INVOICE**

We will send Client an invoice for costs incurred every month. Our invoices are due on presentment; they become delinquent after thirty (30) days. We reserve the right to charge, at the rate of ten percent (10%) per year, a monthly late payment charge on the unpaid balance of any invoice not timely paid in full, computed from thirty (30) days after the invoice issuance date until payment.

We specifically reserve the right to withdraw from your representation if we do not receive full payment of any amounts owed to us within thirty (30) days of the invoice.

We do our best to see to it that our clients are satisfied both with our legal representation and services, but also with the reasonableness of our charges. If you have any questions about or objection to a monthly invoice, our services, or our charges, then you should raise it promptly for discussion.

## **5. ADVANCE DEPOSIT**

No advance deposit for payments is required at this time. We reserve the right to require an advance deposit for payment of our charges for services and expenditures in the future due to circumstances such as substantial expenditures, imminence of trial or other hearing, or delayed payment of any prior invoice.

While we will attempt to obtain a favorable out-of-court resolution of your matter, it may proceed to a trial or other hearing. Preparing for and conducting the trial or other hearing of a matter are usually the most time-consuming services in any litigation engagement. We may require that you provide us with an additional separate deposit prior to our commencement of preparation to cover part of our charges for these services and related expenditures. The amount of the deposit will be determined once the trial or other hearing appears inevitable and as soon as possible prior to the date the matter is set for trial or other hearing, based upon an estimate of the magnitude of services and expenditures which may be involved.

Any deposit paid to B&W shall be deposited in our trust account and shall be used to pay the Client's last invoice at the conclusion of the case, or may be applied to Client's bill after a period of more than one year has passed without a late payment.

We may use this deposit to pay for all costs and expenses incurred by us in representing Client, as well as fees for legal services. Client hereby authorizes us to withdraw moneys from the deposit in our trust account should Client's account become delinquent. When used for this purpose, Client shall replenish the deposit within fifteen (15) days after our demand.

Any unused deposit remaining at the conclusion of our services shall be immediately refunded to Client.

## **6. LIEN**

Client hereby grants B&W a lien on any and all causes of action, judgments or recoveries in connection with the matters for which B&W is retained. Our lien will be for any sums due and owing by Client to B&W. The lien shall attach to any recovery Client may obtain whether by judgment, settlement or otherwise.

## **7. DISCLAIMER OF GUARANTEE**

By signing this Agreement, Client acknowledges that we have made no promises or guarantees to Client about the outcome of Client's matter.



## **8. DISCHARGE AND WITHDRAWAL**

Either party may terminate this Agreement upon written notice to the other party. If we elect to terminate this Agreement, we shall be paid for all fees and costs, which have accrued up to the time of termination. We and Client each agree to sign any documents reasonably necessary to complete our discharge or withdrawal.

## **9. LEGAL ACTION UPON DEFAULT**

If Client does not pay its attorneys' fees balance when due, or breach any other terms of this Agreement, we may demand that the entire unpaid balance be paid immediately and, as provided by law, commence any legal action for its collection. Client agrees to pay interest at the rate of ten percent (10%) per annum from the date of default. Default under this Agreement occurs only if Client fails to make a payment required under this Agreement. If there is any dispute under this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee.

## **10. ARBITRATION OF FEE DISPUTE**

If a dispute arises between B&W and Client regarding B&W's fees or costs under this Agreement, and B&W files suit in any court, or begins an arbitration proceeding other than through the State Bar or a local bar association, Client will have the right to stay that suit or arbitration proceeding by timely electing to arbitrate through the State Bar or a local bar association under Business and Professions Code sections 6200-6206, in which event B&W must submit the matter to that arbitrator, subject to sections 6200-6206.

## **11. CLIENT FILES**

At Client's request, upon termination of the services under this Agreement, B&W will promptly release all of Client's papers and property (subject to any applicable protective orders or non-disclosure agreements).

## **12. DOCUMENT STORAGE POLICY**

If Client does not request the return of Client's papers and property, we will retain Client's file for a period of five (5) years from the last date of service in the matter described in this Agreement, after which time we may have Client's file destroyed. Client acknowledges that it will not be notified prior to the destruction of its papers and property and consent to same. If Client desires to have its file maintained beyond five (5) years after the matter is concluded, separate arrangements with B&W must be made.

## **13. CONSENT TO ELECTRONIC COMMUNICATIONS**

In order to maximize efficiency in this matter, we intend to use advanced communications devices to the fullest extent possible (e.g., email, document transfer by computer, cellular telephones, and facsimile transfers). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe the effectiveness involved in use of these devices outweighs the risk of accidental

disclosure. By signing this Agreement, you acknowledge your consent to the use of these devices.

**14. INSURANCE**

Client is hereby informed that B&W maintains errors and omissions insurance.

**15. CLIENT**

Our client for the purpose of our representation is only the person or entity identified in this Agreement. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any parent, brother-sister, their officers, directors, agents, or employees.


**16. ENTIRE AGREEMENT**

This Agreement contains all terms of the agreement between us applicable to our representation of you, and may not be modified except by a written agreement signed by both of us.

I understand and accept the foregoing terms.

HUMBOLDT COUNTY BOARD OF  
SUPERVISORS

DATE: 7/31/18

By   
By: Ryan Sundberg  
Its: Chairman

BANKS & WATSON

DATE: \_\_\_\_\_

By \_\_\_\_\_  
JAMES J. BANKS

**SCHEDULE OF RATES**

**As July 2018**

Clients of Banks & Watson ordinarily are billed according to the following hourly rates:

<b>Partners .....</b>	<b>\$375</b>
<b>Senior Counsel .....</b>	<b>\$295</b>
<b>Associate Attorneys .....</b>	<b>\$225</b>
<b>Paralegal / Law Clerk .....</b>	<b>\$135</b>



## BANKS & WATSON

### APPENDIX A EXPLANATION OF COST BILLING

**Please review your invoice:** Our invoices are our best explanation of our services and costs incurred in your matter during each billing period. Please review your invoice to insure that each time entry and cost entry is accurate. If you have any questions, please contact us. As part of our fee agreement with you, costs are billed as follows:

**Messenger Runs:** Our Firm utilizes in-house personnel to provide messenger services, when necessary, for court filings, recording documents and related tasks. Clients are charged a flat fee of \$12.00 per delivery, plus mileage, if applicable.

**Mileage:** The Firm charges only for actual travel costs to destinations outside of Sacramento County. Out-of-county automobile travel is charged at 54.5¢ per mile, or the current IRS mileage rate for automobile travel.

**Lexis:** Lexis is an electronic legal research database. Clients are charged for our actual online costs.

**Telephone:** The Firm charges clients actual telephone usage by toll unit cost per a telephone call accounting system. As a result, the charges approximate but may not be identical to the actual cost paid by Banks & Watson.

**Facsimiles:** The Firm charges 50¢ per page for received and outgoing transmissions.

**Copies:** The Firm charges 22¢ per page for copies made in-house. We record those charges through the use of internal copy codes input directly into the copy machines.

**Outside vendors:** The Firm bills clients for actual costs paid on their behalf to outside vendors. Under the fee agreement, vendor invoices may be submitted directly to the client for payment, or at the Firm's option, paid by the Firm and included on the client's invoice.

**Late payment:** Invoices are due on presentment. A service charge is billed to clients at the rate of 10% per annum on any unpaid balance after 60 days.