

ITEM 13 ATTACHMENT  
AMENDED AGREEMENT FOR LEGAL SERVICES FOR  
THE CITY OF CALABASAS

This amended Agreement is made and entered into by and between the law firm of Colantuono, Highsmith & Whatley, PC, formerly known as Colantuono & Levin, PC (hereinafter "the Firm") and the City of Calabasas ("City").

RECITALS

A. The City desires to retain the Firm to discharge the duties of the office of City Attorney and to designate a member of the Firm as City Attorney.

B. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to discharge the duties of the office of City Attorney and to provide the services contemplated by this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

**1. Scope of Services.**

A. The Firm shall discharge the duties of the office of City Attorney of the City of Calabasas and shall use its best efforts to provide legal services in a competent and professional manner. The Firm shall provide all legal services to the City of the kind and nature typically provided by an in-house City Attorney's office and as provided in the Calabasas Municipal Code unless specifically stated otherwise in this Agreement or otherwise directed in writing by the City. Except where conflict of interest rules require otherwise, the Firm shall supervise the activities of all other counsel retained by or for the City and shall review the work of such counsel on behalf of the City.

B. The legal services to be provided by the Firm shall consist of those set forth in Exhibit "A" attached hereto and shall be billed at the rates set forth therein. City reserves the right to review the fixed-retainer relationship created by this amended Agreement and to revert to the hourly relationship in effect prior to this amended Agreement, in its sole discretion.

**2. Designation of City Attorney.**

Colantuono, et al. will designate a City Attorney for the City. The parties understand and agree that the Firm may, from time to time, utilize other attorneys within the Firm to assist Colantuono, et al. in the performance of this Agreement but that Mr. Matthew T. Summers will attend all regularly scheduled Council meetings and make best efforts to attend all special Council meetings unless excused by Council or the City Manager or absent due to illness, an annual vacation or to a once-or-twice-per-year business commitment (such as a conference of the League of California Cities) and will supervise all services rendered under this Agreement.

**3. Billing Procedures and Monthly Statements.**

A. The Firm shall submit to the City, 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 which are billed on an hourly basis. The parties acknowledge that payment of all monthly statements is expected to be made within thirty (30) days of the billing date. The City will not be liable for interest or finance charges, although persistent late payment shall be a basis for the Firm to review its relationship with the City.

B. The Firm will bill the City for actual, out-of-pocket expenses such as, but not limited to, authorized travel, long-distance telephone calls (other than calls between City Hall and the Firm's offices), filing fees, duplication, computerized legal research (except as provided to the contrary below), and similar out-of-pocket expenditures. Photocopies shall be billed at 15 cents per page, outgoing faxes will be charged at \$1 per page. All other expenses will be billed at cost, without markup. The Firm will not charge for word-processing services or secretarial overtime. The Firm will make best efforts to avoid the use of outgoing faxes, and the costs associated with them, by use of email, U.S. Mail and other means. These items will be separately designated on the Firm's monthly statements as "disbursements," and will be billed in addition to fees for professional services. The Firm will not charge the City for routine computerized legal research such as Lexis-Nexis or Westlaw research, but will pass through to the City at cost, without markup, its cost for use of specialized databases outside the Firm's contract with Westlaw or a similar provider.

C. Time will be charged by the Firm in increments of 1/10 of an hour (i.e., six-minute units). The rate structure in general, or the rates of attorneys of particular levels of experience, may be increased or altered from time to time, after written notice to, and approval by, the City. No such change shall affect the terms of Exhibit A to this Agreement absent amendment of this Agreement pursuant to Section 8 below. The current hourly rates of the firm's professionals for non-retainer services are shown in Exhibit B attached hereto.

D. The firm will not charge the City for the attendance of more than one attorney at any meeting, proceeding or deposition without first discussing the need to do so with the principal client contact for the matter, and will limit multiple attendance to exceptional circumstances where such attendance is necessary for the benefit of the client.

#### **4. Resolution of Fee Disputes.**

The City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles County pursuant to the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. In the event that City chooses not to utilize the Los Angeles County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by the Firm shall be submitted to binding arbitration in Los Angeles County to be conducted by JAMS in accordance with its commercial arbitration rules.

#### **5. Term of the Agreement.**

This amended Agreement shall be effective as of July 1, 2021, and shall be and remain in full force and effect until terminated in accordance with the provisions of Section 6 hereof.

## **6. Termination of the Agreement.**

City has the right to terminate the Firm's representation at any time, without cause, subject to an obligation to give notice in writing to the Firm at least thirty (30) days prior to termination. Termination is effective thirty (30) days from the date of the written notice unless otherwise specified therein. The Firm has the same right, subject to the Firm's ethical obligations to allow the City sufficient notice prior to termination so that City will be able to arrange alternative representation. In either circumstance, City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any action in which the Firm may represent the City. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of the Firm's representation, City will remain obligated to pay to the Firm all fees and costs incurred prior thereto.

## **7. Files and Records.**

A. All legal files of the Firm pertaining to the City shall be and remain the property of City. The Firm will control the physical location of such files during the term of this Agreement. The Firm may, in its discretion, maintain all or part of the City's client file in electronic format. The Firm may store part or all of the City's electronic documents using secure cloud storage services. If so, the Firm will use all reasonable methods to maintain the confidentiality of City files, just as it does for the City's non-digital files. The City's data will be password protected and encrypted using currently available technology.

B. The Firm shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. If the City asks the Firm to deliver its file to the City, delivery of an electronic version, together with any materials that cannot be saved electronically, satisfies the Firm's obligation to release all client papers and property to the City. Three years after termination of the attorney-client relationship, and after reasonable notice, the Firm will be free to destroy the City's client file, including all electronic records. The Firm may also discharge its obligation to maintain the City's file prior to the expiration of two years by mailing a copy to the City. "Reasonable notice" means the Firm's mailing of a notice of our intent to destroy your client file to the City.

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

## **8. Modifications to the Agreement.**

Unless otherwise provided in this Agreement, modifications relating to the nature, extent or duration of the Firm's professional services to be rendered hereunder shall require the prior

written approval of the City Council of the City. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rates to be charged by the Firm and paid by the City.

**9. Independent Contractor.**

No employment relationship is created by this Agreement. The Firm and its members shall, for all purposes, be an independent contractor to the City. The Firm and its members shall not be entitled to participate in any pension plan (including, without limitation, the Public Employees Retirement System), insurance, bonus, or other similar benefits provided to City employees.

**10. Nondiscrimination.**

In the performance of this Agreement, the Firm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, medical condition, or any other unlawful basis.

**11. Assignment and Delegation.**

This Agreement contemplates the personal professional services of the Firm. Neither this Agreement nor any portion thereof shall be assigned or delegated without the prior written consent of the City. Delegation to attorneys outside the Firm shall be limited to those situations in which the Firm is disqualified by virtue of a conflict of interest, or where the Firm does not possess the expertise to competently perform services in a particular practice area. Delegation shall not be made without the prior written approval of the City Manager of the City. The Firm shall supervise delegated work, except where precluded from doing so by: virtue of a conflict of interest, and where otherwise agreed to by the parties hereto.

**12. Insurance.**

A. The Firm currently maintains in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. Said insurance policy provides coverage to the City for any damages or losses suffered by the City as a result of any error or omission or neglect by the Firm which arises out of the professional services required by this Agreement.

B. The Firm currently maintains workers' compensation insurance in accordance with Section 3700 of the California Labor Code.

C. The Firm agrees to notify City in the event the limits of its insurance should fall below the coverages stated in paragraph A or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

**13. Indemnification.**

The Firm shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage

due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, or negligent acts, errors or omissions of the Firm in the performance of this Agreement.

**14. Conflicts of Interest.**

The Firm and its members shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.).

**15. Permits and Approvals.**

The Firm and its members shall obtain, at the Firm's sole cost and expense, all permits, and licenses necessary in the performance of this Agreement.

**16. Severability.**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**17. Entire Agreement.**

This Agreement, together with Exhibits "A" and "B" hereto, shall constitute the full and complete agreement and understanding of the parties and shall be deemed to supersede all other written or oral statements of any party hereto relating to the subject matter hereof.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**“City”**  
**City of Calabasas**

**“Consultant”**  
**Colantuono, Highsmith & Whatley, PC**

By: \_\_\_\_\_  
James R. Bozajian, Mayor

By: \_\_\_\_\_  
*Name, Level of Officer e.g., Vice President*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Co-Authorized Signer, Level of Officer*

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Maricela Hernandez, MMC  
City Clerk

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Matthew T. Summers, City Attorney

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES AND APPLICABLE BILLING RATES**

I. GENERAL LEGAL SERVICES

A. *Retainer Services.* The general legal services to be provided by the Firm to the City shall include the following:

1. Provide routine legal assistance, advice and consultation to the City Council and to City staff relating to general public law issues, potential tort liability and risk management.
2. Prepare and review legal opinions, ordinances, resolutions, agreements and related documents.
3. Attend all meetings of the City Council, and such meetings of the Planning Commission and other Boards and Commissions of the City as may from time to time be specified by the City.
4. Monitor pending state and federal legislation and regulations, and new case law, as appropriate.
5. Perform such other or additional general legal services as may be requested by the City, acting by and through the City Council or the City Manager.
6. Administer contracts that the City may have with other legal counsel.
7. Provide attorneys on-site for regular office hours a minimum of twice per month for up to a total of 12 hours per month as requested by the City Manager or the City Council. Additional office hours will be provided as requested by the City Manager or the City Council and compensated pursuant to paragraph B. below.
8. Perform all duties of the office of City Attorney as provided in the Calabasas Municipal Code, except to the extent such duties are provided for in Sections II or III below.

The general legal services specified in this paragraph A shall be provided at the rate of \$21,000 per month except as provided in paragraph B. below.

B. *Special Projects.* Additional office hours requested by the City Manager or the City Council, and services on any single project or matter which would otherwise be within the scope of paragraph A (Retainer Services) that the City Attorney and City Manager mutually agree is reasonably likely to require more than 12 hours of professional services, shall be compensated at the rate of \$175 per hour in addition to the retainer provided for in paragraph A. above.

C. *Task Billing.* Upon request by City, Firm will propose flat-fee amounts to cover specific tasks under paragraph B. of this Section and under Sections II - IV below. When such task, flat-fee arrangements have been agreed upon, they shall control over the rates provided by this Agreement.

## II. LITIGATION SERVICES

A. The Firm will provide litigation services to the City in any and all matters assigned by the City, except as delegated pursuant to paragraph 11 of the Agreement, or as otherwise agreed in writing by the Firm and the City. Litigation oversight services such as review of invoices, coordination of activities, communication of City Council direction, and similar administrative tasks will be included in General Legal Services at the rates set forth in Section I.

B. The litigation services specified in paragraph A shall be billed at the regular hourly rates of the attorneys and other professionals providing such services at the time those services are provided to a maximum of \$250 per hour, or as otherwise agreed pursuant to paragraph I.C above. The non-retainer rates in effect on the Effective Date of this Agreement are set forth in Exhibit B.

## III. LABOR AND EMPLOYMENT LEGAL SERVICES

A. The Firm will provide labor, employment and personnel legal services prior to the initiation of litigation to the City in any and all matters assigned by the City, except as delegated pursuant to paragraph 11 of the Agreement, or as otherwise agreed in writing by the Firm and the City.

B. The labor, employment and personnel services specified in paragraph A shall be billed at the regular hourly rates of the attorneys and other professionals providing such services at the time those services are provided to a maximum of \$250 per hour, except as otherwise agreed pursuant to paragraph I.C. above.

## IV. OTHER SPECIALIZED LEGAL SERVICES

The specialized legal services (excluding those described above) to be provided by the Firm to the City shall include the following:

1. Advice regarding taxes, assessments, fees and other Financial Advice.
2. Environmental Legal Services other than routine review of negative declarations, environmental impact reports and project-level environmental documentation.
3. Real Estate and Eminent Domain Services other than routine review of escrow documents, title reports and contracts of sale.
4. Insurance Coverage Services, such as advice and representation regarding disputes with the California Joint Powers Insurance Authority (CJPIA) or another insurance provider other than routine advice to tender claims to insurers.
5. Redevelopment Services.
6. Water Law Services.
7. Such other specialized services as may be required by the City which are not generally provided by an in-house City Attorney's office.

The specialized legal services specified in this paragraph shall be billed at the regular hourly rates of the attorneys providing such services at the time those services are provided up to a maximum of \$250 per hour. The non-retainer rates in effect on the Effective Date of this Agreement are set forth in Exhibit B.



## **EXHIBIT “B”**

### Non-retainer Hourly Billing Rates as of June 1, 2014

Shareholders and senior contract attorneys	\$250
6 <sup>th</sup> year and more associates	\$250
5 <sup>th</sup> year associates	\$245
4 <sup>th</sup> year associates	\$235
3 <sup>rd</sup> year associates	\$235
2 <sup>nd</sup> year associates	\$215
1 <sup>st</sup> year associates	\$210
Paralegals	\$145
Legal assistants	\$125