

LEGAL SERVICES AGREEMENT

The North Coast Railroad Authority ("NCRA") and the Office of the Sonoma County Counsel ("Counsel") enter into this agreement for legal services which shall become effective on the date set forth in Section 1. Counsel is authorized to provide legal services upon NCRA's request pursuant to Government Code sections 26520, 26529, and 27642. This Agreement is required by Business and Professions Code section 6148 and is intended to fulfill the requirements of that section.

1. Effective Date.

This Agreement shall be deemed effective as of January 15, 2019, upon its signature by both parties, and shall continue in effect until terminated as specified in Section 9.

2. Scope of Services.

The Office of the County Counsel will provide legal services upon request of the NCRA, such services to include legal research and advice; preparation of legal documents such as contracts; representation in negotiations; and attendance at public meetings. NCRA is retaining the Office of the County Counsel, not any particular attorney. Representation will also include substituting in as counsel of record in the current *Friends of Eel River v. NCRA* action. This Agreement excludes services for any matter in which NCRA is or will be seeking a permit, license, or other discretionary benefit from the Board of Supervisors or any other county board or commission.

3. Compensation for Services.

In consideration for Counsel's performance, NCRA shall pay Counsel the amount determined to be the hourly cost to the County of Sonoma ("County") of providing such service which is determined every fiscal year when County adopts its annual budget. Such amount may be adjusted annually as of July 1 to reflect the actual cost of providing such services. In addition, NCRA shall be billed for actual costs and reasonable expenses incurred by the Office of the County Counsel in providing service requested by NCRA. The hourly rate for services of County Counsel for FY 2018/2019 is \$256.00 per hour.

4. Billing and Payment.

Charges for services rendered pursuant to the terms and conditions of this Agreement shall be billed one month in arrears. Time will be billed in quarter-hour increments, rounded off for each particular activity to the nearest quarter-hour. The minimum charged for any particular activity will be one quarter hour. The time charged will include the time Counsel spends on telephone calls relating to NCRA matters, including calls with NCRA and other parties and attorneys. The legal personnel assigned to NCRA matters may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not

duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent. Counsel will charge for waiting time and for out of town travel time. Payment shall be made by the NCRA to Counsel at the address specified in Section 12 within thirty (30) days of the invoice date.

5. Authorized Representative of NCRA.

The parties understand that Counsel has been retained to represent the interests of the NCRA as a whole. In order to facilitate Counsel's representation of the NCRA, NCRA designates the Executive Director of NCRA, designated members of the Board of Directors, or the Director's designee, as authorized representatives to direct Counsel and to be the primary person to communicate regarding the subject matter of Counsel's representation under this Agreement. This designation is intended to establish clear lines of authority and to minimize potential uncertainty, but not to preclude communication between Counsel and other representatives of NCRA. Should NCRA desire to change the designated authorized representative, NCRA shall provide Counsel with written direction that designates the name of the individual(s) who shall act as the replacement authorized representative.

6. Responsibility of NCRA.

NCRA will be truthful and cooperative with Counsel and keep Counsel reasonably informed of all developments relevant to Counsel's legal representation under this Agreement.

7. Conflict of Interest.

No attorney shall be assigned to represent or advise NCRA on any matter in which that attorney has a personal financial interest. In the event a conflict arises during the course of representation, Counsel shall take such steps as might be necessary to provide NCRA with substitute Counsel.

8. Representational Conflicts.

NCRA understands that Counsel serves as the County of Sonoma's legal advisor and representative in all civil matters. Counsel also serves as the legal advisor for a number of other separate legal entities that are governed by the same five (5) individuals that sit as the Board of Supervisors for the County, such as the Sonoma County Water Agency, the Sonoma County Agricultural Preservation and Open Space, the Community Development Commission, and others (hereinafter referred to as "Related Public Entities"). In the past Counsel also served as attorneys for the Sonoma-Marin Area Rail Transit ("SMART"). If deemed necessary Counsel will obtain a conflict waiver from SMART before representing NCRA in a matter. In addition, Counsel may, upon request, represent local governmental entities that are distinct from County government, such as joint powers agencies and special authorities such as NCRA. From time to time, the interests of NCRA may potentially conflict with the interests of the County or Related Public Entities, such as in a situation where the NCRA and the County both require assistance of Counsel in negotiating a contract with each other. As required by the Rules of Professional

Conduct, Counsel will take all steps possible to safeguard the confidential information of NCRA in such situation. A copy of Counsel's internal policy governing the management of conflicts of interest is available to NCRA upon request. Upon execution of this Agreement, NCRA agrees to execute the Advance Waiver of Conflict attached hereto as Exhibit A, so that Counsel may continue to represent the County (or Related Public Entities) and NCRA in the absence of actual conflict. Further, should an actual conflict develop between NCRA and County (or Related Public Entities), NCRA expressly waives its right to disqualify Counsel from representing County (or Related Public Entities) in any matter involving NCRA.

9. Termination and Withdrawal.

This Agreement may be terminated by NCRA at any time by written thirty (30) day notice to Counsel. Counsel may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. Counsel will retain all records in accordance with Counsel's adopted records retention schedule.

10. Indemnification.

NCRA shall defend, indemnify and hold harmless Sonoma County Counsel, and any of its officers, employees, consultants and agents and each of them, against any losses, claims, damages, obligations, liabilities, attachments, executions, demands, actions and/or proceedings brought by a claimant who is not party to this Agreement, to which Sonoma County Counsel may become subject as a result of: (i) errors contained in information furnished by NCRA or (ii) the rendering of any services by Sonoma County Counsel. Sonoma County Counsel may select and retain its own counsel in any action or claim subject to this indemnification. If NCRA fails or refuses to defend Sonoma County Counsel, then NCRA shall reimburse Sonoma County Counsel for all expenses and costs (including legal fees and costs) incurred by them in connection with investigating, preparing to defend, or defending any claim for which indemnification is owed.

11. Modification.

If, during the term of this Agreement, it becomes necessary to amend or add to the terms, conditions, scope, or requirements of this Agreement, such amendment or addition shall only be made in writing upon the mutual agreement of Counsel and NCRA.

12. Notices.

Notices regarding this Agreement may be delivered in person, by first class mail, or by fax, addressed to the following persons:

For the NCRA:
Mitch Stogner, Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

For Counsel:
Office of the County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

13. Malpractice Insurance.

The Office of the County Counsel does not carry malpractice insurance. Because County Counsel attorneys are county employees, any claims for recovery for negligence would be covered by the County's self-insurance program and governed by the provisions of the Government Code.

14. Authority to Sign.

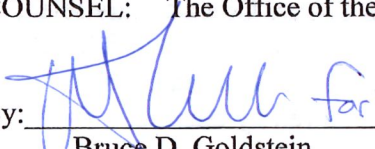
Each party represents that the individual signing this Agreement on its behalf has the authority to do so and to so legally bind the party.

15. Merger.

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

COUNSEL: The Office of the County Counsel

By: 
Bruce D. Goldstein
County Counsel

Date: 2/7/2019

North Coast Railroad Authority

By: 
Mitch Stogner
Executive Director

Date: January 21, 2019

EXHIBIT A

Disclosure Letter and Advance Waiver of Potential Conflicts

Board of Directors
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

Dear Board Members:

Thank you for the opportunity to provide legal services to support the important work of NCRA's evolving mission. As you are aware, the Office of the Sonoma County Counsel ("County Counsel") serves as Sonoma County's legal advisor and representative in all civil matters. In addition, County Counsel also serves as the legal advisor for a number of other separate legal entities that are governed by the same five (5) individuals that sit as the Board of Supervisors for the County, such as the Sonoma County Water Agency, the Sonoma County Agricultural Preservation and Open Space NCRA, the Community Development Commission, and others (all such public entities that are governed by the same five (5) individuals are hereinafter referred to as "Related Public Entities").

Also, County Counsel may, upon request, represent local governmental entities that are distinct from County government, such as the North Coast Railroad Authority ("NCRA" or "You"). From time to time, the interests of NCRA may potentially or actually conflict with the interests of the County or other Related Public Entities, or with those of other NCRA's represented by County Counsel. Counsel cannot represent both parties in any transaction between You and any other client unless both parties agree to waive Counsel's duty of absolute loyalty to each client.

The California Rules of Professional Conduct (CRPC) require that we inform you of and obtain your written consent to our participation as Counsel in transactions which present any potential for conflict of interest. To comply with these requirements, and to fulfill our ethical obligations to you, we hereby disclose to you the following.

Previously, the County Counsel represented the Sonoma Marin Area Rail Transit District ("SMART"). This representation included, but was not limited to, drafting SMART's enabling legislation, providing legal advice on Measure Q, serving as SMART's general counsel, preparing SMART policies and procedures, negotiating the Operating and Coordination Agreement for the Northwester Pacific Line between SMART and NCRA, and advising SMART regarding conflicts between SMART and NCRA.

We wish to make you aware of the various provisions in the CRPC and state law that govern our relationship with clients that have potential or actual conflicts.

CRPC 3-310(B) prohibits an attorney from “accept[ing] or continu[ing] representation of a client without providing written disclosure to the client where the member has or had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter” This would include our relationship with our existing clients.

CRPC 3-310(C) prohibits an attorney “without informed written consent of each client [from] accept[ing] representation of more than one client in a matter in which the interests of [such] clients would actually conflict”

CRPC 3-310(E) prohibits an attorney “without the informed written consent of the client or former client, [from] accept[ing] employment adverse to the client or former client where, by reason of the representation . . . the [attorney] has obtained confidential information material to the employment.”

Evidence Code section 962 provides that where two or more clients have retained an attorney upon a matter of common interest, information disclosed to the attorney in the course of representation on the matter will not be considered confidential from the other client in any civil proceeding that may develop between the clients as adversaries.

Examples of conflicts that may develop include:

- If our representation pertains to the defense or prosecution of a lawsuit in which you and another client are parties, it may subsequently develop that one of you has rights against the other, or defenses that disadvantage the other client. We could not continue representing both parties should this occur.
- If our representation pertains to the negotiation of an agreement, it may develop that one or more terms of the agreement remain unresolved, are in dispute, or require further negotiations. A conflict could also develop, if an agreement is reached, over the meaning of one of the terms or the performance responsibilities of one of the parties.
- If our representation pertains to a negotiation of two clients with a third party, consummation of the transaction may require compromises that may benefit one client more than the other. Our pre-existing relationship with the County or a Related Public Entity may cause the attorney to favor some clients over others.
- One client may wish to prevent the attorney from sharing confidential information with the other client, or may issue instructions that are impossible to carry out without disadvantaging another client. Counsel may not be able to forcefully advance your position because to do so might disadvantage another client.

Although County Counsel will do its best to honor its duty of loyalty to each client and to respect client information as confidential, the following circumstances could arise:

- If our representation on a matter is deemed a joint representation by a court, information disclosed during the course of the representation would be available to the other party in any dispute between the two clients.
- Our Legal Services Agreement requires that we withdraw in certain circumstances, such as if an actual conflict develops with another client, particularly with the County or with a

Related Public Entity, or those entities refuse to consent to our continued representation of NCRA in any actual dispute. In such circumstance, NCRA would be required to engage a different attorney, which may result in extra cost to NCRA.

- After withdrawing as NCRA's Counsel in an actual conflict, County Counsel may continue to represent the County or a Related Public Entity in a position adverse to NCRA.

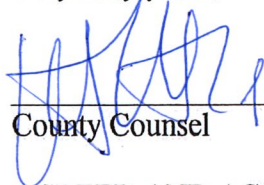
We strongly believe that, in a transaction between clients, despite divided loyalty, County Counsel can be of great assistance to our clients in reaching a resolution that serves both their interests and the public good.

By executing this advance waiver, you are agreeing to waive our duty of loyalty, i.e., to remain conflict-free in our representation of you. You are agreeing that you understand the various adverse consequences, as described above, which could occur because of the conflicts that could arise between our clients. We are happy to meet with you to discuss any questions you might have concerning the contents of this letter. You may wish to consult with an independent attorney before agreeing to execute this advance waiver, and we would encourage you to do so.

Your signature below will acknowledge that the above information has been disclosed to you; that you have been advised of your right to seek the advice of independent Counsel; that you have had a reasonable opportunity to consider this waiver, to ask questions, and to seek any advice you deemed necessary, and that you have decided to engage County Counsel notwithstanding any potential conflict or actual conflict, present or future, of the nature discussed in this disclosure letter.

By executing this waiver letter, NCRA agrees to waive any potential conflicts of interest between NCRA and County and between NCRA and Related Public Entities. Further, as required by the Legal Services Agreement, NCRA agrees to waive the right to disqualify the County Counsel from representing the County or any Related Public Entity over any conflict between NCRA and County or between NCRA and any such Related Public Entities. NCRA understands and acknowledges that County Counsel would not undertake to represent and advise NCRA without this waiver.

Very truly yours,



County Counsel

AGREED AND ACCEPTED:

[NCRA signature]

By: Mitch Stogner
Name: Mitch Stogner
Title: Executive Director
Date: January 21, 2019

