

RETAINER AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____ 2009, by and between the County of San Mateo, a political subdivision of the State of California ("County"), by and through the County Counsel and Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP ("Contractor").

FOR AND IN CONSIDERATION OF THE PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. Retention. County hereby retains Contractor to perform the legal services described in Paragraph 2 below, and Contractor hereby accepts such retention and agrees to perform such services under the terms and conditions set forth herein.

2. Services. Contractor shall provide legal advice, consultation and representation in connection with miscellaneous tax and benefit issues for the San Mateo County Employees Retirement System ("Retirement System") and the County of San Mateo.

a) The services performed by Contractor under this Agreement shall be under the general supervision and direction of the County Counsel and the Contractor shall not accept direction from any other County official or employee or any official or employee of the Retirement System.

b) Contractor shall coordinate all its activities with the County Counsel.

c) Contractor shall provide to County Counsel at intervals determined appropriate by County Counsel such reports as County Counsel may request.

d) County Counsel may delegate any and all of his supervisory responsibilities to appropriate attorneys within that Office.

e) Contractor shall attend such meetings as the County Counsel determines are necessary or appropriate during the term of this Agreement.

f) Contractor shall not institute any administrative proceeding, arbitration or litigation unless directed to do so by the County Counsel.

g) Contractor shall not compromise or settle any claim, protest or dispute against Retirement System without the prior consent of the Board of Supervisors of County or the Retirement Board, as the case may be.

3. Term. The term of this Agreement shall be effective February 1, 2009, and continue until June 30, 2012 or until such time as the Agreement is terminated

pursuant to Section 14 below.

4. Compensation. Subject to the provisions of subsections (a)-(d) below, County shall pay compensation to Contractor for the services rendered hereunder as follows:

a) The services to be performed by Contractor pursuant to this Agreement shall be performed by Robert Blum and other attorneys with Contractor to whom Robert Blum delegates responsibilities. In the case of such delegation, Mr. Blum shall be responsible for all work performed.

b) Contractor shall be compensated as follows. Contractor will be paid for the services at the respective hourly rates of \$460 per hour for Mr. Blum and up to \$470 per hour for other attorneys, based on their standard hourly rates. The County shall not be responsible for the cost of services provided by any individuals unless such services and the rate of compensation are approved in advance and in writing by the County Counsel.

c) County shall not be charged for secretarial or other support services.

d) Total compensation under this contract, including expenses paid pursuant to Section 5, shall not exceed \$150,000.

5. Expenses. County shall pay Contractor for its incidental expenses incurred in connection with this Agreement as follows:

a) Long distance telephone and postal and delivery expenses shall be charged to County at Contractor's cost;

b) There will be no "overhead" charges for such services as in house copying, fax, mailing or mileage.

c) Computerized legal research at the Contractor's cost; and

d) County shall have no liability for any other charges or expenses unless approved in writing by the County Counsel prior to being incurred.

6. Claims For Services. Contractor shall submit monthly statements to the County itemizing amounts charged under the hourly rate and any costs and expenses for which Contractor is entitled to reimbursement. County to pay full amount due within 30 days following approval by the County Counsel. The County Counsel may request additional information or clarification to support the billing by Contractor from Contractor who will be promptly provide the requested information.

7. Independent Contractor.

a) All services delivered by Contractor under this Agreement shall be provided under the coordination of the County Counsel. It is understood and agreed that Contractor is an independent contractor and that no relationship of employer-employee exists between County and Contractor hereto. Contractor hereby holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

b) It is further understood and agreed by the parties hereto that Contractor in the performance of its obligations hereunder is subject to the control or direction of County merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results. No permitted or required approval by County, of personnel, costs, documents or services of Contractor shall be construed as making County responsible for the manner in which Contractor performs its services or for any acts, errors or omissions of Contractor. Such approvals are intended only to give County the right to satisfy itself with the cost and status of work performed by Contractor.

c) If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment, or requirements of law, shall be determined by Contractor, and County shall have no right or authority over such person or the terms of such employment.

d) It is further understood and agreed that Contractor shall issue W-2, or with respect to partners Schedule K-1, Forms for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8. Indemnification. The Contractor shall indemnify, defend and hold harmless County, its officers, agents and employees, from and against any and all claims, losses, liabilities or damages, demands and actions including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, caused in whole or part by any negligent act or omission, or any willful misconduct, of Contractor, its officers, employees, or agents, or anyone directly or indirectly acting on behalf of the Contractor, regardless of whether caused in part by a party indemnified hereunder.

9. Insurance.

a) Without limiting Contractor's indemnification, Contractor shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance covering its operations in the amount of \$15 million.

b) County Counsel is authorized to execute amendments and waivers, with or without conditions, by letter to the insurance requirements of this Agreement, subject to the insurance requirements of this Agreement, subject to the approval of the Risk Manager of County and to the approval of Contractor if such amendments, waivers or conditions would increase the cost, liability or obligations of Contractor.

10. Assignment and Subcontracting. No performance to be rendered or payment due under this Agreement may be assigned or transferred, and Contractor shall not subcontract any work hereunder, without the prior written approval of the County Counsel.

11. Non-Discrimination. No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Section 504 applies only to contractors who are providing services to member of the public. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract.

12. Equal Benefits. With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

13. Audit of Contractor Records.

a) Contractor shall retain all records, including but not limited to, documents, reports, books, papers and accounting records which pertain to any work or transactions under this Agreement for a period of four (4) years after expiration of this Agreement. County, or any duly authorized representative of County, shall, with reasonable notice, have access to and the right to examine, audit and copy such records.

b) Contractor shall reimburse County for any overpayment determined to have been made as a result of an audit of Contractor's records not later than ten days following the date of service of written notice to Contractor of the amount of the overpayment. The Auditor or his or her designated representative shall not disclose to any other County department or person any personally identifiable information concerning client services performed by Contractor derived as a result of the conduct of any audit.

14. Termination. This Agreement and the attorney-client relationship between Contractor and County and the Retirement System may be terminated in whole or in part by County Counsel at any time upon thirty (30) days written notice to Contractor. Upon termination of this Agreement, County will pay Contractor the fees, costs and expenses due under Section 4, as of the effective date of termination, in no case exceeding the limitation set forth in Section 4. In the event of such termination, Contractor shall transmit to County all records, materials, work product and other matters developed or collected pursuant to this Agreement.

15. Governing Law. All claims, counterclaims, disputes and other matters in question between the County and Contractor arising out of or relating to this Agreement or breach thereof will be decided under the laws of the State of California or any other dispute resolution methods agreeable to both parties. California law shall govern the interpretation of this Agreement.

16 Amendments. This Agreement may be modified or amended, or any of its provisions waived, only by written agreements executed by both parties.

17. Entire Agreement. This instrument constitutes the entire Agreement between County and Contractor concerning the subject matter hereof.

18. Notices. Notices concerning this Agreement shall be deemed to have been served when deposited in the United States Mail, first class postage prepaid, and addressed as follows:

TO County:

Michael P. Murphy
County Counsel
400 County Center, 6th Floor
Redwood City, CA 94063

TO Contractor:

Robert Blum
Hanson, Bridgett et al
425 Market St, 26th Floor
San Francisco, CA 94105

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

Dated: _____, 2009

By _____
Robert Blum

COUNTY OF SAN MATEO

Dated: _____, 2009

By _____
Michael P. Murphy, County Counsel