

**FIRST AMENDMENT TO
LEGAL SERVICES AGREEMENT**

This is the First Amendment to Legal Services Agreement (“Amendment”) by and between the County of San Mateo (“County”) and the law firm of Cotchett, Pitre & McCarthy (“COTCHETT”). All capitalized terms not defined in this Amendment will have the meanings assigned to them in the Legal Services Agreement by and between the County and COTCHETT, dated March 7, 2007 (“Agreement”). The Agreement is amended as follows, effective July 26, 2010:

RECITALS

WHEREAS, under the terms of the Agreement, COTCHETT will provide legal services to the County on a contingency fee basis in litigation against the lead paint manufacturers, currently being prosecuted in the Superior Court for the County of Santa Clara, entitled *County of Santa Clara, et al. v. Atlantic Richfield Company, et al.*, Case No. 788657 (“Litigation”); and

WHEREAS the California Supreme Court in *County of Santa Clara v. Superior Court* (2010) 50 Cal.4th 35 upheld the County’s right to engage outside counsel on a contingency fee basis and provided specific guidelines for contingency fee agreements between public and private counsel, which the parties now seek to memorialize; and

WHEREAS the parties have always agreed that the County of San Mateo County Counsel (“County Counsel”) retains authority over all aspects of the County’s interest in the Litigation, and County Counsel has retained full control and supervision over all aspects of the Litigation implicating the County’s interest since its inception; and

WHEREAS the County and COTCHETT (collectively, the “Parties”) wish to amend the Agreement to make explicit the control and supervision being exercised by County Counsel for the County consistent with the existing relationship;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION I: SCOPE OF SERVICES:

The name of the COTCHETT firm is changed to Cotchett, Pitre & McCarthy and the name of the “key person” is changed to Nancy L. Fineman.

SECTIONS I(B), I(C), I(E), II(A), II(G) AND VI OF THE AGREEMENT ARE DELETED IN THEIR ENTIRETY AND REPLACED WITH THE FOLLOWING AS I(B):

CONTROL AND SUPERVISION

The San Mateo County Counsel, as the chief legal officer of the County of San Mateo, is charged with representing the County of San Mateo in all legal proceedings in which the County of San Mateo has an interest. The San Mateo County Counsel will retain final authority over all aspects of the County of San Mateo's interest in the Litigation, including all critical discretionary decisions affecting the County of San Mateo's interest in the Litigation and in particular, any decision regarding the ultimate disposition of the Litigation. In order to retain final authority over the County of San Mateo's interest in the Litigation, the San Mateo County Counsel will (1) retain complete control over the course and conduct of the Litigation as they relate to the County of San Mateo's interest; (2) retain a veto power over any decisions made by COTCHETT; and (3) appoint an Assistant or a Senior Deputy County Counsel with supervisory authority who will specifically be assigned and personally be involved in overseeing the Litigation and supervising the work of COTCHETT as follows:

- (1) The San Mateo County Counsel will retain complete control over the course and conduct of the County of San Mateo's interest in the Litigation and be actively involved in and direct all decisions related to the Litigation. To assist the San Mateo County Counsel with retaining complete control over the course and conduct of the Litigation as they relate to the County of San Mateo's interest in the Litigation, COTCHETT will present the following matters to the San Mateo County Counsel for decision with adequate time for the San Mateo County Counsel to review and decide such matters: (a) ultimate disposition of the Litigation, including but not limited to whether to settle or try the case; (b) witnesses and evidence to be presented at trial; (c) waiver of a jury trial; (d) the necessity of pursuing discovery motions, depositions, and written discovery; (e) all dispositive motions and oppositions to such motions; (f) all significant court pleadings, discovery, or procedural motions; (g) witnesses and evidence to be produced during discovery; (h) retention and selection of experts and consultants, including but not limited to subject matter and areas of expert reports and testimony; (i) approval of expert reports; (j) procedural tactics; (k) overall discovery approach; (l) gathering and presentation of evidence at trial; (m) all litigation and trial strategy questions; and (n) any and all other discretionary matters.

These provisions are not meant to be exhaustive, and the Parties agree that at all times the final authority for discretionary decisions related to the County of San Mateo's interest in the Litigation will remain vested in the San Mateo County Counsel. It is the intent of the Parties that this paragraph be construed broadly to

effectuate the Parties' intent that the San Mateo County Counsel exercise control over the course and conduct of the Litigation as they relate to the County of San Mateo's interest in the Litigation and that the San Mateo County Counsel have final decision-making authority over all aspects of the litigation strategy implicating the County of San Mateo's interest in the Litigation. Status meetings between the San Mateo County Counsel and COTCHETT will be held as requested by the San Mateo County Counsel.

- (2) The San Mateo County Counsel will retain veto power over any decisions, proposals, or recommendations made by COTCHETT, including, but not limited to, those matters listed in paragraph (1) supra. In order to effectuate control over the County of San Mateo's interest in the Litigation, COTCHETT will provide the San Mateo County Counsel with adequate notice of all events and timely copies of all documents that COTCHETT proposes filing, and timely copies of pleadings that defendants filed in the Litigation to allow proper, complete, and considered evaluation of all subject matters, including, but not limited to, those listed in paragraph (1) supra. For example, upon defendants' filing of a motion, COTCHETT will immediately notify the San Mateo County Counsel so that the San Mateo County Counsel can review the pleadings and, as necessary, discuss strategy related to the opposition or reply. By further example, COTCHETT will consult with the San Mateo County Counsel regarding any motions to be filed on behalf of the County of San Mateo and allow the San Mateo County Counsel adequate time to make a considered judgment regarding the necessity of and strategy involved in filing the motions.
- (3) The San Mateo County Counsel will appoint an Assistant or a Senior Deputy County Counsel with supervisory authority who will specifically be assigned and personally be involved in overseeing the County of San Mateo's interest in the Litigation and the relationship with COTCHETT. The San Mateo County Counsel, as the chief legal advisor of the County of San Mateo, will be apprised by his/her designee regarding the course and conduct of the Litigation.
- (4) Decisions regarding settlement of the County of San Mateo's interest in the Litigation are explicitly reserved to the discretion of the San Mateo County Counsel after consultation with the County of San Mateo's Board of Supervisors as required. Counsel for any defendant in the Litigation may directly contact the San Mateo County Counsel or any other attorney assigned to the Litigation from the office of the San Mateo County Counsel, without having to confer with COTCHETT regarding settlement.

The San Mateo County Counsel, together with county counsels and city attorneys for public entities that have joined or may join in the prosecution of the Litigation, may participate in the selection and organization of a Litigation Steering Committee in order to coordinate the joint

prosecution of the Litigation. The Litigation Steering Committee will be composed of representatives of the counties and cities participating in the Litigation who wish to serve on the Litigation Steering Committee. The Litigation Steering Committee will function in a coordinating, scheduling, and advisory capacity and will not have any control over the course or the conduct of the Litigation.

SECTION IV OF THE AGREEMENT IS DELETED IN ITS' ENTIRETY AND REPLACED WITH THE FOLLOWING AS IV:

It is anticipated that the County will provide or prepare data basing, statistical analysis and other compilation of information in connection with the prosecution of the case. It is also anticipated that the County will be needed to locate and reproduce the County's records that may be material to the investigation, discovery, prosecution and trial of the lawsuit, and that County personnel will be needed for depositions and trial as the lawsuit may require. County will provide such personnel as needed for the litigation.

SECTION XXII OF THE AGREEMENT IS REVISED TO ADD THE FOLLOWING LANGUAGE:

Notwithstanding the foregoing notice requirements, COTCHETT may, in its discretion, deliver documents for review and decision as required by this First Amended Agreement via electronic mail to the attorneys from the office of the San Mateo County Counsel assigned to the Litigation.

This First Amendment to the Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of California.

This First Amendment to the Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment through their duly authorized representatives.

COUNTY OF SAN MATEO:

COTCHETT, PITRE & McCARTHY:

Michael P. Murphy
County Counsel

Nancy L. Fineman
Partner