



# OLYMPIC VALLEY PUBLIC SERVICE DISTRICT



EXHIBIT F-1  
11 Pages

## GENERAL LEGAL COUNSEL SERVICES AGREEMENT

**DATE:** January 30, 2024

**TO:** District Board Members

**FROM:** Jessica Asher, Program Manager and Mike Geary, General Manager

**SUBJECT:** General Counsel Legal Services Agreement

**BACKGROUND:** Thomas Archer has represented the District since 1991 and has expressed the desire to retire from the position. In response, the District issued a request for proposals (RFP) for general legal services, distributing it to eight firms, with four providing responsive submissions.

**DISCUSSION:** A selection committee interviewed all responsive firms and the full Board interviewed two finalist attorneys. During a special meeting of the Board on January 16, 2024 the Board authorized the General Manager to enter negotiations with Gary Bell of Colantuono, Highsmith, and Whatley for General Counsel Legal Services. The attached legal services agreement was prepared by Mr. Bell and has been reviewed by Mr. Archer and staff.

**ALTERNATIVES:**

1. Authorize the General Manager to execute the legal services agreement with Colantuono, Highsmith, & Whatley, PC for general legal services.
2. Direct staff to execute an agreement with modifications.
3. Direct staff to not execute the agreement.

**FISCAL/RESOURCE IMPACTS:** The FY2023-24 budget includes funding for general legal counsel services.

**RECOMMENDATION:** Authorize the General Manager to execute the legal services agreement with Colantuono, Highsmith, & Whatley, PC for general legal services.

**ATTACHMENTS:** Draft Legal Services Agreement

**DATE PREPARED:** January 19, 2024

**OLYMPIC VALLEY PUBLIC SERVICE DISTRICT  
LEGAL SERVICES AGREEMENT**

This **LEGAL SERVICES AGREEMENT** (this "Agreement") is made and entered into effective January 30, 2024 (the "Effective Date") by and between Colantuono, Highsmith & Whatley, PC, a California professional corporation ("ATTORNEY"), and the Olympic Valley Public Service District, a California special district and public entity ("OVPSD"), with respect to the following Recitals:

**RECITALS**

**WHEREAS**, OVPSD is organized and operates under the County Water District Law (Wat. Code, § 30000 et seq.); and

**WHEREAS**, Water Code sections 30544 and 31004 authorize the Board to appoint and prescribe the authorities and duties of attorneys necessary or convenient for the business of OVPSD and to make contracts and employ labor to carry out the purposes of OVPSD, respectively; and

**WHEREAS**, OVPSD desires the services of a law firm to provide general counsel, special, and litigation services as provided herein.

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by and between the parties as follows:

**I. EMPLOYMENT OF ATTORNEY**

OVPSD agrees to engage ATTORNEY and ATTORNEY hereby agrees to perform the services hereinafter set forth.

**II. SCOPE OF SERVICES**

ATTORNEY shall provide and perform those services listed in Exhibit "A", which is fully incorporated herein by reference.

**III. ATTORNEY'S EMPLOYEES AND EQUIPMENT**

ATTORNEY agrees that it has secured or will secure at its own expense all persons, employees and equipment required to provide and perform the services required under this Agreement and that all such services will be performed by ATTORNEY, or under ATTORNEY's supervision, by persons authorized by law to perform such services.

#### **IV. COMPENSATION AND MANNER OF PAYMENT**

ATTORNEY will be compensated only for services described in Section II above at the rates included in Exhibit "B", which is fully incorporated herein by reference.

#### **V. MANNER OF AND MAXIMUM PAYMENT**

ATTORNEY shall submit monthly invoices to OVPSD. Payment by OVPSD shall be made in arrears within thirty (30) days of receipt of invoices. Such payment shall constitute full and complete payment for the period covered by the invoice. The total amount paid to ATTORNEY for work within any fiscal year shall be subject to the approval of OVPSD's Board of Directors and may not exceed the amount budgeted for this purpose for that fiscal year.

#### **VI. AUDIT AND INSPECTION OF RECORDS**

At times agreed upon by OVPSD and ATTORNEY and as often as OVPSD may deem necessary, ATTORNEY shall make available to OVPSD, or its designated agents, all of ATTORNEY's data and records for examination with respect to all matters covered by this Agreement, and ATTORNEY will permit OVPSD, or its designated agents, to audit, examine, and make excerpts or transcripts from such data and records, and to make audits of all invoices, materials, and other data relating to all matters covered by this Agreement. Unless otherwise specified by OVPSD in writing, said data and records should be made available for examination for a period of two (2) years following completion of this Agreement.

#### **VII. INTEREST OF ATTORNEY**

1. ATTORNEY covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be employed or utilized to perform services under this Agreement.

2. Except as provided in paragraph 3. below, ATTORNEY agrees to not perform services of any kind for any person or entity with potentially or actually adverse interests to OVPSD without the prior written consent of OVPSD.

3. ATTORNEY has informed OVPSD that it provides advisory and/or litigation services to other public agencies in Placer County including: the City of Auburn, the Tahoe Forest Hospital District, the City of Lincoln, the City of

Roseville, the Placer County Water Agency, the City of Rocklin, and the City of Colfax. ATTORNEY is generally in the business of providing advisory and litigation services to public agencies in Placer County and elsewhere in California. Provided ATTORNEY does not provide services in Placer County which create a conflict under the Rules of Professional Conduct, ATTORNEY may continue its practice of providing legal services to public agencies in Placer County without further consent of OVPSD. ATTORNEY shall not provide services in Placer County which create a conflict under the Rules of Professional Conduct without the informed, written consent of OVPSD.

4. ATTORNEY agrees to alert every client for whom consent is required to this conflict of interest provision and to include language in its agreements with those clients, which would enable ATTORNEY to comply fully with the terms herein.

5. ATTORNEY shall recuse from discussions or actions that may result in a financial benefit to itself or any public agency it represents.

6. The following persons are hereby classified in "designated positions," as defined by OVPSD's Conflict of Interest Code. Such "designated positions" will be required to complete and submit "Statement of Economic Interests" (Form 700s) during the term of this Agreement:

Gary B. Bell

Alexandra M. Jack

## **VIII. TERMINATION**

OVPSD reserves the right to terminate this Agreement at any time by written notice to ATTORNEY thirty (30) days prior to date of termination. OVPSD shall thereafter pay ATTORNEY for work performed to the date of termination. Such notice shall terminate this Agreement and release OVPSD from any further fee, cost, or claim hereunder by ATTORNEY, other than for work performed to the date of termination. In the event of termination, all finished and unfinished documents and other material shall, at the option of OVPSD, become its property.

## IX. INSURANCE

ATTORNEY agrees to maintain such insurance as will fully protect ATTORNEY and OVPSD from any and all claims under any workers' compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from operations carried on under this Agreement, either by ATTORNEY, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.

1. ATTORNEY 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 \$4,000,000 aggregate. Said insurance policy provides coverage to OVPSD for any damages or losses suffered by OVPSD as a result of any error or omission or neglect by ATTORNEY which arises out of the professional services required by this Agreement.
2. ATTORNEY currently maintains in full force and effect a commercial general liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Said insurance provides coverage for claims arising from bodily or personal injury or damage to property.
3. ATTORNEY currently maintains workers' compensation insurance in accordance with Section 3700 of the California Labor Code.
4. ATTORNEY agrees to notify OVPSD in the event the limits of its insurance should fall below the coverages stated in paragraphs 1. and 2. above or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.
5. Promptly upon execution of this Agreement, and prior to commencement of any work, ATTORNEY shall provide OVPSD with certificates of insurance to which shall be attached certified copies of policies described in paragraphs 1. and 2. above. Approval of the insurance by OVPSD shall not relieve or decrease the liability of ATTORNEY.

## **X. HOLD HARMLESS AGREEMENT**

ATTORNEY shall exonerate, indemnify, defend, and hold harmless OVPSD from and against, and shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to ATTORNEY and ATTORNEY's employees engaged in performance of this Agreement. OVPSD and its agents, officers, and employees shall not be, nor be held liable for any claims, liabilities, penalties, fines, or forfeitures, or for any damage to the goods, properties, or effects of ATTORNEY or of any other persons whatsoever, nor for personal injury to or death of them, or any of them, caused by or resulting from any negligent act or omission of ATTORNEY or ATTORNEY's agents, employees, or representatives. ATTORNEY further agrees to indemnify, defend, and hold harmless OVPSD and its agents, officers, and employees, against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by OVPSD on account of any claim therefor to the extent caused by ATTORNEY's negligence.

## **XI. ASSIGNABILITY**

ATTORNEY shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written consent of OVPSD thereto. Provided, however, that claims for money due or to become due to ATTORNEY from OVPSD under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to OVPSD. Any assignment requiring approval may not be further sub-assigned without OVPSD approval.

## **XII. NOTICE**

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

OVPSD:	Olympic Valley Public Service District
	Attn: General Manager
	P.O. Box 2026
	Olympic Valley, CA 96146
	(530) 583-4692

ATTORNEY: Gary B. Bell  
Colantuono, Highsmith & Whatley, PC  
333 University Avenue, Suite 200  
Sacramento, CA 95825  
(916) 898-0049  
[GBell@chwlaw.us](mailto:GBell@chwlaw.us)

Payments shall be directed to ATTORNEY as follows:

Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091

Either party may alter its address for notice under this Agreement by written notice to the other party at any time.

### **XIII. INDEPENDENT CONTRACTOR**

ATTORNEY and any agent, subcontractor, or employee of ATTORNEY shall act in an independent capacity and not as an officer or employee of OVPSD. OVPSD assumes no liability for ATTORNEY's action in performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for ATTORNEY. ATTORNEY shall not have authority to act as an agent on behalf of OVPSD unless specifically authorized to do so in writing by OVPSD. ATTORNEY acknowledges that it is aware that, because it is an independent contractor, OVPSD is making no deductions from its fee and is not contributing to any fund on its behalf. ATTORNEY disclaims the right to fee or benefits except as expressly provided for in this Agreement.

ATTORNEY shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice, or recommendations, independent of the control and direction of OVPSD, other than normal contract monitoring; provided, however, ATTORNEY shall possess no authority with respect to any OVPSD decision beyond rendition of such information, advice, or recommendations unless authorized in writing by OVPSD.

#### **XIV. EQUAL OPPORTUNITY**

ATTORNEY will not discriminate against any employee, or against any applicant for such employment, based on a protected class under federal or state law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

#### **XV. SUBCONTRACTS**

None of the services covered by this Agreement shall be subcontracted or assigned without the prior written consent of OVPSD, provided however, that this provision shall not apply to secretarial, clerical, routine mechanical, and similar incidental services needed by ATTORNEY to assist in the performance of this Agreement. ATTORNEY shall not hire OVPSD's employees to perform any portion of the work or services provided for herein including secretarial, clerical, and similar incidental services except upon the written approval of OVPSD. Performance of services under this Agreement by associates or employees of ATTORNEY shall not relieve ATTORNEY from any responsibility under this Agreement.

#### **XVI. CHANGES**

OVPSD may, from time-to-time, require changes in the scope of the services of ATTORNEY to be performed hereunder. Such changes, including any increase or decrease in the amount of ATTORNEY's compensation, which are mutually agreed upon by and between OVPSD and ATTORNEY, shall be effective upon written amendment to this Agreement signed by the parties.

#### **XVII. DISPUTE RESOLUTION**

Should any dispute arise concerning this Agreement or any provision hereof, the parties agree to mediate in good faith the dispute before a neutral mediator to be mutually selected by the parties. The parties agree to equally pay any and all such cost and expense of mediation.

In the event the parties are unsuccessful in resolving all or any portion of the dispute through mediation, the remaining dispute or portion(s) thereof shall be submitted to binding arbitration as follows:



1. OVPSD is entitled to require that any fee dispute be resolved by binding arbitration in Sacramento County pursuant to the arbitration rules of the Sacramento County Bar Association for legal fee disputes.

2. All other disputes regarding or arising under this Agreement, including fee disputes not submitted pursuant to paragraph 1. above, shall be submitted to binding arbitration in Sacramento County to be conducted by ADR Services, Inc. in accordance with its commercial arbitration rules.

#### **XVIII. APPLICABLE LAW**

This Agreement shall be construed and interpreted according to the laws of the State of California.

**IN WITNESS WHEREOF**, OVPSD and ATTORNEY have executed this Agreement as of the Effective Date:

“OVPSD”

Olympic Valley Public Service District

By: \_\_\_\_\_

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

“ATTORNEY”

Colantuono, Highsmith & Whatley, PC

By: \_\_\_\_\_

Gary B. Bell, Vice President and Secretary

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

## **EXHIBIT A**

### **SERVICES**

#### **General Counsel services:**

- Oversee and manage the legal affairs of the District and ensure that the policies, programs, and activities of the District and its employees and agents are carried out in compliance with all applicable law and that the best interests of the District are otherwise protected to the fullest extent possible.
- Provide legal advice and opinions as requested by the Board of Directors, General Manager, or staff.
- Interpret laws, legislation, rulings and regulations for the District.
- Advise the Board of Directors and staff on issues related to wastewater and water law.
- Represent and advise the Board of Directors as the governing body and all District Officers in all matters of law pertaining to their offices.
- Represent the District in administrative and legal proceedings, providing litigation services as needed.
- Represent and work with Board of Directors and staff on negotiations.
- Monitor current, new and pending state and federal legislation, and case law as applicable to the District, and inform and provide direction to Board members and the General Manager regarding compliance issues and/or impacts to the District.
- Provide prompt responses and have availability for telephone consultation and to render written opinions on given issues related to District business in a timely manner.
- Attend regular Board Meetings (held monthly on the last Tuesday of the month, starting at 8:30 a.m., except in November and December) and other meetings as needed.
- Advise the Board of Directors and staff on relevant laws and regulations including, but not limited to the Brown Act, Public Records Act, parliamentary procedures for running meetings, and conflict of interest requirements for public officials.
- Provide the District with education and in-service seminars as mutually agreed to maintain a level of education among the Board of Directors, staff and management, to the fullest extent possible, to increase the knowledge of District staff and Board Members. any other services requested by board of directors or general manager
- Review and prepare board and committee agendas and reports as required.
- Aid in responding to public records requests.
- Prepare or review all ordinances, resolutions, contracts, deeds, leases, agreements, easements, and all other legal documents as requested by the General Manager or staff.
- Provide guidance on applicability, requirements, implementation, and enforcement of Board resolutions and ordinances.
- Draft language related to issues raised during negotiations.
- Advise on individual labor and employment matters.
- Provide legal counsel to the District for Human Resources policies and issues, including personnel actions and appeals.

Special Counsel services:

- Services provided on an as-needed basis, and not within the definition of “General Counsel services” above, when directed by the District.
- Interpret and provide support to staff and the Board of Directors to enforce the District’s ordinances in accordance with criminal/civil law and procedures;
- Provide support in working with regulatory agencies such as the California State Water Resources Control Board (CalEPA), California Dept. of Water Resources, California's Department of Resources Recycling and Recovery (CalRecycle), Sierra-Sacramento Valley Emergency Medical Services Agency (S-SV EMS), California Division of Occupational Safety and Health (Cal/OSHA), etc.;
- Such other specialized services as may be required by the District.

Litigation services:

- Enforce all ordinances and regulations through administrative and judicial actions as requested by the Board of Directors;
- Prepare personnel for deposition proceedings and provide guidance through the intricacies of the subpoena process;
- Litigation services include advice and representation concerning actual or threatened litigation, administrative proceedings, and court proceedings;
- Such other litigation services as required.

## **EXHIBIT B**

### **RATES AND COSTS**

General Counsel services: Standard rates capped at \$250/hour

Special Counsel services: Standard rates capped at \$300/hour

Litigation services: Standard rates capped at \$350/hour

\* No charge for travel to and from one regular meeting of the Board of Directors per month. For all other meetings as needed, one-half the applicable rate for time actually travelled to and from the meeting. Mileage charged at IRS rate.

\* \$0.20/page for in-house copies. \$1.00/page for outgoing faxes.

\* All other costs at actual cost.