


## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_  
Arnaldo Rodriguez, City Manager

**Council Meeting of:** December 4, 2019

**Agenda Number:** B-11

**SUBJECT:**

Consideration of a Resolution Approving an Agreement for Special Counsel Legal Services with Colantuono Highsmith Whatley, PC

**RECOMMENDATION:**

It is recommended that the City Council (Council) adopt the resolution approving the agreement for special counsel legal services with Colantuono Highsmith Whatley, PC and authorizing the Mayor to sign the agreement.

**SUMMARY:**

The City received a claim from Driscoll & Omens, a law firm representing Claimant Mantilla and a Claimant Class "consisting of those customers of the City of Madera (Water Provider) who obtain water services from Water Provider if that service is provided at the rates charged for service to a single-family residence or the rates charged to a multiple family residence." The claim further alleges that Claimants paid charges in excess of those allowed under Proposition 218. The claim was tendered to the RMA but it is not covered.

The City Attorney learned that numerous identical claims have been filed against cities and water agencies around California. The City Attorney has recommended that the City retain Colantuono Highsmith Whatley, PC ("Firm") as special counsel to handle this matter. The firm is an expert in Proposition 218 matters and has been retained by other entities receiving similar claims. The Firm brings efficiencies to the handling of the pending claims.

Under the proposed agreement, the Firm will be responsible solely for the analysis and defense of claims alleging the City's water rates violate Proposition 218.

**FINANCIAL IMPACT:**

The Firm's rates for attorneys have a high mark of \$495 per hour. For this engagement, the Firm has agreed to utilize a range starting at \$210 and capped at \$385 per hour for their fees. At this time, it is difficult to forecast potential and final costs associated with this Agreement. However, the City Attorney will keep the Council and this office updated with milestones and potential costs.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

**ALTERNATIVES:**

Council could direct staff to solicit additional proposals for Special Counsel.

**ATTACHMENTS:**

1. Resolution approving the proposed agreement for legal services.
2. Exhibit 1 to Resolution: Proposed agreement for legal services.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AGREEMENT FOR SPECIAL COUNSEL LEGAL SERVICES BETWEEN THE CITY OF MADERA AND COLANTUONO HIGHSMITH WHATLEY, PC AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

**WHEREAS**, the City of Madera has a need to secure expert legal services to advise and represent the City on the analysis and defense of claims alleging the City's water rates violate Proposition 218; and

**WHEREAS**, Colantuno Highsmith Whatley, PC has the legal competence, experience, and qualifications to provide professional legal services required by the City.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA** hereby resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The Agreement for Legal Services between the City and Montoy Law Corporation, a copy of which is attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City of Madera.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

790 E. Colorado Boulevard, Suite 850  
Pasadena, CA 91101-2109  
Voice (213) 542-5700  
Fax (213) 542-5710

Exhibit 1  
**COLANTUONO**  

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**HIGSMITH**  

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**WHATLEY, PC**

Michael G. Colantuono  
(530) 432-7359  
MColantuono@chwlaw.us

November 11, 2019

**VIA ELECTRONIC MAIL**

Hilda Cantu Montoy, Interim City Attorney  
City of Madera  
2440 Tulare Street, Suite 410  
Fresno, CA 93721-2292

Re: **Representation of City of Madera re Claims Challenging City Water Rates**

Dear Hilda:

As you asked, I write to propose the terms under which we agree to represent City of Madera (“you” or “City”) regarding analysis and defense of claims alleging the City’s water rates violate Proposition 218. This will be our sole project for you; if we can assist you on other matters, please let me know. Colantuono, Highsmith & Whatley, PC and all of its professionals are very pleased to have the opportunity to represent you in this matter.

This letter sets forth the basis upon which our firm will provide legal services to you and bill you for services and costs. The firm maintains a conflict of interest index which lists all clients of our firm and matters in which we represent them. We will not represent any party with an interest that may be adverse to an indexed person without first determining if a professional conflict of interest would arise. We propose to index the following with respect to this matter:

Client-Affiliated Parties:

City of Madera

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Adverse Parties:

None.

Please let me know if any of these names are incorrect or if there are other parties with an interest in this matter that we should list such as, the names of the claimant or claimants. Unless we hear from you to the contrary, we will assume that the above listing is accurate and complete.

We have reviewed our files and our conflicts index and have no other client relationships which would interfere with our ability to represent you in this matter. As you know, we have represented the City on revenue matters in the past.

As we have discussed, the nature of the matter makes it impossible for us to precisely estimate the fees you may incur. You will receive monthly statements informing you of the fees and costs incurred during the prior month. We will, of course, do our best to represent you efficiently and without undue expense.

Please make payments payable to Colantuono, Highsmith & Whatley, PC directly to our Grass Valley office at:

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

Our federal employer identification number is 75-3031545.

Ryan Dunn and I will have primary responsibility for your representation, and the firm will use other attorneys and legal assistants in the best exercise of our professional judgment. If you have questions, concerns or criticisms at any time, please contact me at once. Naturally, we expect you to keep us reasonably informed of all significant developments regarding this representation.

We review all statements before they are issued to ensure the amount charged is appropriate. The statement for fees is simply the product of the hours worked multiplied by the hourly rates for the attorneys and legal assistants who did the work.

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Our hourly rates are based upon the experience, reputation and ability of the lawyer or legal assistant performing the services, and for 2019 range between \$210 and \$495 per hour for attorneys' time, and between \$135 and \$170 for the time of paralegals and legal assistants. As a courtesy to you, however, we agree to cap our rates at \$385 per hour, a substantial discount from my full rate. Our rate structure in general and the rates of particular lawyers may be increased from time to time, and are usually adjusted as of the beginning of each calendar year, but we will not lift the \$385 per hour cap without first discussing with you our need to do so.

It may be necessary to bill you for items such as, but not limited to, authorized travel, long distance telephone calls, filing fees, photocopying, computerized legal research outside the scope of our Westlaw contract and the like. These items are separately itemized on our statement as "disbursements." These amounts will be billed in addition to our fees.

We will send you monthly statements, and expect payment within 15 days of the billing date. If payment is not received within 30 days of the billing date, we reserve the right to charge interest on the unpaid balance at the rate of 1% per month and to terminate our representation.

We rarely have disputes with clients over our fees. Nevertheless, you should be aware that you are entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles or Nevada Counties pursuant to the arbitration rules for legal fee disputes of the respective County Bar Association. We agree that all disputes between us regarding the services rendered or fees charged not resolved via County Bar fee arbitration will be submitted to binding arbitration in Sacramento to be conducted by ADR Services, Inc. in accordance with its commercial arbitration rules. **YOU SHOULD REVIEW THIS PARAGRAPH CAREFULLY AND, IF YOU WISH, SEEK INDEPENDENT LEGAL COUNSEL REGARDING IT, AS YOU AND WE ARE AGREEING TO FOREGO SIGNIFICANT RIGHTS IN THE EVENT OF A DISPUTE BETWEEN US, INCLUDING THE RIGHT TO A JURY TRIAL.**

You have the right to terminate our representation at any time. We have the same right, subject to an obligation to give you reasonable notice to arrange alternative representation. In either circumstance, you agree to secure new counsel to represent you as quickly as possible and to cooperate fully in the substitution of the new counsel

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as counsel of record. Notwithstanding the termination of our representation, you will remain obligated to pay to us all fees and costs incurred previously.

You agree that we may, in our discretion, maintain all or part of your client file in electronic format. The firm may store part or all of your documents using secure cloud storage services. If so, the firm will apply all reasonable methods to maintain the confidentiality of your files, just as it does for your non-digital information. Your data will be password protected and encrypted using currently available technology. Clients requiring information from their files may obtain that information only by written request to us.

You also agree that following termination of our attorney-client relationship, we will not be required to maintain your client file for more than two years. If you ask us to deliver your file to you, you agree that delivery of an electronic version, together with any materials that cannot be saved electronically, satisfies our obligation to release all your client papers and property to you. Two years after termination of our relationship, and after reasonable notice, you agree that we will be free to destroy your client file, including all electronic records. We may also discharge our obligation to maintain your file before two years expire by mailing a copy to you at your address last known to us. You agree that "reasonable notice" means our mailing a notice of our intent to destroy your client file to you at that address.

I apologize for the formality of this letter, but we are required by California law to provide this information to you in writing. We are also required to inform you that we currently maintain professional liability insurance coverage.

Please review the foregoing and, if it meets with your approval, execute it and return it to me. If you have any questions, please feel free to call me at the direct-dial number above.

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Thank you for the opportunity to represent you!

Very truly yours,

Michael G. Colantuono

MGC:mgc

On behalf of City of Madera, I agree to retain Colantuono, Highsmith & Whatley, PC to provide legal services as set forth above.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_, 2019

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

Title: \_\_\_\_\_