

April 1, 2019

Irwin M. Fletcher, Trustee  
133 Babar Street  
Hurricane UT, 72358

**RE: Fiduciary Governance Support for the Coxtolstoy Trust**

Dear Irwin:

The controlling statutes and a long line of cases interpreting these rules make it abundantly clear that as a trustee you have an ongoing duty to (1) prudently administer the trust assets, (2) monitor the assets held in the trust and (3) monitor the parties who provide investment services to the trust. Too many trustees adopt a “set it and forget it” approach to fiduciary governance which falls far below the standard of prudence and diligence required by **Utah’s Prudent Investor Act**<sup>1</sup>. This Fiduciary Governance service is designed to help you fulfill your oversight duties of care as you administer the **Coxtolstoy Trust**.

## Duties of Care

Following is a summary of your specific duties as a trustee which will be incorporated into this governance process:

Duty of Prudence - §2(a): The Uniform Prudent Investor Act<sup>2</sup> directs that “**A trustee shall invest and manage trust assets as a prudent investor would...**” A prudent trustee will establish a series of policies and procedures that inform their administrative decisions. We will develop for you a Fiduciary Governance Statement which will act as a road map for future governance audits and administrative procedures.

Duty re Administrative Plan - §2(a): The code directs that a trustee shall act prudently by “... **considering the purposes, terms, distribution requirements, and other circumstances of the trust.**” As trustee, your administrative decisions are to take into

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<sup>1</sup> §75-7-901 to §75-7-907

<sup>2</sup> Utah adopted the UPIA in 2004

consideration the following factors: (1) the identified purposes of the trusts; (2) the targeted distribution rate from the trust; (3) the term of the trust; (4) the projected return from the trust assets; and (5) other circumstances that should be accommodated. We will develop for you an Administrative Plan that integrates the trust purpose with the investment strategies and distribution policies being employed.

Duty to Establish Risk and Return Expectations - §2(b): The code directs that the investment strategy adopted or approved by a trustee shall establish “... **risk and return objectives reasonably suited to the trust.**” As trustee, you are responsible for establishing and monitoring the risk expectations and return objectives for the assets held by the trust. We will create for you a record of several key performance indicators that will be used to fulfill your duty to monitor the risks and return of the trust assets.

Duty to Consider "Prevailing Factors" - §2(c): The code directs, “**Among circumstances that are appropriate to consider in investing and managing trust assets are the following...**”: (1) general economic conditions; (2) the possible effect of inflation or deflation; (3) the expected tax consequences of investment decisions or strategies; (4) the role that each investment or course of action plays within the overall trust; (5) the expected total return from income and the appreciation of capital; (6) other resources of the beneficiary; and (7) the need for liquidity, regularity of income, and preservation or appreciation of capital. We will create a record that you have carefully considered these factors as you administer the trust.

Duty to Diversify - §3: The code directs that “... **the trustee shall diversify the investments of the trusteeship unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.**” We will create a record that you have carefully evaluated the diversity of the trust assets within the (1) securities held by the trust, (2) the industries represented by the trust assets and (3) the asset class represented by the trust holdings. If a portion of the trust is concentrated in a single asset or asset class, **as it is in your case with the fractional interest in various real estate LLCs**, we will articulate a rational basis for retaining this concentration or make specific recommendations about how to more closely comply with this duty to diversify.

Duty to Investment Costs - §7: The code directs that “... **a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.**” We will create a record that the fee agreement between you and the trust and any investment advisor’s you rely upon are clearly

documented and appropriately set. We will also conduct an independent review of these costs to confirm that these expenses are reasonable, customary and within industry norms.

Duty to Prudently Delegate - §9(a)(2): The code directs, ***“The trustee shall exercise reasonable care, skill and caution in... establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.”*** We will create a record that you have established and communicated clear financial objectives and investment expectations to any advisors you rely upon.

Duty to Monitor the Agent’s Activities - §9(a)(3): The code directs, ***“The trustee shall exercise reasonable care, skill and caution in... periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.”*** Throughout this governance engagement we will be developing a record of your monitoring and oversight of the advisors to whom investment duties have been entrusted.

## The Service

The Anodos Fiduciary Governance support will begin by identifying and documenting the financial objectives, investment expectations, and governance policies you have established for the trust. Each quarter thereafter we will conduct a review of several of the trustee’s duties of care. The compliance calendar that we will follow completes one governance cycle every four quarters.

Each quarter we will provide to you our findings and recommendations in a series of reports (governance audits) what will be included in your compliance files. In any instance where some corrective action is suggested, we will document and implement these administrative changes for/with you.

### Compliance Calendar:

Qtr	Code Section – Duty
#1	Duty to Prudently Administer (Governance Statement and Library) Duty to Prudently Administer (Administrative Plan) Duty to Consider Prevailing Economic Factors Duty to Consider Total Return (GIPS)

	Duty to Consider Liquidity Needs (Bear Market Contingency)
#2	Duty to Diversify re Marketable Securities (If applicable) Duty to Diversify re Illiquid Assets (If applicable) Duty to Incur Reasonable Cost (Fee Study - Trustee and Advisor)
#3	Duty to Prudently Select Agents Duty to Prudently Delegate (IPS) Duty to Investigate Conflicts of Interest
#4	Duty to Monitor Investment Delegate(s) Duty to Balance Risk & Return (Benchmarking Study)

## The Fee

The fixed fee for our governance support is \$5,000 per year (billed quarterly) or 0.10% of the trust corpus whichever is greater. For trusts with values in excess of \$25mm a reduced retainer is often proposed. In this case the proposed annual retainer is **\$7,000** paid in four **\$1,750** quarterly installments.

Anodos will submit an invoice at the beginning of each calendar quarter. The cost of this engagement is appropriately born by the trust. **Utah Probate Code Section 75-7-802** grants the trustee specific powers to administer the trust. One of these powers is the authority to compensate agents of the trust for support provided to the trustee in their administrative duties.

## Key Staff

*Josh Yager, Managing Partner* – Josh is a recognized content expert on the issues of fiduciary duties relating to the management and oversight of trust assets. He lectures extensively on the policies and procedures for conducting investment manager audits to CPAs, attorneys, and professional fiduciaries throughout the country. Josh is Managing Partner at Anodos Advisors and a licensed attorney. Prior to founding Anodos in 2005, Josh worked for fifteen years as an investment advisor with Mercer Advisors.

*Ryan Wolfshorndl, Partner* - Ryan has been with the firm since its inception in 2005. Ryan holds the Chartered Financial Analyst (CFA®) and Certified Financial Planner (CFP®) designations. Ryan has over 10 years of experience in monitoring the activities

and risk/return outcomes of investment managers. Additionally, he conducts performance attribution and other statistical analysis relevant to the investment process. This work ensures accountability, adherence to investment parameters, and clarity of expectations between clients and their managers.

### Other Housekeeping Matters

- Anodos is a Registered Investment Advisor (RIA), but does not have discretion or authority to manage securities under this or any other agreement. Specifically, Anodos is not compensated for or engaged in the business of providing advice or analysis about specific securities, market trends, asset allocations or identification or introduction of other investment advisors ([Link to ADV2](#)).
- **Anodos is prohibited from ever serving as an investment advisor for this trust or introducing other investment advisors to the trustee. Any violation of this key contract term will result in the trustee's right to reimbursement of three times (3x) the consulting fee paid for this engagement.**
- Anodos has never been named in any legal action or investigation by the SEC, DOL or similar federal or state regulatory body.
- Anodos agrees to hold in strict confidence and not disclose any information obtained from the trustee or their agents during the course of this engagement unless authorized to do so by the trustee or compelled by law.

### Conclusion

Thank you for considering Anodos as a resource for your fiduciary governance needs. If you have any questions, please do not hesitate to contact me at 805.899.1245 or [josh@anodosadvisors.com](mailto:josh@anodosadvisors.com). If this proposal is acceptable, please return a signed copy of the following page by email and we will get started immediately.

Very truly yours,

Josh Yager, Esq., CFP<sup>®</sup>, ChFC<sup>®</sup>, CLU<sup>®</sup>

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

I am authorized to agree to this engagement letter on behalf of the **Coxtolstoy** Trust.

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**Irwin M. Fletcher**, Trustee of the **Coxtolstoy** Trust

INVOICE

**Date:** April 1, 2019

**Trust Name:** The Coxtolstoy Trust

**Bill To:** Irwin M. Fletcher, Trustee  
133 Babar Street  
Hurricane UT, 72358

**Contact Info:** [ifletcher@ajaxballbearings.com](mailto:ifletcher@ajaxballbearings.com)  
808-590-5646

**Service Description:** Documentation of the trustee's financial objectives, investment principles and governance policies and the ongoing monitoring of the trust assets and the advisor's compliance with the term of the delegation.

**Fee:** \$1,750 quarterly governance retainer

**Terms:** The initial governance retainer of \$1,750 will be billed at the commencement of the agreement and at the beginning of every calendar quarter thereafter until cancelled by either party.

**Check Payable To:** Anodos Advisors  
115 E. Micheltorena Street  
Suite 100  
Santa Barbara, CA 93101