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AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT is made and entered into this 18th day of June, 2019, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Best, Best and Krieger, LLP, hereinafter referred to as "ATTORNEY."

WITNESSETH

WHEREAS, COUNTY is in the process of defending various claims against COUNTY and Fresno County Board of Supervisors in *Comunidades Unidas Por Un Cambio v. County of Fresno, et al.*, (Fresno County Superior Court Case Number 18CECG04586); and

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, to represent COUNTY in the suit; and

WHEREAS, ATTORNEY represents that it is specially trained and experienced, and the it possesses such expertise; and

WEHREAS, such specialized legal services are either not available or expected not to be available in Fresno County's Office of the County Counsel.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions herein described, the parties hereto agree as follows:

SECTION I

ENGAGEMENT OF ATTORNEY

COUNTY hereby engages ATTORNEY as an independent contractor through the services of the following key person(s): Richard Egger, and such other partners of and associate lawyers as set forth in Attachment A, as well as such other partners of and associate lawyers and staff members employed by ATTORNEY as ATTORNEY deems necessary, and which COUNTY's County Counsel ("County Counsel"), or his designee, approves pursuant to paragraph 3 of this Agreement, except that the foregoing key persons may, from time to time, consult with such of ATTORNEY's other lawyers on a

1 "limited basis" (as hereinafter defined) as ATTORNEY reasonably deems prudent and
2 necessary under the circumstances. It is understood that ATTORNEY may not replace
3 any of the aforementioned key persons named above without the prior, express, written
4 approval of County Counsel, or his designee. In case of death, illness or other
5 incapacity of any of the foregoing key persons, ATTORNEY shall provide a replacement
6 of at least equal professional ability and experience as the key person replaced.

7 ATTORNEY shall perform specialized legal services in connection with the
8 defense of the COUNTY and Fresno County Board of Supervisors in the Comunidades
9 Unidas Por Un Cambio v. County of Fresno, et al. litigation. In addition, from time to
10 time, County counsel, or his designee, may request ATTORNEY to perform additional
11 specialized legal services in connection with this litigation on behalf of COUNTY. Upon
12 County Counsel's, or his designee's, written request to perform such services,
13 ATTORNEY shall perform such services pursuant to the terms and conditions of this
14 Agreement. Notwithstanding the foregoing provisions of this paragraph, in the event of
15 exigent circumstances, County Counsel may make such request orally, and County
16 Counsel and ATTORNEY shall within a reasonable time thereafter document such
17 request for services and acknowledgment thereof.

18 SECTION II

19 PERFORMANCE BY ATTORNEY

20 ATTORNEY agrees to timely perform all services provided for under this
21 Agreement. ATTORNEY agrees to avoid unnecessary duplicative efforts on the part of
22 ATTORNEY and ATTORNEY's partners, associate lawyers, and staff members in
23 ATTORNEY's performance of services for the COUNTY hereunder.

24 COUNTY shall not be obligated to compensate ATTORNEY for intra-office
25 conferences between or among ATTORNEY's partners, associate lawyers, and staff
26 members, unless such intra-office conferences promote efficiency in the performance of
27 ATTORNEY's work on a matter, or a reduction in the cost of compensation paid or
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1 reimbursement made for related, reasonable and necessary, out-of-pocket expenses to
2 ATTORNEY, or both. In the performance of the tasks identified in paragraph 1 under
3 this Agreement, ATTORNEY shall provide only those services that are necessary to
4 carry out such tasks in an efficient and effective manner.

5 III

6 COMPENSATION OF ATTORNEY

7 COUNTY shall be obligated to compensate ATTORNEY pursuant to the terms
8 and conditions of this Agreement only for the performance of those tasks, to the
9 reasonable satisfaction of COUNTY, which are related to the subject matter of this
10 Agreement. It is understood that COUNTY shall not be obligated to compensate
11 ATTORNEY for any work, services, or functions performed by ATTORNEYS: (i) in
12 seeking to obtain COUNTY's business or negotiating with COUNTY to enter into this
13 Agreement or (ii) in providing COUNTY with documentation, explanations, or
14 justifications concerning the adequacy or accuracy of its invoices for the performance of
15 services under this Agreement and resolving same to the reasonable satisfaction of
16 COUNTY.

17 COUNTY agrees to pay and ATTORNEY agrees to accept as full compensation
18 for performance of tasks under this Agreement the sums per hour per person as set
19 forth in Attachment A, attached hereto and incorporated herein by this reference.

20 In addition, ATTORNEY shall be reimbursed for reasonable and necessary out-
21 of-pocket expenses, as follows: telephone charges, telephonic facsimile transmission
22 charges, computer research charges, filing fees, courier charges, postage charges,
23 printing and photographic reproduction expenses, in-State travel, and all such directly
24 related expenses. It is understood that ATTORNEY shall not be reimbursed for its
25 secretarial or clerical services (including overtime hours worked), or normal office
26 operating expenses, with the exception of those charges and expenses stated above.
27 In addition, ATTORNEY shall not be reimbursed for such secretarial or clerical services
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1 performed or expenses incurred, regardless of whether such tasks are performed or
2 expenses are incurred by ATTORNEY's partners, associate lawyers, or anyone else.
3 Furthermore, COUNTY shall not compensate ATTORNEY for work performed by
4 paralegals where such work ordinarily is performed by licensed attorneys, including
5 legal research and legal document drafting.

6 In no event shall the maximum amount paid to ATTORNEY as compensation for
7 ATTORNEY's services performed under this Agreement exceed Two Hundred Seventy-
8 Five Thousand and No/100 Dollars (\$275,000), unless the parties agree to expand the
9 scope of services through written amendment. ATTORNEY shall not be paid for any
10 services or costs above this limit without a written modification of this Agreement
11 executed by both parties. ATTORNEY shall notify COUNTY in writing when the amount
12 of accrued services under the agreement whether billed or unbilled reaches Two
13 Hundred Ten Thousand and No/100 Dollars (\$210,000) in order to allow for adequate
14 time for any necessary amendment of this AGREEMENT. ATTORNEY acknowledges
15 that services performed in excess of any AGREEMENT lawfully approved by the Board
16 of Supervisors are performed at ATTORNEY's own risk.

17 IV.

18 PAYMENT AND RECORD-KEEPING

19 Subject to paragraph 3 of this Agreement, payment of compensation for the
20 services provided under this Agreement and reimbursement for related, reasonable and
21 necessary out-of-pocket expenses incurred shall be made by COUNTY after
22 submission of an itemized invoice by ATTORNEY to the County Counsel no later than
23 the thirtieth (30th) day following the end of the month in which such services were
24 rendered or expenses incurred. All payments of compensation and reimbursement for
25 expenses incurred in connection therewith shall be made by COUNTY no later than
26 forty-five (45) days following the date that the COUNTY receives a properly completed
27 invoice requesting the payment for such services rendered and expenses incurred.

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1 All such invoices shall reflect accurately the tasks performed by ATTORNEY
2 under this Agreement. In addition, all such invoices shall have sufficient detail as may
3 be required by COUNTY, including, but not limited to:

- 4 A. The specific nature of each task performed as services under this
5 Agreement;
- 6 B. The name of the partner or associate lawyer performing each such task;
- 7 C. The number of hours worked by each such person for each such task;
- 8 D. The hourly rate per each such person performing each such task; and
- 9 E. The related, reasonable and necessary, out-of-pocket expenses incurred, as
10 provided for in paragraph 3 of this Agreement.

11 In addition, each invoice shall set forth a summary of hours worked by each
12 partner and associate lawyer for the applicable billing period. Each such invoice shall
13 set forth the product of such summary of hours worked by each person multiplied by
14 such person's billing rate.

15 ATTORNEY shall prepare its invoices in an organized manner that facilitates an
16 efficient review of the services performed and the expenses incurred in order to provide
17 COUNTY with a clear and complete understanding of how much time was devoted to
18 specific tasks and projects, and the cost associated therewith.

19 ATTORNEY shall keep complete records of the services provided, together with
20 all related reasonable and necessary, out-of-pocket expenses. COUNTY and the
21 Fresno County Auditor-Controller/Treasurer-Tax Collector shall be given reasonable
22 access to all of these records for the purposes of audit of this Agreement. In addition,
23 ATTORNEY shall be subject to the examination and audit of such records by the
24 Auditor General for a period of three (3) years after final payment under this Agreement
25 (Gov. Code section 8546.7).

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1 V

2 TERM OF AGREEMENT

3 This Agreement is effective June 18, 2019 and shall continue in effect through
4 June 19, 2022, unless earlier terminated hereunder by either or both parties. Either
5 party may terminate this Agreement in writing at any time, either in whole or in part.
6 However, if ATTORNEY elects to terminate this Agreement, COUNTY's rights under
7 any pending matter which may arise from ATTORNEY's services hereunder shall not be
8 prejudiced due to such termination as required by the Rules of Professional Conduct of
9 the State Bar of California. Subject to paragraph 3 of this Agreement, ATTORNEY shall
10 be paid for all services performed to the date of termination of this Agreement, which
11 are done to the reasonable satisfaction of COUNTY.

12 VI

13 INDEPENDENT CONTRACTOR

14 In performance of the work, duties and obligations assumed by ATTORNEY
15 under this Agreement, it is mutually understood and agreed that ATTORNEY, including
16 any and all of ATTORNEY's officers, agents, and employees will at all times be acting
17 and performing as an independent contractor, and shall act in an independent capacity
18 and not as an officer, agent, servant, employee, joint venture, partner, or associate of
19 COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the
20 manner or method by which ATTORNEY shall perform its obligations under this
21 Agreement. However, COUNTY shall retain the right to administer this Agreement so
22 as to verify that ATTORNEY is performing its obligations in accordance with the terms
23 and conditions hereof. ATTORNEY and COUNTY shall comply with all applicable
24 provisions of law and the rules and regulations, if any, of governmental authorities
25 having jurisdiction over matters of the subject hereof.

26 Because of its status as an independent contractor, ATTORNEY shall have
27 absolutely no right to employment rights and benefits available to COUNTY employees.

1 ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its
2 employees all legally-required employee benefits. In addition, ATTORNEY shall be
3 solely responsible and save COUNTY harmless from all matters related to payment of
4 ATTORNEY's employees, including compliance with social security, withholding, and all
5 other regulations governing such matters. It is acknowledged that during the term of
6 this Agreement, ATTORNEY may be providing services to others unrelated to COUNTY
7 or to this Agreement.

8 VII

9 HOLD HARMLESS

10 ATTORNEY shall hold COUNTY, its officers, agents, and employees harmless
11 and indemnify and defend COUNTY, its officers, agents and employees against
12 payment of any and all costs and expenses (to include legal fees and court costs),
13 claims, suits, losses, damages and liability occurring or resulting to COUNTY in
14 connection with the negligent performance, or negligent failure to perform, by
15 ATTORNEY, its officers, agents, or employees under this Agreement, and from any and
16 all costs and expenses (including attorney's fees and costs), damages, liabilities,
17 claims, and losses occurring or resulting to any person, firm, or corporation who may be
18 injured or damaged by the performance, or failure to perform, of ATTORNEY, its
19 officers, agents, or employees under this Agreement. COUNTY's receipt of any
20 insurance certificates required herein does not in any way relieve the ATTORNEY from
21 its obligations under this paragraph 7 of this Agreement.

22 VIII

23 INSURANCE

24 Without limiting COUNTY's rights under paragraph 7 of this Agreement, or
25 against any third parties, ATTORNEY, at its sole expense, shall maintain in full force
26 and effect the following insurance policies throughout the entire term of this Agreement:
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1 A. Professional Liability Insurance with limits of not less than One Million
2 Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual
3 aggregate;

4 B. Comprehensive General Liability Insurance with limits of not less than
5 One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Four
6 Million Dollars (\$4,000,000). This policy shall be issued on a per occurrence basis.
7 COUNTY may require specific coverages including completed operations, products
8 liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any
9 other liability insurance deemed necessary because of the nature of this Agreement;

10 C. Comprehensive Automobile Liability Insurance for hired and non-
11 owned vehicles with limits of not less than One Million Dollars (\$1,000,000) per accident
12 for bodily injury and for property damages. Coverage should include any auto used in
13 connection with this Agreement; and

14 D. A policy of workers compensation insurance as may be required by the
15 California Labor Code.

16 ATTORNEY shall obtain endorsements to the Commercial General Liability
17 insurance naming the County of Fresno, its officers, agents, and employees, individually
18 and collectively, as additional insured, but only insofar as the operations under this
19 Agreement are concerned. Such coverage for additional insured shall apply as primary
20 insurance and any other insurance, or self-insurance, maintained by COUNTY, its
21 officers, agents and employees shall be excess only and not contributing with insurance
22 provided under ATTORNEY's policies herein. This insurance shall not be cancelled or
23 changed without a minimum of thirty (30) days advance written notice given to
24 COUNTY.

25 Within Thirty (30) days from the date ATTORNEY signs and executes this
26 Agreement, ATTORNEY shall provide certificates of insurance and endorsement as
27 stated above for all of the foregoing policies, as required herein, to the County of
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1 Fresno, County Counsel's Office, Attn: Joan Cuadros, 2220 Tulare Street, Suite 500,
2 Fresno, California, 93721, stating that such insurance coverage has been obtained and
3 are in full force; that the COUNTY, its officers, agents and employees will not be
4 responsible for any premiums on the policies; that for such worker's compensation
5 insurance the ATTORNEY has waived its right to recover from the COUNTY, its
6 officers, agents, and employees any amounts paid under the insurance policy and that
7 waiver does not invalidate the insurance policy; that such Commercial General Liability
8 insurance names the COUNTY, its officers, agents and employees, individually and
9 collectively, as additional insured, but only insofar as the operations under this
10 Agreement are concerned; that such coverage for additional insured shall apply as
11 primary insurance and any other insurance, or self-insurance, maintained by COUNTY,
12 its officers, agents and employees, shall be excess only and not contributing with
13 insurance provided under ATTORNEY's policies herein, and that this insurance shall
14 not be cancelled or changed without a minimum of thirty (30) days advance, written
15 notice given to COUNTY.

16 In the event ATTORNEY fails to keep in effect at all times insurance coverage as
17 herein provided, the COUNTY may, in addition to other remedies it may have, suspend
18 or terminate this Agreement upon the occurrence of such event.

19 All policies shall be issued by admitted insurers licensed to do business in the
20 State of California, and such insurance shall be purchased from companies possessing
21 a current A.M. Best, Inc. rating of A FSC VII or better.

22 In addition to its obligations set forth hereinabove, ATTORNEY agrees that it
23 shall maintain, at its sole expense, in full force and effect for a period of three (3) years
24 following the termination of this Agreement a policy of professional liability insurance
25 with limits of coverage of not less than One Million Dollars (\$1,000,000) per occurrence;
26 provided, however, in the event that ATTORNEY does not maintain such policy of
27 insurance for such entire three (3) year period, ATTORNEY shall maintain, at its sole
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1 expense, in full force and effect extended claims reporting coverage insurance in lieu
2 thereof in the amount of not less than One Million and No/100 Dollars (\$1,000,000.00).

3 IX

4 AGREEMENT IS BINDING UPON SUCCESSORS

5 This Agreement shall be binding upon COUNTY and ATTORNEY and their
6 successors, executors, administrators, legal representatives and assigns with respect to
7 all the covenants and conditions set forth herein.

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9 ASSIGNMENT AND SUBCONTRACTING

10 Notwithstanding anything stated to the contrary in paragraph 9 of this Agreement,
11 neither party hereto shall assign, transfer, or sub-contract this Agreement nor its rights
12 or duties hereunder without the written consent of the other.

13 XI

14 AMENDMENTS

15 This Agreement may only be amended in writing signed by the parties hereto.

16 XII

17 CONFLICT OF INTEREST

18 ATTORNEY promises, covenants, and warrants that, after having performed a
19 reasonable investigation, the performance of its services and representation to
20 COUNTY under this Agreement do not result in a conflict of interest as that term is used
21 in the Rules of Professional Conduct of the State Bar of California. In the event a
22 conflict of interest occurs, ATTORNEY will request COUNTY's Board of Supervisors to
23 waive such conflict of interest on a case-by-case basis.

24 XIII

25 FURTHER ASSURANCES BY ATTORNEY

26 ATTORNEY represents that it has read and is familiar with Government Code
27 section 1090 et seq. and 87100 et seq. ATTORNEY promises, covenants, and
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1 warrants that, after having performed a reasonable investigation, the performance of its
2 services under this Agreement shall not result in or cause a violation by it of
3 Government Code section 1090 et seq. and 87100 et seq.

4 XIV

5 COMPLIANCE WITH LAWS

6 ATTORNEY shall comply with all federal, state, and local laws and regulations
7 applicable to the performance of its obligations under this Agreement.

8 XV

9 AUDITS AND INSPECTIONS

10 ATTORNEY shall at any time during business hours, and as often as the
11 COUNTY may deem necessary, make available to the COUNTY for examination all of
12 its records and data with respect to the matters covered by this Agreement.

13 ATTORNEY shall, upon request by the COUNTY, permit the COUNTY to audit and
14 inspect all of such records and data necessary to ensure ATTORNEY's compliance with
15 the terms of this Agreement.

16 If this agreement exceeds ten thousand dollars (\$10,000), ATTORNEY shall be
17 subject to the examination and audit of the Auditor General for a period of three (3)
18 years after final payment under contract (Government Code Section 8546.7).

19 XVI

20 NOTICES

21 The persons and their addresses having authority to give and receive notices
22 under this Agreement include the following:

23 COUNTY

24 Daniel C. Cederborg
25 County Counsel
26 Fresno County Counsel's Office
27 2220 Tulare Street, Suite 500
28 Fresno, CA 93720

ATTORNEY

Richard Egger
Best, Best, & Krieger, LLP
655 W. Broadway
15th Floor
San Diego, CA 92101

1 All notices between the COUNTY and ATTORNEY provided for or permitted under this
2 Agreement must be in writing and delivered either by personal service, by first-class
3 United States mail, by an overnight commercial courier service, or by telephonic
4 facsimile transmission. A notice delivered by personal service is effective upon service
5 to the recipient. A notice delivered by first-class United States mail is effective three
6 COUNTY business days after deposit in the United States mail, postage prepaid,
7 addressed to the recipient. A notice delivered by an overnight commercial courier
8 service is effective one COUNTY business day after deposit with the overnight
9 commercial courier service, delivery fees prepaid, with delivery instructions given for
10 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile
11 is effective when transmission to the recipient is completed (but, if such transmission is
12 completed outside of COUNTY business hours, then such delivery shall be deemed to
13 be effective at the next beginning of an COUNTY business day), provided that the
14 sender maintains a machine record of the completed transmission. For all claims
15 arising out of or related to this Agreement, nothing in this section establishes, waives, or
16 modifies any claims presentation requirements or procedures provided by laws,
17 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the
18 Government Code, beginning with section 810).

19 XVII

20 VENUE AND GOVERNING LAW

21 The parties agree that, for purposes of venue, performance under this
22 Agreement is to be in Fresno County, California. The rights and obligations of the
23 parties and all interpretations and performance of this Agreement shall be governed in
24 all respects by the laws of the State of California.

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XVIII

DISCLOSURE OF SELF-DEALING TRANSACTIONS

This provision is only applicable if ATTORNEY is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, ATTORNEY changes its status to operate as a corporation.

Members of ATTORNEY's Board of Directors shall disclose any self-dealing transactions that they are a party to while ATTORNEY is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which ATTORNEY is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Attachment B and by this reference incorporated herein, and submitting it to COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

XIXI

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between COUNTY and ATTORNEY with respect to the specialized legal services to be provided herein and supersedes any previous agreement concerning the subject matter hereof, negotiations, proposals, commitments, writings, or understandings of any nature whatsoever unless expressly included in this Agreement. If any part of this Agreement is found violative of any law or is found to be otherwise legally defective, ATTORNEY and COUNTY shall use their best efforts to replace that part of this Agreement with legal terms and conditions most readily approximating the original intent of the parties.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

Best, Best and Krieger, LLP

COUNTY OF FRESNO

By 



Richard Egger,
Partner

Nathan Magsig, Chairman
of the Board of Supervisors of the
County of Fresno

For Accounting Use Only:

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

Org: 2540
Account No.: 7295
Fund: 0001
Subclass: 10000

By: 
Deputy

Attachment A
SCHEDULE OF RATES
BEST, BEST, AND KRIEGER LLP

COST PROPOSAL

Richard Egger	\$375 per hour
Todd Leishman (Of Counsel)	\$290 per hour
Megan Garibaldi (Partner)	\$280 per hour
Associates	\$275 per hour

PARALEGALS

Paralegals Providing Litigation Support	\$188 per hour
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MATERIALS AND MISCELLANEOUS

Photocopies	\$.25 per page
Computer-assisted legal research	Actual Costs
Faxes	\$.50 per page plus L/D charges
Mileage	IRS approved rate for out of town travel
Messenger Services	Actual Cost
Other Cost	Direct pass-through without surcharge

ATTACHMENT B

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	