

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT is made and entered into this 17th day of May 2022 by and between the **COUNTY OF FRESNO**, a political subdivision of the State of California, hereinafter referred to as "**COUNTY**," and Prentice Long, PC, a California corporation hereinafter referred to as "**ATTORNEY**" or "Firm". COUNTY and ATTORNEY are each a "Party" to this Agreement, and are collectively referred to as the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, COUNTY is responsible for the administration and defense of General Liability, Auto Liability, Employment Law, and Medical Malpractice claims against COUNTY and its employees.

WHEREAS, COUNTY desires to engage appropriate legal counsel, who is skilled and knowledgeable in defense of General Liability claims and litigation and other claims and litigation that are covered under the County's General Liability and Medical Malpractice Programs, and to advise and represent COUNTY and its employees in connection with these matters, as provided herein; and

WHEREAS, ATTORNEY states that it is experienced, possesses expertise in such matters, and is willing to perform said services,

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

SECTION 1

ENGAGEMENT OF ATTORNEY

1.1 COUNTY hereby engages ATTORNEY as an independent contractor, and any associated staff attorneys and paralegals or other legal support staff as

1 ATTORNEY deems necessary, and whom COUNTY Human Resources Department,
2 Risk Management Division approves.

3 1.2 Each claim will be handled by the attorney in the Firm to which the
4 assignment is made (the "Assigned Attorney") unless COUNTY approves the handling
5 by another attorney in the firm. Non-attorney staff employed by ATTORNEY may assist
6 the Assigned Attorney as deemed necessary by the Assigned Attorney.

7 1.3 Any additional instructions relative to the handling of a claim which are not
8 specified in this Agreement will be included in the letter of engagement for each claim
9 assigned to ATTORNEY. Such instructions will be complied with by ATTORNEY as
10 well as any additional direction provided by COUNTY's Risk Manager, or their designee,
11 in the management of the claim.

12 **SECTION 2**

13 **SCOPE OF SERVICES**

14
15 2.1 ATTORNEY shall assist, advise, and represent COUNTY and its
16 employees in connection with all matters relative to the administration and defense of
17 the claims and litigation assigned to ATTORNEY by COUNTY's Risk Manager, or their
18 designee, as they specify and according to the terms set forth in this Agreement.

19 2.2 ATTORNEY shall perform such other similar legal services as requested
20 by COUNTY's Risk Manager, or their designee, in connection with the matters related to
21 the administration and defense of the assigned claims.

22 **SECTION 3**

23 **PERFORMANCE BY ATTORNEY**

24
25 3.1 ATTORNEY agrees to avoid unnecessary duplicative efforts by
26 ATTORNEY and any associated attorneys and/or staff members employed by
27 ATTORNEY in the performance of services for COUNTY hereunder.

1 3.2 COUNTY shall not be obligated to compensate ATTORNEY for intra-office
2 conferences between or among attorneys of the Firm and/or other staff members,
3 unless such intra-office conferences promote efficiency in the performance of
4 ATTORNEY's work on a matter, or a reduction in the cost of compensation paid or
5 reimbursement made for related, actual, reasonable and necessary, out-of-pocket
6 expenses to ATTORNEY, or both.

7 3.3 In the performance of the tasks identified in Section 2 of this Agreement,
8 ATTORNEY shall provide only those services which are necessary to carry out such
9 tasks in an efficient and effective manner.

10 3.4 COUNTY must approve the retention of all experts, consultants,
11 investigators, and any other unusual expenditures.

12 **SECTION 4**

13 **COMPENSATION OF ATTORNEY**

14 4.1 COUNTY shall be obligated to compensate ATTORNEY pursuant to the
15 terms and conditions of this Agreement for the performance of those tasks identified in
16 Section 2 of this Agreement, to the reasonable satisfaction of the COUNTY, that take
17 place during the term of this Agreement. It is understood that COUNTY shall not be
18 obligated to compensate ATTORNEY for:
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20 (a) any work, services, or functions performed by ATTORNEY that do not
21 arise directly from the performance of tasks identified in Section 2 of this Agreement;
22 and

23 (b) providing COUNTY with documentation, explanations, or justifications
24 concerning the adequacy or accuracy of ATTORNEY's invoices for the performance of
25 services under this Agreement, and resolving same to the reasonable satisfaction of
26 COUNTY.

1 4.2 COUNTY agrees to pay and ATTORNEY agrees to accept as full
2 compensation for performance of tasks under this Agreement ATTORNEY's reasonable
3 fees as described in Attachment A, Schedule of Rates.

4 4.3 ATTORNEY shall not be reimbursed for their secretarial, clerical, word
5 processing or typist services (including overtime hours worked), that are part of their
6 normal office operating expenses, with the exception of those charges and expenses
7 stated above. In addition, ATTORNEY shall not be reimbursed for such normal office
8 operating expenses incurred, regardless of who performs such services or incurs such
9 expenses.

10 4.4 COUNTY will not reimburse ATTORNEY for any travel within the cities of
11 Fresno and Clovis.

12 4.5 Notwithstanding anything else stated to the contrary in this Agreement, in
13 no event shall the maximum amount paid by COUNTY to ATTORNEY as
14 compensation, and as reimbursement of related, actual, reasonable and necessary, out-
15 of-pocket expenses, exceed one million five hundred thousand dollars (\$1,500,000.00)
16 annually, defined as May 17 through May 16 of the following year. The total amount
17 paid by COUNTY to ATTORNEY as compensation, and as reimbursement of related,
18 actual, reasonable and necessary, out-of-pocket expenses for the period May 17, 2022
19 through May 16, 2025 shall not exceed four million five hundred thousand dollars
20 (\$4,500,000.00). If this Agreement is extended an additional one year period from May
21 17, 2025 through May 16, 2026 according to the provisions of section 6.1, then the total
22 amount paid by COUNTY to ATTORNEY as compensation, and as reimbursement of
23 related, actual, reasonable and necessary, out-of-pocket expenses for the period May
24 17, 2022 through May 16, 2026, shall not exceed six million dollars (\$6,000,000.00). If
25 this Agreement is extended an additional one year period from May 17, 2026 through
26 May 16, 2027 according to the provisions of section 6.1, then the total amount paid by
27 COUNTY to ATTORNEY as compensation, and as reimbursement of related, actual,
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1 reasonable and necessary, out-of-pocket expenses for the period May 17, 2022 through
2 May 16, 2027, shall not exceed seven million five hundred thousand dollars
3 (\$7,500,000.00).

4 **SECTION 5**

5 **PAYMENT AND RECORD-KEEPING**

6 5.1 Subject to Section 4 of this Agreement, payment of compensation for the
7 services provided and reimbursement for related, actual, reasonable and necessary,
8 out-of-pocket expenses incurred which are described herein shall be made by COUNTY
9 after submission of an itemized invoice by ATTORNEY to Human Resources
10 Department, Risk Management Division. ATTORNEY shall submit such invoices no
11 later than the twentieth (20th) day of the month following the month services are
12 completed, unless the bill totals less than one hundred dollars (\$100). The file will not
13 be billed until the total reaches at least one hundred dollars (\$100) or the claim is
14 closed. All payments by COUNTY will be made within forty-five (45) days after receipt,
15 verification and approval of ATTORNEY's invoices by COUNTY'S Human Resources
16 Department, Risk Management Division.

17 5.2 All such invoices shall have sufficient detail as may be required by the
18 COUNTY Auditor-Controller/Treasurer-Tax Collector, including, but not limited to:

19 5.2.1 The plaintiff's name, the date of loss, the COUNTY's claim number and
20 any other identifying information that will indicate the file to which billing is to be
21 assigned.

22 5.2.2 The specific nature of each task performed as services under this
23 Agreement;

24 5.2.3 The name of the ATTORNEY or staff member performing each task;

25 5.2.4 The number of hours worked by each such person for each such task, in
26 increments of one-tenth of an hour (0.1 hours), with no minimum greater than 0.1 hours
27 for any task;

1 5.2.5 The hourly rate per each such person performing each such task;

2 5.2.6 The related, actual, reasonable and necessary, out-of-pocket expenses
3 incurred, as provided for in Section 4 of this Agreement;

4 5.2.7 A certification by ATTORNEY that each such invoice is true and accurate
5 as to the information and specification contained therein;

6 5.3 In addition to the requirements of Section 5.2, each invoice shall set forth
7 a summary of hours worked by each ATTORNEY and staff member for the applicable
8 billing period. Each invoice shall set forth the total hours worked by each person
9 multiplied by each such person's billing rate, as set forth in Attachment A, Schedule of
10 Rates.

11 5.4 In preparing invoices, if requested by COUNTY Human Resources
12 Department, Risk Management Division, ATTORNEY shall segregate each task
13 performed on a daily basis. If so requested by COUNTY, ATTORNEY shall not
14 combine unrelated tasks as a single entry in lieu of setting forth the hours of work
15 performed by an ATTORNEY or staff member on each specific task.

16 5.5 ATTORNEY shall prepare all invoices in an organized manner that
17 facilitates an efficient review of the services performed and the expenses incurred in
18 order to provide COUNTY with a clear and complete picture of how much time was
19 devoted to specific tasks and projects, and the cost associated therewith.

20 5.6 ATTORNEY shall keep complete records of the services provided, as
21 described in this Section 5, together with all related actual, reasonable and necessary,
22 out-of-pocket expenses applicable to the work provided under this Agreement. The
23 County Auditor-Controller/Treasurer-Tax Collector, or his or her duly authorized
24 representatives, shall be given reasonable access to all of these records for the
25 purposes of audit of this Agreement. In addition, ATTORNEY shall be subject to the
26 examination and audit of such records by the State Auditor for a period of three (3)

1 years after final payment under this Agreement, pursuant to Government Code section
2 8546.7, as applicable.

3 5.7 Attorney shall provide to COUNTY a W-9, 1099 and CA Form 590 as
4 appropriate upon execution of the agreement and annually thereafter.

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6 **SECTION 6**

7 **TERM OF AGREEMENT**

8 6.1 This Agreement shall be effective and shall commence May 17, 2022.
9 This Agreement shall continue in full force and effect until May 16, 2025, subject to each
10 Party's right to terminate this Agreement sooner, as set forth below. This Agreement
11 may be extended for two (2) additional consecutive twelve (12) month periods upon
12 written approval of both parties no later than thirty (30) days prior to the first day of the
13 next twelve (12) month extension period. The Director of the Human Resources
14 Department, or their designee, is authorized to execute such written approval on behalf
15 of COUNTY based on ATTORNEY's satisfactory performance. COUNTY may
16 terminate this Agreement at any time for any reason by providing written notice to
17 ATTORNEY.

18 6.2 ATTORNEY may terminate this Agreement for material breach after giving
19 COUNTY written notice and 10 days to correct the breach. However, COUNTY's rights
20 under any pending matter which may arise from ATTORNEY's service hereunder shall
21 not be prejudiced due to such termination, as required by the Rules of Professional
22 Conduct of the State Bar of California.

23 6.3 Subject to Section 4 of this Agreement, ATTORNEY shall be paid for all
24 services performed to the reasonable satisfaction of the COUNTY, to the date of
25 termination of this Agreement.

26
27 **SECTION 7**

1 **INDEPENDENT CONTRACTOR**

2 7.1 In performance of the work, duties, and obligations assumed by
3 ATTORNEY under this Agreement, it is mutually understood and agreed that
4 ATTORNEY, including any and all of ATTORNEY's officers, agents, and employees, will
5 at all times be acting and performing as an independent contractor, and shall act in an
6 independent capacity and not as an officer, agent, servant, employee, joint venturer,
7 partner, or associate of COUNTY. However, COUNTY shall retain the right to
8 administer this Agreement to verify that ATTORNEY is performing its obligations in
9 accordance with the terms and conditions thereof. ATTORNEY and COUNTY shall
10 comply with all applicable provisions of law and the rules and regulations, if any, of
11 governmental authorities having jurisdiction over the subject matter thereof.

12 7.2 Because of its status as an independent contractor, ATTORNEY, including
13 any and all of ATTORNEY's officers, agents, and employees, shall have absolutely no
14 right to employment rights and benefits available to COUNTY employees. ATTORNEY
15 shall be solely liable and responsible for providing to, or on behalf of, its employees all
16 legally required employee benefits. In addition, ATTORNEY shall be solely responsible
17 and hold COUNTY harmless from all matters related to payment of ATTORNEY's
18 employees, including compliance with social security, withholding, and all other
19 regulations governing such matters. It is acknowledged that during the term of this
20 Agreement, ATTORNEY may be providing services to others unrelated to the COUNTY
21 or to this Agreement.

22 **SECTION 8**

23 **HOLD HARMLESS**

24 8.1 ATTORNEY agrees to indemnify, save, hold harmless, and at COUNTY'S
25 request, defend the COUNTY, its officers, agents, and employees from any and all costs
26 and expenses (including attorney's fees and costs), damages, liabilities, claims, and
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1 losses occurring or resulting to COUNTY in connection with the performance, or failure to
2 perform, by ATTORNEY, its officers, agents, or employees under this Agreement, and
3 from any and all costs and expenses (including attorney's fees and costs), damages,
4 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who
5 may be injured or damaged by the performance, or failure to perform, of ATTORNEY,
6 its officers, agents, or employees under this Agreement.

7
8 **SECTION 9**
9 **INSURANCE**

10 Without limiting the COUNTY's right to obtain indemnification from ATTORNEY
11 or any third parties, ATTORNEY, at its sole expense, shall maintain in full force and
12 effect, the following insurance policies throughout the term of the Agreement:

13 9.1 Professional Liability

14 ATTORNEY shall maintain Professional Liability Insurance with limits of
15 not less than one million dollars (\$1,000,000.00) per occurrence and three million
16 dollars (\$3,000,000.00) annual aggregate. ATTORNEY shall provide COUNTY with
17 written evidence of such coverage. This coverage may be issued on a per claim basis.
18 If so, ATTORNEY agrees that it shall maintain, at its sole expense, so-called "tail
19 coverage" in full force and effect for a period of three (3) years following the termination
20 of this Agreement, which shall be one or more policies of professional liability insurance
21 with limits of coverage as specified herein.

22 9.2 Automobile Liability

23 Comprehensive Automobile Liability Insurance with limits of not less than One
24 Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages.
25 Coverage should include any auto used in connection with this Agreement.

26 9.3 Commercial General Liability

1 ATTORNEY shall maintain Commercial General Liability Insurance with
2 limits of not less than two million dollars (\$2,000,000.00) per occurrence and an annual
3 aggregate of four million dollars (\$4,000,000.00). This policy shall be issued on a per-
4 occurrence basis. COUNTY may require specific coverage including completed
5 operations, product liability, contractual liability, explosion-collapse-underground liability,
6 fire legal liability, or any other liability insurance deemed necessary because of the
7 nature of the contract.

8 9.4 Workers' Compensation

9 ATTORNEY shall maintain a policy of Workers' Compensation insurance
10 as may be required by the California Labor Code.

11 9.5 Cyber Liability

12 Cyber liability insurance with limits of not less than Two Million Dollars
13 (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The
14 cyber liability policy must be endorsed to cover the full replacement value of damage to,
15 alteration of, loss of, or destruction of intangible property (including but not limited to
16 information or data) that is in the care, custody, or control of the ATTORNEY. Definition
17 of Cyber Risks: "Cyber Risks" include but are not limited to (i) security breach, which
18 may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data
19 breach; (iii) breach of any of the Contractor's obligations under Section 17 of this
20 Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data
21 breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card
22 liabilities and costs; (ix) infringement of intellectual property, including but not limited to
23 infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including
24 release of private information; (xi) information theft; (xii) damage to or destruction or
25 alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the
26 Contractor's obligations under this Agreement regarding electronic information,
27 including personal information; (xv) fraudulent instruction; (xvi) funds transfer fraud;

1 (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs,
2 including Security Breach response costs; (xx) regulatory fines and penalties related to
3 the ATTORNEY's obligations under this Agreement regarding electronic information,
4 including Personal Information; and (xxi) credit monitoring expenses.

6 **SECTION 10**

7 **ADDITIONAL INSURANCE TERMS**

8 10.1 ATTORNEY shall obtain endorsements to the Commercial General
9 Liability insurance naming the County of Fresno, its officers, agents, and employees,
10 individually and collectively, as additional insured, but only insofar as the operations
11 under this Agreement are concerned. Such coverage for additional insured shall apply
12 as primary insurance and any other insurance, or self-insurance, maintained by County,
13 its officers, agents and employees shall be excess only and not contributing with
14 insurance provided under ATTORNEY's policies herein. This insurance shall not be
15 cancelled or changed without a minimum of thirty (30) days advance written notice
16 given to COUNTY.

17 10.2 ATTORNEY hereby waives its right to recover from COUNTY, its officers,
18 agents, and employees any amounts paid by the policy of worker's compensation
19 insurance required by this Agreement. ATTORNEY is solely responsible to obtain any
20 endorsement to such policy that may be necessary to accomplish such waiver of
21 subrogation, but ATTORNEY's waiver of subrogation under this paragraph is effective
22 whether or not ATTORNEY obtains such an endorsement.

23 10.3 Within thirty (30) days from the date ATTORNEY executes this
24 Agreement, ATTORNEY shall provide certificates of insurance and endorsement as
25 stated above for all of the foregoing policies, as required in Section 9 herein, to
26 COUNTY, Human Resources Department, Risk Management Division, stating that such
27 insurance coverage has been obtained and is in full force and effect; that the County of
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1 Fresno, its officers, agents and employees will not be responsible for any premiums on
2 the policies; that for such worker's compensation insurance the ATTORNEY has waived
3 its right to recover from the COUNTY, its officers, agents, and employees any amounts
4 paid under the insurance policy and that waiver does not invalidate the insurance policy;
5 that such Commercial General Liability insurance names the COUNTY, its officers,
6 agents and employees, individually and collectively, as additional insured, but only
7 insofar as the operations under this Agreement are concerned; that such coverage for
8 additional insured shall apply as primary insurance and any other insurance, or self-
9 insurance, maintained by COUNTY, its officers, agents and employees, shall be excess
10 only and not contributing with insurance provided under ATTORNEY's policies herein;
11 and that this insurance shall not be cancelled or changed without a minimum of thirty
12 (30) days advance, written notice given to COUNTY.

13 10.3 In the event ATTORNEY fails to keep in effect at all times insurance
14 coverage as herein provided, the COUNTY may, in addition to other remedies it may
15 have, suspend or terminate this Agreement upon the occurrence of such event.

16 10.4 All policies shall be with admitted insurers licensed to do business in the
17 State of California. Insurance purchased shall be purchased from companies
18 possessing a current A.M. Best, Inc. rating of A, FSC VII or better.

19
20 **SECTION 11**

21 **AGREEMENT BINDING ON SUCCESSORS**

22 11.1 This Agreement shall be binding upon COUNTY and ATTORNEY and its
23 successors, executors, administrators, legal representatives, and assigns with respect
24 to all the covenants and conditions set forth herein.

25
26 **SECTION 12**

27 **ASSIGNMENT AND SUBCONTRACTING**

1 12.1 Neither party hereto shall assign, transfer, or sub-contract neither this
2 Agreement nor its rights nor duties hereunder without the written consent of the other.

3
4 **SECTION 13**

5 **AMENDMENTS**

6 13.1 This Agreement may be amended only in writing signed by the Parties
7 hereto.

8
9 **SECTION 14**

10 **CONFLICT OF INTEREST**

11 14.1 ATTORNEY promises, covenants, and warrants that the performance of
12 its services and representation of COUNTY under this Agreement do not result in a
13 "conflict of interest" as that term is used in the Rules of Professional Conduct of the
14 State Bar of California. In the event a "conflict of interest" occurs, ATTORNEY will
15 request that COUNTY waive such "conflict of interest" on a case-by-case basis. If the
16 COUNTY does not waive the conflict, ATTORNEY must resolve the conflicting issue in
17 the favor of COUNTY.

18
19 **SECTION 15**

20 **FURTHER ASSURANCES BY ATTORNEY**

21 15.1 ATTORNEY represents that it has read and is familiar with Government
22 Code Section 1090 *et seq.* and Section 87100 *et seq.* ATTORNEY promises,
23 covenants, and warrants that the performance of its services under this Agreement shall
24 not result in or cause a violation of Government Code Section 1090 *et seq.* and Section
25 87100 *et seq.*

26
27 **SECTION 16**
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1 **COMPLIANCE WITH LAWS**

2 16.1 ATTORNEY shall comply with all federal, state, and local laws and
3 regulations applicable to the performance of its obligations under this Agreement and
4 maintain all licenses as required in the performance of its duties.

5
6 **SECTION 17**

7 **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

8 17.1 The parties to this Agreement shall be in strict conformance with all
9 applicable Federal and State of California laws and regulations, including, but not
10 limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions
11 Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR),
12 Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of
13 the California Code of Regulations, and the Health Insurance Portability and
14 Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title
15 42, United States Code (USC) and its implementing regulations, including, but not
16 limited to, Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information
17 Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality
18 and security of patient information, and the Genetic Information Nondiscrimination Act
19 (GINA) of 2008 regarding the confidentiality of genetic information.

20 Except as otherwise provided in this Agreement, ATTORNEY, as a Business
21 Associate of COUNTY, may use or disclose Protected Health Information (PHI) to
22 perform functions, activities or services for or on behalf of COUNTY, as specified in this
23 Agreement, provided that such use or disclosure shall not violate the Health Insurance
24 Portability and Accountability Act (HIPAA), USC 1320d *et seq.* The uses and
25 disclosures of PHI may not be more expansive than those applicable to COUNTY, as
26 the "Covered Entity" under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as
27 authorized for management, administrative or legal responsibilities of the Business
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1 Associate.

2 17.2 ATTORNEY, including its subcontractors and employees, shall protect
3 from unauthorized access, use, or disclosure of names and other identifying
4 information, including genetic information, concerning persons receiving services
5 pursuant to this Agreement, except where permitted in order to carry out data
6 aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i),
7 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons
8 receiving services pursuant to a COUNTY funded program. This requirement applies to
9 electronic PHI. ATTORNEY shall not use such identifying information or genetic
10 information for any purpose other than carrying out ATTORNEY's obligations under this
11 Agreement.

12 17.3 ATTORNEY, including its subcontractors and employees, shall not
13 disclose any such identifying information or genetic information to any person or entity,
14 except as otherwise specifically permitted by this Agreement, authorized by Subpart E
15 of 45 CFR Part 164 or other law, required by the Secretary, or authorized by the
16 client/patient in writing. In using or disclosing PHI that is permitted by this Agreement or
17 authorized by law, ATTORNEY shall make reasonable efforts to limit PHI to the
18 minimum necessary to accomplish intended purpose of use, disclosure or request.

19 17.4 For purposes of the above sections, identifying information shall include,
20 but not be limited to, name, identifying number, symbol, or other identifying particular
21 assigned to the individual, such as fingerprint or voiceprint, or photograph.

22 17.5 For purposes of the above sections, genetic information shall include
23 genetic tests of family members of an individual or individual(s), manifestation of
24 disease or disorder of family members of an individual, or any request for or receipt of
25 genetic services by individual or family members. Family member means a dependent
26 or any person who is first, second, third, or fourth degree relative.

27 17.6 ATTORNEY shall provide access, at the request of COUNTY, and in the
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1 time and manner designated by COUNTY, to PHI in a designated record set (as defined
2 in 45 CFR Section 164.501), to an individual or to COUNTY in order to meet the
3 requirements of 45 CFR Section 164.524 regarding access by individuals to their PHI.

4 With respect to individual requests, access shall be provided within thirty (30) days from
5 request. Access may be extended if ATTORNEY cannot provide access and provides
6 the individual with the reasons for the delay and the date when access may be granted.
7 PHI shall be provided in the form and format requested by the individual or COUNTY.

8 ATTORNEY shall make any amendment(s) to PHI in a designated record set at
9 the request of COUNTY or individual, and in the time and manner designated by
10 COUNTY in accordance with 45 CFR Section 164.526.

11 ATTORNEY shall provide to COUNTY or to an individual, in a time and manner
12 designated by COUNTY, information collected in accordance with 45 CFR Section
13 164.528, to permit COUNTY to respond to a request by the individual for an accounting
14 of disclosures of PHI in accordance with 45 CFR Section 164.528.

15 17.7 ATTORNEY shall report to COUNTY, in writing, any knowledge or
16 reasonable belief that there has been unauthorized access, viewing, use, disclosure,
17 security incident, or breach of unsecured PHI not permitted by this Agreement of which
18 it becomes aware, immediately and without reasonable delay and in no case later than
19 two (2) business days of discovery. Immediate notification shall be made to COUNTY's
20 Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA
21 Representative, within two (2) business days of discovery. The notification shall
22 include, to the extent possible, the identification of each individual whose unsecured
23 PHI has been, or is reasonably believed to have been, accessed, acquired, used,
24 disclosed, or breached. ATTORNEY shall take prompt corrective action to cure any
25 deficiencies and any action pertaining to such unauthorized disclosure required by
26 applicable Federal and State laws and regulations. ATTORNEY shall investigate such
27 breach and is responsible for all notifications required by law and regulation or deemed
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1 necessary by COUNTY and shall provide a written report of the investigation and
2 reporting required to COUNTY's Information Security Officer and Privacy Officer and
3 COUNTY's DPH HIPAA Representative.

4 This written investigation and description of any reporting necessary shall be
5 postmarked within the thirty (30) working days of the discovery of the breach to the
6 addresses below:

7			
8	County of Fresno	County of Fresno	County of Fresno
9	Dept. of Public Health Svcs.	Dept. of Public Health	Information Technology
10	HIPAA Representative	Privacy Officer	Information Security Officer
11	(559) 600-6439	(559) 600-6405	(559) 600-5800
12	P.O. Box 11867	P.O. Box 11867	2048 N. Fine Street
13	Fresno, CA 93775	Fresno, CA 93775	Fresno, CA 93727

14 17.8 ATTORNEY shall make its internal practices, books, and records relating
15 to the use and disclosure of PHI received from COUNTY, or created or received by the
16 ATTORNEY on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including,
17 but not limited to, the requirements set forth in Title 45, CFR, Sections 160 and 164.

18 ATTORNEY shall make its internal practices, books, and records relating to the use and
19 disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on
20 behalf of COUNTY, available to the United States Department of Health and Human
21 Services (Secretary) upon demand.

22 ATTORNEY shall cooperate with the compliance and investigation reviews
23 conducted by the Secretary. PHI access to the Secretary must be provided during the
24 ATTORNEY's normal business hours; however, upon exigent circumstances access at
25 any time must be granted. Upon the Secretary's compliance or investigation review, if
26 PHI is unavailable to ATTORNEY and in possession of a Subcontractor, it must certify
27 efforts to obtain the information to the Secretary.

28 17.9 Safeguards

ATTORNEY shall implement administrative, physical, and technical safeguards

1 as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and
2 appropriately protect the confidentiality, integrity, and availability of PHI, including
3 electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY
4 and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other
5 than as provided for by this Agreement. ATTORNEY shall conduct an accurate and
6 thorough assessment of the potential risks and vulnerabilities to the confidentiality,
7 integrity and availability of electronic PHI. ATTORNEY shall develop and maintain a
8 written information privacy and security program that includes administrative, technical
9 and physical safeguards appropriate to the size and complexity of ATTORNEY's
10 operations and the nature and scope of its activities. Upon COUNTY's request,
11 ATTORNEY shall provide COUNTY with information concerning such safeguards.

12 ATTORNEY shall implement strong access controls and other security
13 safeguards and precautions in order to restrict logical and physical access to
14 confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said
15 safeguards and precautions shall include the following administrative and technical
16 password controls for all systems used to process or store confidential, personal, or
17 sensitive data:

- 18 1. Passwords must not be:
 - 19 a. Shared or written down where they are accessible or
20 recognizable by anyone else; such as taped to computer screens, stored under
21 keyboards, or visible in a work area;
 - 22 b. A dictionary word; or
 - 23 c. Stored in clear text
- 24 2. Passwords must be:
 - 25 a. Eight (8) characters or more in length;
 - 26 b. Changed every ninety (90) days;
 - 27 c. Changed immediately if revealed or compromised; and

1 d. Composed of characters from at least three (3) of the
2 following four (4) groups from the standard keyboard:

- 3 1) Upper case letters (A-Z);
- 4 2) Lowercase letters (a-z);
- 5 3) Arabic numerals (0 through 9); and
- 6 4) Non-alphanumeric characters (punctuation
7 symbols).

8 ATTORNEY shall implement the following security controls on each workstation
9 or portable computing device (e.g., laptop computer) containing confidential, personal,
10 or sensitive data:

- 11 1. Network-based firewall and/or personal firewall;
- 12 2. Continuously updated anti-virus software; and
- 13 3. Patch management process including installation of all operating
14 system/software vendor security patches.

15 ATTORNEY shall utilize a commercial encryption solution that has received FIPS
16 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable
17 electronic media (including, but not limited to, compact disks and thumb drives) and on
18 portable computing devices (including, but not limited to, laptop and notebook
19 computers).

20 ATTORNEY shall not transmit confidential, personal, or sensitive data via e-mail
21 or other internet transport protocol unless the data is encrypted by a solution that has
22 been validated by the National Institute of Standards and Technology (NIST) as
23 conforming to the Advanced Encryption Standard (AES) Algorithm. ATTORNEY must
24 apply appropriate sanctions against its employees who fail to comply with these
25 safeguards. ATTORNEY must adopt procedures for terminating access to PHI when
26 employment of employee ends.

27 17.10 Mitigation of Harmful Effects

1 ATTORNEY shall mitigate, to the extent practicable, any harmful effect that is
2 suspected or known to ATTORNEY of an unauthorized access, viewing, use,
3 disclosure, or breach of PHI by ATTORNEY or its subcontractors in violation of the
4 requirements of these provisions. ATTORNEY must document suspected or known
5 harmful effects and the outcome.

6 17.11 ATTORNEY's Subcontractors

7 ATTORNEY shall ensure that any of its contractors, including subcontractors, if
8 applicable, to whom ATTORNEY provides PHI received from or created or received by
9 ATTORNEY on behalf of COUNTY, agree to the same restrictions, safeguards, and
10 conditions that apply to ATTORNEY with respect to such PHI and to incorporate, when
11 applicable, the relevant provisions of these provisions into each subcontract or sub-
12 award to such agents or subcontractors.

13 17.12 Employee Training and Discipline

14 ATTORNEY shall train and use reasonable measures to ensure compliance with
15 the requirements of these provisions by employees who assist in the performance of
16 functions or activities on behalf of COUNTY under this Agreement and use or disclose
17 PHI, and discipline such employees who intentionally violate any provisions of these
18 provisions, including termination of employment.

19 17.13 Termination for Cause

20 Upon COUNTY's knowledge of a material breach of these provisions by
21 ATTORNEY, COUNTY shall either:

- 22 1. Provide an opportunity for ATTORNEY to cure the breach or end
23 the violation and terminate this Agreement if ATTORNEY does not cure the breach or
24 end the violation within the time specified by COUNTY; or
- 25 2. Immediately terminate this Agreement if ATTORNEY has breached
26 a material term of these provisions and cure is not possible.
- 27 3. If neither cure nor termination is feasible, the COUNTY's Privacy
28

1 Officer shall report the violation to the Secretary of the U.S. Department of Health and
2 Human Services.

3 17.14 Judicial or Administrative Proceedings

4 COUNTY may terminate this Agreement in accordance with the terms and
5 conditions of this Agreement as written hereinabove, if: (1) ATTORNEY is found guilty
6 in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the
7 HITECH Act; or (2) a finding or stipulation that the ATTORNEY has violated a privacy or
8 security standard or requirement of the HITECH Act, HIPAA or other security or privacy
9 laws in an administrative or civil proceeding in which the ATTORNEY is a party.

10 17.15 Effect of Termination

11 Upon termination or expiration of this Agreement for any reason, ATTORNEY
12 shall return or destroy all PHI received from COUNTY (or created or received by
13 ATTORNEY on behalf of COUNTY) that ATTORNEY still maintains in any form, and
14 shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall
15 continue to extend the protections of these provisions to such information, and limit
16 further use of such PHI to those purposes that make the return or destruction of such
17 PHI infeasible. This provision shall apply to PHI that is in the possession of
18 subcontractors or agents, if applicable, of ATTORNEY. If ATTORNEY destroys the PHI
19 data, a certification of date and time of destruction shall be provided to the COUNTY by
20 ATTORNEY.

21 17.16 Disclaimer

22 COUNTY makes no warranty or representation that compliance by ATTORNEY
23 with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be
24 adequate or satisfactory for ATTORNEY's own purposes or that any information in
25 ATTORNEY's possession or control, or transmitted or received by ATTORNEY, is or will
26 be secure from unauthorized access, viewing, use, disclosure, or breach. ATTORNEY
27 is solely responsible for all decisions made by ATTORNEY regarding the safeguarding
28

1 of PHI.

2 17.17 Amendment

3 The parties acknowledge that Federal and State laws relating to electronic data
4 security and privacy are rapidly evolving and that amendment of these provisions may
5 be required to provide for procedures to ensure compliance with such developments.

6 The parties specifically agree to take such action as is necessary to amend this
7 agreement in order to implement the standards and requirements of HIPAA, the HIPAA
8 regulations, the HITECH Act and other applicable laws relating to the security or privacy
9 of PHI. COUNTY may terminate this Agreement upon thirty (30) days written notice in
10 the event that ATTORNEY does not enter into an amendment providing assurances
11 regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient
12 to satisfy the standards and requirements of HIPAA, the HIPAA regulations and the
13 HITECH Act.

14 17.18 No Third-Party Beneficiaries

15 Nothing expressed or implied in the terms and conditions of these provisions is
16 intended to confer, nor shall anything herein confer, upon any person other than
17 COUNTY or ATTORNEY and their respective successors or assignees, any rights,
18 remedies, obligations or liabilities whatsoever.

19 17.19 Interpretation

20 The terms and conditions in these provisions shall be interpreted as broadly as
21 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable
22 State laws. The parties agree that any ambiguity in the terms and conditions of these
23 provisions shall be resolved in favor of a meaning that complies and is consistent with
24 HIPAA and the HIPAA regulations.

25 17.20 Regulatory References

26 A reference in the terms and conditions of these provisions to a section in the
27 HIPAA regulations means the section as in effect or as amended.

1 Dealing Transaction Disclosure Form, attached hereto as Attachment B and
2 incorporated herein by reference, and submitting it to the COUNTY prior to commencing
3 with the self-dealing transaction or immediately thereafter.

4
5 **SECTION 20**

6 **NOTICES**

7 20.1 The persons and their addresses having authority to give and receive
8 notices under this Agreement include the following:

9 **COUNTY**

10 **ATTORNEY**

11 County of Fresno
12 ATTN: Hollis Magill
13 Director of Human Resources
2220 Tulare Street, 16th Floor
Fresno, CA 93721

Prentice Long, PC
ATTN: Margaret Long
2240 Court St.
Redding, CA 96001

14 20.2 All notices between the COUNTY and ATTORNEY provided for or
15 permitted under this Agreement must be in writing and delivered either by personal
16 service, by first-class United States mail, by an overnight commercial courier service, or
17 by telephonic facsimile transmission. A notice delivered by personal service is effective
18 upon service to the recipient. A notice delivered by first-class United States mail is
19 effective three COUNTY business days after deposit in the United States mail, postage
20 prepaid, addressed to the recipient. A notice delivered by an overnight commercial
21 courier service is effective one COUNTY business day after deposit with the overnight
22 commercial courier service, delivery fees prepaid, with delivery instructions given for
23 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile
24 is effective when transmission to the recipient is completed (but, if such transmission is
25 completed outside of COUNTY business hours, then such delivery shall be deemed to
26 be effective at the next beginning of a COUNTY business day), provided that the sender
27 maintains a machine record of the completed transmission. For all claims arising out of
28 or related to this Agreement, nothing in this section establishes, waives, or modifies

1 any claims presentation requirements or procedures provided by law, including but not
2 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
3 beginning with section 810).

4 **SECTION 21**

5 **ELECTRONIC SIGNATURE**

6 21.1 The parties agree that this Agreement may be executed by electronic
7 signature as provided in this section. An “electronic signature” means any symbol or
8 process intended by an individual signing this Agreement to represent their signature,
9 including but not limited to (1) a digital signature; (2) a faxed version of an original
10 handwritten signature; or (3) an electronically scanned and transmitted (for example by
11 PDF document) of a handwritten signature. Each electronic signature affixed or
12 attached to this Agreement (1) is deemed equivalent to a valid original handwritten
13 signature of the person signing this Agreement for all purposes, including but not limited
14 to evidentiary proof in any administrative or judicial proceeding, and (2) has the same
15 force and effect as the valid original handwritten signature of that person. The
16 provisions of this section satisfy the requirements of Civil Code section 1633.5,
17 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2,
18 Title 2.5, beginning with section 1633.1). Each party using a digital signature
19 represents that it has undertaken and satisfied the requirements of Government Code
20 section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other
21 party may rely upon that representation. This Agreement is not conditioned upon the
22 parties conducting the transactions under it by electronic means and either party may
23 sign this Agreement with an original handwritten signature.

24 **SECTION 22**

25 **NO EFFECT ON PRIOR COUNTY AGREEMENT NO. P-21-497**

26 This Agreement does not modify County Agreement Number P-21-497, effective
27 September 1, 2021, by which COUNTY engaged ATTORNEY to provide legal advice
28

1 and counsel to COUNTY, including litigation, as assigned by the Office of the County
2 Counsel. County Agreement Number. P-21-497 continues in full force and effect.

3
4 **SECTION 23**

5 **ENTIRE AGREEMENT**

6 23.1 This Agreement, and any and all documents referred to or otherwise
7 incorporated by reference herein, constitutes the entire Agreement between COUNTY
8 and ATTORNEY with respect to the specialized legal services to be provided herein and
9 supersedes any previous Agreement concerning the subject matter hereof,
10 negotiations, proposals, commitments, writings, or understandings of any nature
11 whatsoever unless expressly included in this Agreement.

12 23.2 If any part of this Agreement is found violative of any law or is found to be
13 otherwise legally defective, ATTORNEY and COUNTY shall use their best efforts to
14 replace that part of this Agreement with legal terms and conditions most readily
15 approximating the original intent of the parties.

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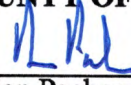
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1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be
2 executed as of the day and year first above written.

3 **ATTORNEY**
4 
5 _____
(Authorized Signature)

COUNTY OF FRESNO


Brian Pacheco, Chairman of the Board
of Supervisors of the County of
Fresno

7
8 **Margaret Long**

Print Name & Title
9 **2240 Court Street**

Mailing Address
10 **Redding, CA 96001**

City, State, ZIP

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

13
14 By: 

Deputy

15
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20 **FOR ACCOUNTING USE ONLY:**

21 **Fund: 1060**
22 **Subclass: 10000**
23 **ORG: 89250100**
24 **Account: 7100**
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1 **ATTACHMENT A**

2 **Compensation**

3
4 County shall compensate Attorney as follows:

5 Other Services

6 Attorney Rate- Litigation \$200.00/hour
7 Paralegal \$90.00/hour

8 Necessary travel time charged at one-half of applicable hourly rate, however no travel
9 within the Cities of Fresno or Clovis shall be charged to or payable by COUNTY.

10 Costs and Expenses

11 Voluminous duplication or printing \$0.10/page
12 (charged for each page beyond
350 pages in any month)

13 Travel Expenses for approved Best available rate
14 trips related to attendance of for overnight stays and
15 regular County meetings, office meal diems at County
hours and appointments policy and IRS

16 Extraordinary postage or Actual Cost
17 overnight delivery when
18 expedited delivery is necessary

19 Necessary costs incurred for the Actual Cost
20 following:

- 21 • Court filing fees
- 22 • Courtcall expenses
- 23 • Attorney services (includes service of process fees, arbitrators, and mediators)
- 24 • Messenger services
- 25 • Westlaw research outside of our prepaid service fee
- 26 • Fed-ex, On-Trac Overnight, or other one-day delivery services
- 27 • Reasonable travel expenses and parking fees for court appearances,
28 depositions, arbitrations, mediations, and other necessary appointments
- Actual costs for large reproduction projects if performed by an outside service, or \$0.10 per page if performed in house

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- Any other expenses not listed above that becomes necessary for the successful resolution of a particular litigation matter, as pre-approved in writing by the Department of Human Resources, Risk Management.

1 **ATTACHMENT B**

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3
4 In order to conduct business with the County of Fresno (hereinafter referred to as
5 “County”), members of a contractor’s board of directors (hereinafter referred to as “County
6 Contractor”), must disclose any self-dealing transactions that they are a party to while
7 providing goods, performing services, or both for the County. A self-dealing transaction is
8 defined below:

9
10
11 “A self-dealing transaction means that a transaction to which the corporation is a party and
12 in which one or more of its directors has a material financial interest.”

13
14 The definition above will be utilized for purposes of completing this disclosure form.
15
16

17 **Instructions**

- 18 1. Enter board member’s name, job title (if applicable), and date this disclosure is
19 being made.
20
21 2. Enter the board member’s company/agency name and address.
22
23 3. Describe in detail the nature of the self-dealing transaction that is being disclosed
24 to the County. At a minimum, include a description of the following:
25 a. The name of the agency/company with which the corporation has a
26 transaction; and
27
28

1 b. The nature of the material financial interest in the corporation's transaction
2 that the board member has.

3 4. Describe in detail why the self-dealing transaction is appropriate based on
4 applicable provisions of the Corporations Code.

5 5. Form must be signed by the board member that is involved in the self-dealing
6 transaction described in Sections (3) and (4).
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(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	
		:	