

AGREEMENT

THIS AGREEMENT ("Agreement") is dated February 4th, 2020 ("Effective Date"), and is between the County of Fresno, a political subdivision of the State of California ("COUNTY"), and Pacific Publishing Group, Inc., dba The Business Journal, a California corporation located at 1315 Van Ness Avenue, Suite 200, Fresno California, 93721 ("CONTRACTOR").

RECITALS

WHEREAS, COUNTY has previously purchased printing services from CONTRACTOR to service various COUNTY departments, including the most recent County Agreement No. 15-045, approved on February 10, 2015, which expired on December 31, 2019; and

WHEREAS, COUNTY and its various Departments continue to need to publish legal notices; and

WHEREAS CONTRACTOR represents that it is a newspaper of general circulation that it is able to publish notices as requested.

NOW, THEREFORE, the parties therefore agree as follows:

WITNESSETH**I. SERVICES PROVIDED BY THE CONTRACTOR**

CONTRACTOR shall publish legal notices submitted as requested by the COUNTY and its various Departments, according to the CONTRACTOR'S ordinary publishing schedule, at the prices specified in this Agreement. There is no minimum order quantity.

II. TERM

This Agreement is effective from the Effective Date through February 3, 2023. The term of this Agreement may be renewed for no more than two one-year extensions at the sole discretion of the COUNTY, upon a determination of satisfactory performance by the Chief Information Officer (CIO) or his designee.

To exercise each one-year extension, the CIO will notify the CONTRACTOR of the extension by written letter at least 45 days before the termination date. The CIO is expressly authorized to execute and issue each extension letter.

TERMINATION**A. NON-ALLOCATION OF FUNDS**

1 The terms of this Agreement, and the services to be provided thereunder, are
2 contingent on the approval of funds by the appropriating government agency. Should
3 sufficient funds not be allocated, the services provided may be modified, or this
4 Agreement terminated at any time without penalty by giving CONTRACTOR thirty (30)
5 days' advance written notice.

6 **B. BREACH OF CONTRACT**

7 The COUNTY may immediately suspend or terminate this Agreement in whole or
8 in part, where in the determination of the COUNTY there is:

- 9 1. An illegal or improper use of funds,
- 10 2. A failure to comply with any term of this Agreement;
- 11 3. A substantially incorrect or incomplete report submitted to the COUNTY;
- 12 4. Improperly performed service.

13 In no event shall any payment by the COUNTY constitute a waiver by the
14 COUNTY of any breach of this Agreement or any default which may exist on the part of
15 the CONTRACTOR. Neither shall such payment impair or prejudice any remedy
16 available to the COUNTY with respect to the breach or default. The COUNTY shall have
17 the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds
18 disbursed to the CONTRACTOR under this Agreement, which in the judgement of the
19 COUNTY were not expended in accordance with the terms of this Agreement. The
20 CONTRACTOR shall promptly refund any such funds upon demand.

21 **C. WITHOUT CAUSE**

22 Under circumstances other than those set forth above, COUNTY may terminate
23 this Agreement in full or in part by giving thirty (30) days advance written notice of an
24 intention to terminate to CONTRACTOR.

25 **III. COMPENSATION/INVOICING**

26 COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to receive
27 compensation as follows: \$28.00 per column inch for services provided in calendar years 2020,
28 and 2021, \$29.00 per column inch for services provided in calendar years 2022; and, if

1 extensions are granted as provided in section II of this Agreement, \$29.00 per column inch for
2 services that are provided in 2023, and \$30.00 per column inch for services that are provided in
3 2024. CONTRACTOR shall submit invoices to the COUNTY department receiving the service,
4 at the address provided by the department. The invoice terms shall be net 45 days.

5 In no event shall compensation paid by COUNTY to CONTRACTOR for services
6 performed under this Agreement exceed one hundred and fifty thousand dollars (\$150,000)
7 during each year of the initial three-year term of this Agreement, and two hundred thousand
8 dollars (\$200,000) during each of the optional one-year extensions, if extensions are granted. In
9 no event shall the total compensation paid to CONTRACTOR for services performed under the
10 total possible 5-year term of this Agreement exceed eight hundred and fifty thousand dollars
11 (\$850,000). It is understood that all expenses incidental to CONTRACTOR'S performance of
12 services under this Agreement shall be borne by CONTRACTOR.

13 IV. **INDEPENDENT CONTRACTOR:**

14 In performance of the work, duties and obligations assumed by CONTRACTOR
15 under this Agreement, it is mutually understood and agreed that CONTRACTOR,
16 including any and all of the CONTRACTOR'S officers, agents, and employees will, at all
17 times, be acting and performing as an independent contractor, and shall act in an
18 independent capacity and not as an officer, agent, servant, employee, joint venturer,
19 partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to
20 control or supervise or direct the manner or method by which CONTRACTOR shall
21 perform its work and function. However, COUNTY shall retain the right to administer this
22 Agreement so as to verify that CONTRACTOR is performing its obligations in
23 accordance with the terms and conditions thereof.

24 CONTRACTOR and COUNTY shall comply with all applicable provisions of law
25 and the rules and regulations, if any, of governmental authorities having jurisdiction over
26 matters the subject thereof.

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

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

8 V. **MODIFICATION**

9 Any matters of this Agreement may be modified from time to time by the mutual
10 written consent of all the parties without, in any way, affecting the remainder.

11 VI. **NON-ASSIGNMENT**

12 Neither party shall assign, transfer or sub-contract this Agreement nor their rights
13 or duties under this Agreement without the prior written consent of the other party.

14 VII. **HOLD HARMLESS**

15 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S
16 request, defend the COUNTY, its officers, agents, and employees from any and all costs
17 and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses
18 occurring or resulting to COUNTY in connection with the performance, or failure to perform,
19 by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any
20 and all costs and expenses (including attorney's fees and costs), damages, liabilities,
21 claims, and losses occurring or resulting to any person, firm, or corporation who may be
22 injured or damaged by the performance, or failure to perform, of CONTRACTOR, its
23 officers, agents, or employees under this Agreement.

24 The provisions of this Section VIII shall survive the termination of this Agreement.

25 VIII. **INSURANCE**

26 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third
27 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance
28 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or

1 Joint Powers Agreement (JPA) throughout the term of the Agreement:

2 A. Commercial General Liability

3 Commercial General Liability Insurance with limits of not less than Two Million Dollars
4 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
5 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
6 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
7 liability or any other liability insurance deemed necessary because of the nature of this contract.

8 B. Automobile Liability

9 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
10 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any
11 auto used in connection with this Agreement.

12 C. Professional Liability

13 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
14 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
15 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

16 D. Worker's Compensation

17 A policy of Worker's Compensation insurance as may be required by the California Labor
18 Code.

19 Additional Requirements Relating to Insurance

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

27 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
28 employees any amounts paid by the policy of worker's compensation insurance required by this

1 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
2 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
3 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

4 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
5 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
6 foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will
7 administer this contract), stating that such insurance coverage have been obtained and are in full force;
8 that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on
9 the policies; that for such worker's compensation insurance the CONTRACTOR has waived its right to
10 recover from the COUNTY, its officers, agents, and employees any amounts paid under the insurance
11 policy and that waiver does not invalidate the insurance policy; that such Commercial General Liability
12 insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as
13 additional insured, but only insofar as the operations under this Agreement are concerned; that such
14 coverage for additional insured shall apply as primary insurance and any other insurance, or
15 self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not
16 contributing with insurance provided under CONTRACTOR's policies herein; and that this insurance shall
17 not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to
18 COUNTY.

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

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

25 IX. **AUDITS AND INSPECTIONS**

26 CONTRACTOR shall, at any time during CONTRACTOR'S normal business
27 hours, and upon prior written notice, as often as the COUNTY may deem necessary,
28 make available to the COUNTY for examination all of its records and data with respect to

1 the matters covered by this Agreement. CONTRACTOR shall, upon request by the
2 COUNTY, permit the COUNTY to audit and inspect all of such records and data
3 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.
4 Any such examinations or audits shall be at the COUNTY'S expense, and at
5 Contractor's facility.

6 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
7 shall be subject to the examination and audit of the California State Auditor for a period
8 of three (3) years after final payment under contract (Government Code Section 8546.7)
9 at Contractor's facility.

10 X. **NOTICES:**

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

13 COUNTY OF FRESNO	CONTRACTOR
14 Director of Internal Services/CIO	Pacific Publishing Group, Inc., dba
333 W Pontiac Way	The Business Journal
15 Clovis, CA 93612	1315 Van Ness Ave. Suite 200
	16 Fresno, CA 93721

17 All notices between the COUNTY and CONTRACTOR provided for or permitted
18 under this Agreement must be in writing and delivered either by personal service, by
19 first-class United States mail, by an overnight commercial courier service, or by
20 telephonic facsimile transmission. A notice delivered by personal service is effective
21 upon service to the recipient. A notice delivered by first-class United States mail is
22 effective three COUNTY business days after deposit in the United States mail, postage
23 prepaid, addressed to the recipient. A notice delivered by an overnight commercial
24 courier service is effective one COUNTY business day after deposit with the overnight
25 commercial courier service, delivery fees prepaid, with delivery instructions given for
26 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile
27 is effective when transmission to the recipient is completed (but, if such transmission is
28 completed outside of COUNTY business hours, then such delivery shall be deemed to
be effective at the next beginning of a COUNTY business day), provided that the sender

1 maintains a machine record of the completed transmission. For all claims arising out of
2 or related to this Agreement, nothing in this section establishes, waives, or modifies any
3 claims presentation requirements or procedures provided by law, including but not
4 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
5 beginning with section 810).

6 XI. **VENUE AND GOVERNING LAW**

7 Venue for any action arising out of or related to this Agreement shall only be in
8 Fresno County, California. The rights and obligations of the parties and all interpretation
9 and performance of this Agreement shall be governed in all respects by the laws of the
10 State of California.

11 XII. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

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

15 Members of the CONTRACTOR's Board of Directors shall disclose any self-
16 dealing transactions that they are a party to while CONTRACTOR is providing goods or
17 performing services under this Agreement. A self-dealing transaction shall mean a
18 transaction to which the CONTRACTOR is a party and in which one or more of its
19 directors has a material financial interest. Members of the Board of Directors shall
20 disclose any self-dealing transactions that they are a party to by completing and signing
21 a Self-Dealing Transaction Disclosure Form (Exhibit A) and submitting it to the COUNTY
22 prior to commencing with the self-dealing transaction or immediately thereafter.

23 XIII. **ENTIRE AGREEMENT**

24 This Agreement constitutes the entire agreement between the CONTRACTOR
25 and COUNTY with respect to the subject matter hereof, and supersedes all previous
26 Agreement negotiations, proposals, commitments, writings, advertisements,
27 publications, and understandings of any nature whatsoever unless expressly included in
28 this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and
2 year first herein above written.

3 **CONTRACTOR**

COUNTY OF FRESNO

4 Callie Martin
5 (Authorized Signature)
6 Callie Martin
7 Legal Ad Coordinator TITLE

Ernest Buddy Mendes
Ernest Buddy Mendes,
Chairman of the Board of Supervisors of
the County of Fresno

8 Business Journal
Print Name & Title

9 1315 Van Ness Avenue, Suite 200
10 Fresno California, 93721-1729
11 Mailing Address

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

15 Org. No.: Various
16 Account No.: 7325

By: Rose Cuyf
Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "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).

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(1) Company Board Member Information:

	Date:	

(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:	
-----------	--	-------	--