

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT (the "Agreement") is made and entered into this 9th day of January, 2018, by and between the COUNTY OF FRESNO, a political subdivision of the State of California (the "COUNTY"), and the law firm of LIEBERT CASSIDY WHITMORE, a professional law corporation, hereinafter referred to as "ATTORNEY."

WITNESSETH:

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code, section 31000, to perform services as lead negotiator for Memorandum of Understanding bargaining tables and provide advice related thereto; and

WHEREAS, COUNTY wishes to engage the specialized legal services of counsel who is expert in legal matters concerning such issues; and

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

WHEREAS, 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

1. Employment of Attorney: COUNTY hereby hires ATTORNEY as an independent contractor through the services of the following key person(s): Shelline K. Bennett, and such other partners of and associate lawyers and staff members employed by ATTORNEY as ATTORNEY deems necessary and which the COUNTY 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 "limited basis" (as hereinafter defined) as ATTORNEY reasonably deems prudent and necessary under the circumstances. It is understood that ATTORNEY may not replace any of the

1 aforementioned key persons named above without the prior, express, written approval
2 of County Counsel, or his designee. In case of death, illness or other incapacity of any
3 of the foregoing key persons, ATTORNEY shall provide a replacement of at least equal
4 professional ability and experience as the key person replaced.

5 ATTORNEY shall perform specialized legal services as lead negotiator including
6 caucuses, review of proposals, and appearance in closed session. In addition, from
7 time to time, COUNTY may request ATTORNEY to perform additional specialized legal
8 services in connection with labor relations and training on behalf of COUNTY. Upon
9 COUNTY'S written request to perform such services, and ATTORNEY's written
10 acknowledgment that ATTORNEY will provide such services, ATTORNEY shall perform
11 such services pursuant to the terms and conditions of this Agreement. Notwithstanding
12 the foregoing provisions of this paragraph, in the event of exigent circumstances, the
13 Department of Human Resources (Human Resources) may make such request orally,
14 and COUNTY and ATTORNEY shall within a reasonable time thereafter document such
15 request for services and acknowledgment thereof.

16 2. Performance by Attorney: ATTORNEY agrees to timely perform all
17 services provided for under this Agreement. ATTORNEY agrees to avoid unnecessary
18 duplicative efforts on the part of ATTORNEY and ATTORNEY's partners, associate
19 lawyers, and staff members in ATTORNEY's performance of services for the COUNTY
20 hereunder.

21 COUNTY shall not be obligated to compensate ATTORNEY for intra-office
22 conferences between or among ATTORNEY's partners, associate lawyers, and staff
23 members, unless such intra-office conferences promote efficiency in the performance of
24 ATTORNEY's work on a matter, or a reduction in the cost of compensation paid or
25 reimbursement made for related, reasonable and necessary, out-of-pocket expenses to
26 ATTORNEY, or both.

1 In the performance of the tasks identified in paragraph 1 under this Agreement,
2 ATTORNEY shall provide only those services, which are necessary to carry out such
3 tasks in an efficient and effective manner.

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

14 COUNTY agrees to pay and ATTORNEY agrees to accept as full compensation
15 for performance of tasks under this Agreement the following sum per hour per person:

16 Shelline K. Bennett: \$325 per hour

17 Associate Counsel: \$230 per hour

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

Furthermore, COUNTY shall not compensate ATTORNEY for work performed by paralegals where such work ordinarily is performed by licensed attorneys, including legal research and legal document drafting.

In no event shall the maximum amount paid to ATTORNEY as compensation for ATTORNEY's services performed exceed One Hundred Seventy Five Thousand and No/100 Dollars (\$175,000) under this Agreement. ATTORNEY shall not be paid for any services or costs above this limit without a written modification of this Agreement executed by both parties. ATTORNEY shall notify COUNTY in writing when the value of its accrued services, whether billed or not yet billed to the COUNTY, has reached the amount of One Hundred Thousand and No/100 Dollars (\$100,000) and again when and if the value of its accrued services, whether billed or not yet billed to the COUNTY, has reached the amount of One Hundred Twenty Five Thousand and No/100 Dollars (\$125,000).

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

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

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

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

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

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

24 5. Term of Agreement: This Agreement shall be effective upon execution by
25 the Board of Supervisors and will terminate on January 8, 2020. Either party
26 may terminate this Agreement at any time, either in whole or in part. However, if
27 ATTORNEY elects to terminate this Agreement, COUNTY's rights under any pending
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1 matter which may arise from ATTORNEY's services hereunder shall not be prejudiced
2 due to such termination as required by the Rules of Professional Conduct of the State
3 Bar of California. Subject to paragraph 3 of this Agreement, COUNTY shall be paid for
4 all services performed to the date of termination of this Agreement, which are done to
5 the reasonable satisfaction of COUNTY.

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

19 Because of its status as an independent contractor, ATTORNEY shall have
20 absolutely no right to employment rights and benefits available to COUNTY employees.
21 ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its
22 employees all legally-required employee benefits. In addition, ATTORNEY shall be
23 solely responsible and save COUNTY harmless from all matters related to payment of
24 ATTORNEY's employees, including compliance with social security, withholding, and all
25 other regulations governing such matters. It is acknowledged that during the term of
26 this Agreement, ATTORNEY may be providing services to others unrelated to COUNTY
27 or to this Agreement.

1 7. Hold Harmless: ATTORNEY shall hold COUNTY, its officers, agents, and
2 employees harmless and indemnify and defend AUTHORITY, its officer, agents and
3 employees against payment of any and all costs and expenses, claims, suits, losses,
4 damages and liability arising from or arising out of any actual negligent or wrongful acts
5 or omissions of ATTORNEY, including its partners, officers, agents and employees, in
6 performing or failing to perform the services provided herein. COUNTY's receipt of any
7 insurance certificates required herein does not in any way relieve the ATTORNEY from
8 its obligations under this paragraph 7 of this Agreement.

9 8. Insurance: Without limiting COUNTY's rights under paragraph 7 of this
10 Agreement, or against any third parties, ATTORNEY, at its sole expense, shall maintain
11 in full force and effect the following insurance policies throughout the entire term of this
12 Agreement:

13 A. A policy of professional liability insurance with limits of coverage of not
14 less than One Million Dollars (\$1,000,000.00) per covered event, Two Million Dollars
15 (\$2,000,000.00) in the annual aggregate;

16 B. A policy of comprehensive general liability insurance with limits of
17 coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence. [Such
18 insurance shall include automobile insurance coverage, provided however, if
19 ATTORNEY maintains comprehensive general liability insurance that does not cover a
20 loss in connection with an automobile, ATTORNEY shall also obtain and maintain
21 automobile liability insurance coverage with limits of coverage of not less than One
22 Hundred Thousand Dollars (\$100,000.00) per person and Three Hundred Thousand
23 Dollars (\$300,000.00) per occurrence]; and

24 C. A policy of workers compensation insurance as is required by the
25 California Labor Code, providing full statutory coverage.

26 All such insurance policies shall be issued by insurers who at least have an A.M.
27 Best rating of B+ FSC VIII, and shall be acceptable to COUNTY. In addition, the
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1 comprehensive general liability insurance policy (and, the automobile liability insurance
2 policy, if such policy is at any time maintained separately from the comprehensive
3 general liability insurance policy) shall name the COUNTY, its officers, agents, and
4 employees, individually and collectively, as additional insureds, but only insofar as the
5 operations under this Agreement are concerned. Such coverage for additional insureds
6 shall apply as primary insurance and any other insurance, or self-insurance, maintained
7 by the COUNTY, its officers, agents, and employees, shall be excess only and not
8 contributing with such insurance provided under ATTORNEY's policies herein. This
9 insurance shall not be canceled, reduced, or changed without a minimum of thirty (30)
10 calendar days advance, written notice given to Human Resources (at the address for
11 notices to Human Resources provided herein).

12 ATTORNEY shall provide to Human Resources a certificate of insurance for all
13 the foregoing policies and an endorsement to ATTORNEY's comprehensive general
14 liability insurance policy (and, to the automobile liability insurance policy, if such policy is
15 at any time maintained separately from the comprehensive general liability insurance
16 policy) naming COUNTY as an additional insured, as stated above, which are
17 acceptable to COUNTY, evidencing proof of such insurance coverages required herein
18 prior to performing any services under this Agreement.

19 In addition to its obligations set forth hereinabove, ATTORNEY agrees that it
20 shall maintain, at its sole expense, in full force and effect for a period of three (3) years
21 following the termination of this Agreement a policy of professional liability insurance
22 with limits of coverage of not less than One Million Dollars (\$1,000,000.00) per claim;
23 provided, however, in the event that ATTORNEY does not maintain such policy of
24 insurance for such entire three (3) year period, ATTORNEY shall maintain, at its sole
25 expense, in full force and effect extended claims reporting coverage insurance in lieu
26 thereof in the amount of not less than One Million Dollars (\$1,000,000.00).

1 If either the professional liability or comprehensive general liability insurance
2 policies (or, the automobile liability insurance policy, if such policy is at any time
3 maintained separately from the comprehensive general liability insurance policy)
4 required to be maintained pursuant to this paragraph 8, or both (or all of them, as the
5 case may be), have a self-insured retention, such self-insured retentions shall be
6 funded by ATTORNEY and approved by AUTHORITY.

7 9. Agreement is Binding Upon Successors: This Agreement shall be binding
8 upon COUNTY and ATTORNEY and their successors, executors, administrators, legal
9 representatives and assigns with respect to all the covenants and conditions set forth
10 herein.

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

15 11. Amendments: This Agreement may only be amended in writing signed by
16 the parties hereto.

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

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

3 14. Compliance With Laws: ATTORNEY shall comply with all federal, state,
4 and local laws and regulations applicable to the performance of its obligations under this
5 Agreement.

6 15. Notices: The persons and their addresses having authority to give and
7 receive notices under this Agreement include the following:

8 COUNTY

ATTORNEY

9 Paul Nerland
10 Director of Human Resources
2220 Tulare S., Suite 1600
11 Fresno, CA 93721

Shelline Bennett
Liebert, Cassidy & Whitmore
5250 N. Palm Ave., Suite 310
Fresno, CA 93704

12 Any and all notices between the COUNTY and ATTORNEY provided for or permitted
13 under this Agreement or by law shall be in writing and shall be deemed duly served
14 when personally delivered to one of the parties, or in lieu of such personal service,
15 when deposited in the United States mail, postage prepaid, addressed to such party.
16 Any notices to be given or provided for under this Agreement are not modifications or
17 changes of this Agreement.

18 16. Venue and Governing Law: The parties agree that, for purposes of venue,
19 performance under this Agreement is to be in Fresno County, California. The rights and
20 obligations of the parties and all interpretations and performance of this Agreement shall
21 be governed in all respects by the laws of the State of California.

22 17. Disclosure of Self-Dealing Transactions: This provision is only applicable
23 if ATTORNEY is operating as a corporation (a for-profit or non-profit corporation) or if
24 during the term of this Agreement, ATTORNEY changes its status to operate as a
25 corporation.

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

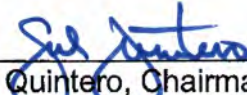
8 18. Entire Agreement: This Agreement constitutes the entire agreement
9 between COUNTY and ATTORNEY with respect to the specialized legal services to be
10 provided herein and supersedes any previous agreement concerning the subject matter
11 hereof, negotiations, proposals, commitments, writings,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

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

3
4 ATTORNEY

COUNTY OF FRESNO

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6 _____
(Authorized Signature)


Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

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8 Shelline K. Bennett, Managing Partner Fresno
Liebert Cassidy Whitmore
9 5250 N. Palm Ave., #310
Fresno, CA 93704

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

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13 By: Susan Bishop
Deputy

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23 FOR ACCOUNTING USE ONLY:

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25 ORG No.: ~~0925 0500~~ 1010 0500
Account No.: 7295
26 Requisition No.: 1011800023
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