

1 BEFORE THE BOARD OF SUPERVISORS
2 OF THE
3 COUNTY OF FRESNO, STATE OF CALIFORNIA
4

5 IN THE MATTER OF ESTABLISHING A)
6 TEMPLATE AGREEMENT FOR COUNTY)
7 HEARING OFFICERS)

RESOLUTION NO. 19-004

8 WHEREAS, the Board of Supervisors on October 31, 2017, adopted an ordinance to add
9 Chapter 2.81 to the Ordinance Code of Fresno County ("Ordinance Code") establishing the Office of
10 the County Hearing Officer ("Office"); and

11 WHEREAS, by Ordinance Code section 2.81.080, the Board has authorized the delegation of
12 appeals from administrative actions to the Office for final resolution; and

13 WHEREAS, the County requires the services of hearing officers as provided in California
14 Government Code, Title 3, Division 2, Part 3, Chapter 14 (beginning with section 27720) and
15 Ordinance Code Chapter 2.81 to conduct administrative hearings; and

16 WHEREAS, by Ordinance Code section 2.81.040, the County Administrative Officer ("CAO") is
17 required to appoint five attorneys-at-law as county hearing officers, and authorized to execute
18 employment agreements with county hearing officers; and

19 WHEREAS, the CAO wishes to engage county hearing officers as independent contractors,
20 rather than as employees of the County;

21 NOW, THEREFORE, BE IT RESOLVED, that the Fresno County Board of Supervisors hereby
22 approves the form of agreement for county hearing officers, attached as Exhibit A, and authorizes the
23 CAO to sign agreements in that form with individuals who will serve as county hearing officers, as
24 needed to satisfy the CAO's obligation to appoint county hearing officers.
25

26 BE IT FURTHER RESOLVED, that the CAO may modify the hourly rate paid to hearing officers
27 under the agreement, the insurance requirements under the agreement, or both, as needed as
28 determined by the CAO, on condition that any modifications shall apply to all hearing officers equally

1 and are subject to the approval of County Counsel as to legal form, and any modifications to the
2 insurance requirements shall be made in consultation with County Risk Management.

3 THE FOREGOING, was passed and adopted by the following vote of the Board of Supervisors
4 of the County of Fresno this 8th day of January, 2019, to wit:

5
6 AYES: Supervisors Magsig, Mendes, Pacheco, Quintero

7 NOES: None

8 ABSENT: None

9 ABSTAINED: None

10 VACANT: District 2

11
12
13 

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

16 **ATTEST:**

17 Bernice E. Seidel
18 Clerk of the Board of Supervisors
19 County of Fresno, State of California

20 By: Susan Bishop
21 Deputy

HEARING OFFICER SERVICES AGREEMENT

This agreement is dated _____ and is between [Name of Hearing Officer], an individual and a resident of Fresno, California ("Contractor"), and the County of Fresno, a political subdivision of the State of California ("County").

The County requires the services of a hearing officer as provided in California Government Code, Title 3, Division 2, Part 3, Chapter 14 (beginning with section 27720) and Ordinance Code of Fresno County ("Ordinance Code") Chapter 2.81, to conduct administrative hearings.

The Contractor represents to the County that the Contractor is competent to provide such services, and is ready, willing, and able to provide those services, subject to the terms of this agreement.

The parties therefore agree as follows:

Article 1**Appointment**

1.1 The County Administrative Officer ("CAO") hereby appoints the Contractor to serve as a hearing officer for the County as provided in California Government Code, Title 3, Division 2, Part 3, Chapter 14 (beginning with section 27720) and Ordinance Code Chapter 2.81, specifically section 2.81.040(C), and subject to the terms of this agreement.

Article 2**Contractor's Obligations**

2.1 The Contractor shall serve as a hearing officer for the County as provided in California Government Code, Title 3, Division 2, Part 3, Chapter 14 (beginning with section 27720) and Ordinance Code Chapter 2.81, and subject to the terms of this agreement.

2.2 **Conduct of Hearings.** When assigned matters by the CAO for hearing, the Contractor shall preside over and timely conduct each hearing in a fair and impartial manner in

1 the hearing room provided by the County, administer oaths, receive oral and documentary
2 evidence as the trier of fact, and rule on the admissibility of evidence and upon questions of law.
3 The Contractor shall cause an audio recording of each hearing to be made using equipment
4 provided by the County under section 4.2 of this agreement. Time is of the essence for the
5 Contractor's obligations under this section 2.2.

6 **2.3 Service on Panel.** The Contractor acknowledges that, as provided by the Ordinance
7 Code or other applicable legal authority, the CAO may assign the Contractor to hear matters
8 including, but not limited to appeals on a panel with other hearing officers.

9 **2.4 Decisions and Orders.** The Contractor shall prepare all decisions and orders
10 necessary to matters before the Contractor for hearing. After hearing on each matter, the
11 Contractor shall render a written decision, including any findings or conclusions of law required
12 for the decision, and submit the decision to the Clerk of the Board of Supervisors. The
13 Contractor shall render each written decision within the time specified in the applicable statute
14 or ordinance governing the hearing, or within 30 calendar days from the closing of the record if
15 no time is specified elsewhere, except that if either party before or during a hearing requests an
16 expedited decision, the Contractor shall endeavor to issue that decision within five business
17 days from the closing of the record. Time is of the essence for the Contractor's obligations
18 under this section 2.4.

19 **2.5 Maintenance and Ownership of Records.**

20 (A) The Contractor shall maintain the file provided by the CAO upon assignment of a
21 matter, and shall maintain all documents produced in the course of hearing the matter
22 (including but not limited to the Contractor's correspondence with the parties, and
23 documentary evidence produced by the parties), until that matter is final. Upon finality of
24 a matter, the Contractor shall return all such documents to the CAO and shall not keep
25 copies of any such documents. If the Contractor has electronic versions of such
26

documents, the Contractor shall delete them concurrently with returning documents to the CAO under this section 2.5.

(B) All documents received or prepared by the Contractor in connection with matters before the Contractor for hearing under this agreement are the property of the County. To the extent those documents might be subject to the deliberative process privilege or any other privilege against disclosure, the County reserves the sole right to assert those privileges.

(C) Notwithstanding anything else in this section 2.5, the Contractor may create and maintain documents in the form of templates, notes, and memoranda for the purpose of enhancing the efficiency of the Contractor's provision of services under this agreement. The Contractor acknowledges that such documents might be subject to disclosure as provided in section 11.3 of this agreement, relating to the California Public Records Act.

(D) For purposes of this section 2.5, "documents" has the same meaning as "writings" under California Evidence Code section 250.

2.6 Maintenance of Qualifications.

(A) Continuously during the term of this agreement, the Contractor shall maintain:

(1) The qualifications stated in California Government Code section 27724, as that section may be amended;

(2) An active license to practice law in the State of California; and

(3) Any other qualifications required under section 2.81.050 of the Ordinance Code, as that section may be amended.

(B) The Contractor shall notify the CAO immediately of any failure by the Contractor to maintain the qualifications listed in paragraph (A) of this section 2.6.

(C) The Contractor acknowledges that failure to maintain the qualifications listed in paragraph (A) of this section 2.6 is cause for revocation of the Contractor's appointment to serve as a hearing officer under Ordinance Code section 2.18.050(C) and is a failure

1 to comply with a part of this agreement for purposes of section 7.3 of this agreement,
2 relating to termination for breach.

3 2.7 **Ethics.** The Contractor shall comply with Canon 6D of the California Code of Judicial
4 Ethics as though the Contractor were a “temporary judge” as that term is defined in the
5 California Code of Judicial Ethics. If there is any conflict between the terms of Canon 6D and
6 the terms of this agreement, the stricter rule applies.

7 2.8 **Independent Judgment.** The Contractor shall exercise independent, impartial
8 judgement in deciding all matters before the Contractor for hearing under this agreement. In
9 deciding such matters, the Contractor shall not take direction from the CAO, the Board of
10 Supervisors, any member of the Board of Supervisors, any County department head, or any
11 other person. The Contractor may consider legal arguments presented by the Office of the
12 County Counsel on behalf of a County department in connection with a matter that is before the
13 Contractor for hearing, and may request the parties in such a matter to submit legal arguments,
14 but the Contractor shall not otherwise seek legal advice from the Office of the County Counsel
15 on any matter that is before the Contractor for hearing.

16 2.9 **Conflicts of Interest.** The Contractor shall not do any of the following:

17 (A) Decide any matter in which the Contractor is interested directly or indirectly.

18 (B) Receive any commission, money, or thing of value, or derive any profit, benefit,
19 or advantage, directly or indirectly, from or by reason of the Contractor’s provision of
20 services under this agreement, except for the compensation paid by the County under
21 article 4 of this agreement.

22 (C) Be financially interested in any matter before the Contractor for hearing under
23 this agreement.

24 (D) Represent any firm, organization, or person that is in litigation with the County or
25 any of its agents.

26 (E) Represent or perform work for any clients that do business with the County.

1 (F) Be employed by any firm, organization, or person that is in litigation with the
2 County or any of its agents, that represents any person in litigation with the County or
3 any of its agents, or that represents or performs work for clients that do business with
4 the County.

5 (G) Employ or retain the services of any County employee or any person who is a
6 member of any County commission, board, committee, or similar County body.

7 **2.10 Voluntary Disqualification.** The Contractor shall voluntarily disqualify themselves
8 and withdraw from any matter in which there are grounds for disqualification, as provided in
9 Ordinance Code section 2.81.070.

10 **2.11 Compliance with Laws and Regulations.** In the provision of services under this
11 agreement, the Contractor shall, at the Contractor's sole cost, comply with all applicable federal,
12 state, and local laws and regulations, and professional rules, including but not limited to the
13 State Bar of California Rules of Professional Conduct, the provisions of the California Political
14 Reform Act relating to conflicts of interest (California Government Code, Title 9, Chapter 7,
15 Article 1 (beginning with section 87100)), the regulations of the Fair Political Practices
16 Commission relating to conflicts of interest (California Code of Regulations, Title 2, Division 6,
17 Chapter 7 (beginning with section 18700)), and the County's Conflict of Interest Code. The
18 Contractor shall comply with any rules of procedure established under Ordinance Code section
19 2.81.120.

20 **2.12 Disclosure of Economic Interests.** The Contractor is required to file a Statement of
21 Economic Interests, Form 700, which is a public document, and shall disclose to the extent
22 required under the conflict of interest code for contracted hearing officers under the County
23 Administrative Office.

24 **2.13 No Other Services to County.** The Contractor shall not provide services to the
25 County except those of a hearing officer under this agreement.
26

2.14 **Use of County Property.** The Contractor shall not use County premises, property (including equipment, instruments, and supplies), or personnel for any purpose other than the performance of the Contractor's obligations under this agreement. The Contractor shall not have access to the County's intranet under this agreement, or access to the Internet through County systems, and shall not receive a County computer, a County email address, or any data storage space on County computers.

2.15 **Not Attorney to County.** The Contractor is not an attorney for or legal advisor to the County.

Article 3

Contractor's Representations, Warranties, and Acknowledgments

3.1 The Contractor represents and warrants that:

(A) The Contractor is qualified and competent to perform the duties of hearing officer under California Government Code sections 27720 and following, under Ordinance Code Chapter 2.81, and under the terms of this agreement.

(B) The Contractor has the qualifications stated in California Government Code section 27724.

(C) The Contractor has an active license to practice law in the State of California.

(D) The Contractor is not in litigation with the County or any of its agents.

(E) The Contractor does not represent any firm, organization, or person that is in litigation with the County or any of its agents.

(F) The Contractor does not represent or perform work for any clients that do business with the County.

(G) The Contractor is not employed by any firm, organization, or person that is in litigation with the County or any of its agents, that represents any person in litigation with the County or any of its agents, or that represents or performs work for clients that do business with the County.

1 (H) The Contractor does not employ or retain the services of any County employee
2 or any person who is a member of any County commission, board, committee, or similar
3 County body.

4 3.2 The Contractor acknowledges that the Contractor is responsible to provide the
5 Contractor's own office space, office supplies, and office equipment as might be necessary to
6 provide services under this agreement, except as provided in section 4.2 of this agreement.

7 3.3 The Contractor acknowledges that the County makes no guarantee that the
8 Contractor will be assigned a minimum number of matters.

9 **Article 4**

10 **County's Obligations**

11 4.1 **Assignment of Matters.** The CAO shall assign matters to the Contractor for hearing
12 as provided in Ordinance Code Chapter 2.81. For each matter assigned to the Contractor, the
13 CAO shall provide a file to the Contractor containing the documents giving rise to the matter.

14 4.2 **Hearing Room and Equipment.** The County shall provide a room for each hearing
15 under this agreement. The County shall provide all equipment needed for hearings, including
16 but not limited to equipment for recording, hearing assistance, and audio-visual presentation,
17 and shall ensure that such equipment is in working order for hearings.

18 4.3 **Staff.** The CAO shall provide staff to the office of the county hearing officer as
19 provided in the Ordinance Code, section 2.81.130.

20 4.4 **No Office Space or Equipment.** Except as provided in section 4.2 of this
21 agreement, the County has no obligation under this agreement to provide office space, office
22 supplies, or office equipment to the Contractor.

23 4.5 **No Guarantee of Minimum Number of Matters.** The County makes no guarantee
24 that the Contractor will be assigned a minimum number of matters.

1 **Article 5**

2 **Compensation, Invoices, and Payments**

3 5.1 **Hourly Rates.** The County agrees to pay, and the Contractor agrees to receive, as
4 compensation for services under this agreement \$125 per hour for the Contractor's preparation,
5 conducting of hearings, and rendering of written decisions as required by this agreement. The
6 hourly rate includes overhead expenses, such as secretarial, telephone, photocopy, computer,
7 printer, Internet, legal research, postage, supplies, and related costs.

8 5.2 **Travel and Accommodations.** The Contractor shall not bill and the County will not
9 pay for the Contractor's travel time or mileage.

10 5.3 **Maximum Compensation.** The maximum compensation payable to the Contractor
11 under this agreement shall not exceed \$100,000 per year not to exceed \$400,000 for the term
12 of the appointment.

13 5.4 **Compensation Not Contingent on Hearing Outcome.** Compensation payable
14 under this agreement is not contingent upon the outcome in any matter that comes before the
15 Contractor for hearing.

16 5.5 **No Minimum Compensation.** There is no minimum compensation payable under
17 this agreement.

18 5.6 **Invoices.** The Contractor shall submit monthly invoices to the CAO in the manner
19 provided in article 6 of this agreement, relating to notices. Each invoice shall be submitted by
20 the 15th day of the month after the month in which the Contractor rendered the services listed on
21 the invoice. Each invoice shall accurately reflect the tasks performed by Contractor under this
22 agreement, and shall include, but not be limited to:

23 (A) The specific nature of each task that the Contractor performed, including
24 identifying the matter by number, and stating whether the task was part of preparation
25 for a hearing, conducting a hearing, conducting legal research, or preparing a written
26 decision;

1 (B) The number of hours that the Contractor spent on each task, in tenths (0.1) of an
2 hour;

3 (C) The hourly rate specified in section 5.1 of this agreement; and

4 (D) The dollar amount product of items (B) and (C) for each task

5 5.7 **Payment.** The County will issue a check to pay each complete and timely-submitted
6 invoice within 30 days after receipt of the invoice, except that the County may withhold payment
7 if the Contractor is failing to render timely written decisions or orders as required by section 2.4
8 of this agreement.

9 **Article 6**

10 **Notices**

11 6.1 **Contact Information.** The persons and their addresses having authority to give and
12 receive notices provided for or permitted under this agreement include the following:

13 **For the County:**

14 Fresno CAO
15 County Administrative Office
16 County of Fresno
2281 Tulare Street, Suite 304
Fresno, California 93721
fresnoca@fresnocountyca.gov

17 **For the Contractor:**

18 [Title]
19 [Name of Contractor]
[Street Address]
[City, State ZIP]
[Email Address]
20

21 6.2 **Change of Contact Information.** Either party may change the information in section
22 6.1 of this agreement by giving notice as provided in section 6.3 of this agreement.

23 6.3 **Method of Delivery.** All notices between the County and the Contractor provided for
24 or permitted under this agreement must be in writing and delivered either by personal service,
25 first-class United States mail, an overnight commercial courier service, or Portable Document
26 Format (PDF) document attached to an email.

1 (A) A notice delivered by personal service is effective upon service to the recipient.

2 (B) A notice delivered by first-class United States mail is effective three County
3 business days after deposit in the United States mail, postage prepaid, and addressed to
4 the recipient.

5 (C) A notice delivered by an overnight commercial courier service is effective one
6 County business day after deposit with the overnight commercial courier service,
7 delivery fees prepaid, with delivery instructions given for next day delivery, and
8 addressed to the recipient.

9 (D) A notice delivered by PDF document attached to an email is effective when
10 transmission to the recipient is completed (but, if such transmission is completed outside
11 of County business hours, then such delivery shall be deemed to be effective at the next
12 beginning of a County business day), provided that the sender maintains a machine
13 record of the completed transmission.

14 6.4 **Claims Presentation.** For all claims arising from or related to this agreement,
15 nothing in this agreement establishes, waives, or modifies any claims presentation requirements
16 or procedures provided by law, including but not limited to the Government Claims Act (Division
17 3.6 of Title 1 of the Government Code, beginning with section 810).

18 **Article 7**

19 **Term and Termination**

20 7.1 **Term.** The term of the Contractor's appointment as a hearing officer is for a period of
21 four years beginning on [start date]. This agreement expires at the end of that term.

22 7.2 **Termination for Non-Allocation of Funds or Cessation of Program.** The terms of
23 this agreement are contingent on the approval of funds by the appropriating government agency
24 and upon the continuation of a practice of hiring contracted hearing officers. If sufficient funds
25 are not allocated, or if the County discontinues its practice of hiring contracted hearing officers
26 (for example, by hiring hearing officers as employees, or by repealing Ordinance Code Chapter

2.81, which examples are not exhaustive), then the County, upon at least 30 days' advance written notice to the Contractor, may:

(A) Modify the services provided by the Contractor under this agreement; or

(B) Terminate this agreement.

7.3 Termination for Breach.

(A) Upon determining that a breach (as defined in paragraph (C) of this section 7.3) has occurred, the CAO may give written notice of the breach to the Contractor. The written notice may suspend performance under this agreement, and shall provide a reasonable time for the Contractor to cure the breach.

(B) If the Contractor fails to cure the breach to the County's satisfaction within the time stated in the written notice, the County may terminate this agreement.

(C) For purposes of this section 7.3, a breach occurs when, in the determination of the CAO, the Contractor has:

(1) Used funds illegally or improperly;

(2) Failed to comply with any part of this agreement;

(3) Submitted a substantially incorrect or incomplete report to the County; or

(4) Improperly performed any of its obligations under this agreement.

(D) For purposes of this section 7.3, a decision by the Contractor that is unfavorable to the County in any matter that comes before the Contractor for hearing is not a breach.

7.4 County's Rights upon Termination for Breach. Upon termination for breach under this article 7, the County may demand repayment by the Contractor of any monies disbursed to the Contractor under this agreement that, in the County's sole judgment, were not expended in compliance with this agreement. The Contractor shall promptly refund all such monies upon demand. The parties' rights and obligations under this section 7.4 survive the termination of this agreement.

7.5 Contractor's Obligations and Rights upon Termination. Upon termination except for breach under this article 7:

(A) The Contractor shall immediately stop all work under this agreement, except for completing any hearings that have begun and where evidence was presented before termination of this agreement.

(B) The County shall pay compensation to the Contractor, as provided in article 5 of this agreement, for all services provided prior to the effective date of termination, and all services required to complete hearings described in paragraph (A) of this section 7.5.

The rights and obligations of the parties under this paragraph survive the termination of this agreement.

Article 8

Independent Contractor

8.1 **Status.** In performing under this agreement, the Contractor is at all times acting and performing as an independent contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the County.

8.2 **Supervision.** The County has no right to control, supervise, or direct the manner or method of the Contractor's performance under this agreement, but the County may verify that the Contractor is performing according to the terms of this agreement.

8.3 **Benefits.** Because of the Contractor's status as an independent contractor, the Contractor has no right to employment rights or benefits available to County employees. The Contractor is solely responsible for providing to the Contractor's own employees all employee benefits required by law. The Contractor shall hold the County harmless from all matters relating to the payment of the Contractor's employees, including compliance with Social Security withholding and all related regulations.

8.4 **Services to Others.** The parties acknowledge that the Contractor may provide services to others unrelated to the County during the term of this agreement, subject to the limitations of section 2.9 of this agreement.

Article 9

Indemnity

9.1 **Indemnifiable Losses.** For purposes of this article 9, “loss” or “losses” includes all claims, demands, injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and liabilities of any kind.

9.2 **Indemnity.** The Contractor shall indemnify the County (including its officers, agents, and employees) against any losses to the County, the Contractor, or any third party that arise from or relate to the performance or failure to perform by the Contractor under this agreement, except when the loss is caused by (1) the Contractor's decision in any matter that comes before the Contractor for hearing, or (2) the sole negligence or intentional wrongdoing of the County.

9.3 **Defense.** If requested by the County, the Contractor shall defend actions or proceedings brought against the County (including its officers, agents, and employees) for any losses to the County, or any third party, that are covered under section 9.2 of this agreement. The County may conduct or participate in its own defense without affecting the Contractor's obligation to indemnify or defend the County.

9.4 Survival. The provisions of this article 9 survive the termination of this agreement.

Article 10

Insurance

10.1 **Required Policies.** Without limiting the County's right to obtain indemnification from the Contractor or any third parties, the Contractor, at the Contractor's sole expense, shall maintain in full force and effect, the following insurance policies throughout the term of this agreement.

1 (A) **Commercial General Liability.** Commercial general liability insurance with limits of
2 not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate
3 of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence
4 basis. The Contractor shall obtain an endorsement to this policy naming the County of
5 Fresno, its officers, agents, and employees, individually and collectively, as additional
6 insureds, but only insofar as the operations under this agreement are concerned. Such
7 coverage for additional insureds shall apply as primary insurance and any other
8 insurance, or self-insurance, maintained by the County shall be excess only and not
9 contributing with insurance provided under the Contractor's policy.

10 (B) **Professional Liability.** Professional liability insurance with limits of not less than
11 Five Hundred Thousand Dollars (\$500,000) per occurrence and an annual aggregate of
12 One Million Dollars (\$1,000,000).

13 (C) **Automobile Liability.** Comprehensive automobile liability insurance with limits of
14 not less than One Million Dollars (\$1,000,000) per accident for bodily injury and for
15 property damages. Coverage shall include any auto used in connection with this
16 agreement.

17 (D) **Workers Compensation.** Workers compensation insurance as required by the
18 California Labor Code.

19 **10.2 Additional Requirements.**

20 (A) **Verification of Coverage.** Within 30 days after the Contractor signs this
21 agreement, the Contractor shall deliver to the County's Risk Manager, at 2220 Tulare
22 Street, 16th Floor, Fresno, California 93721, certificates of insurance and endorsement
23 for all of the coverages required under this agreement.

24 (1) All insurance certificates shall state that: (1) the insurance coverage has been
25 obtained and is in full force; (2) the County, its officers, agents, and employees are
26 not responsible for any premiums on the policy; (3) the insurance will not be

1 canceled without giving 30 days' advance written notice to the County; and (4) the
2 Contractor has waived its right to recover from the County, its officers, agents, and
3 employees any amounts paid under any insurance policy required by this agreement
4 and that waiver does not invalidate the insurance policy.

5 (2) The commercial general liability insurance certificate shall also state that: (1)
6 the County of Fresno, its officers, agents, and employees, individually and
7 collectively, are additional insureds insofar as the operations under this agreement
8 are concerned; (2) the coverage shall apply as primary insurance and any other
9 insurance, or self-insurance, maintained by the County shall be excess only and not
10 contributing with insurance provided under the Contractor's policy.

11 (3) The automobile liability insurance certificate shall state that the policy covers
12 any auto used in connection with this agreement.

13 (4) The professional liability insurance certificate, if it is a claims-made policy,
14 shall also state the retroactive date of the policy, which must be prior to the date on
15 which services begin under this agreement.

16 (B) **Acceptability of Insurers.** All insurance policies required under this agreement
17 shall be issued by admitted insurers licensed to do business in the State of California
18 and possessing a current A.M. Best, Inc. rating of A:VII or greater.

19 (C) **Notice of Cancellation or Change.** For each insurance policy required under
20 this agreement, the Contractor shall provide to the County, or ensure that the policy
21 requires the insurer to provide to the County, written notice of any cancellation or change
22 in the policy as provided in this paragraph. For cancellation of the policy for nonpayment
23 of premium, the Contractor or the insurer shall provide written notice to the County not
24 less than 10 days in advance of cancellation. For cancellation of the policy for any other
25 reason, and for any other change to the policy, the Contractor or the insurer shall
26 provide written notice to the County not less than 30 days in advance of cancellation or

1 change. The County in its sole discretion may determine that the failure of the Contractor
2 or its insurer to timely provide any written notice required by this paragraph is a material
3 breach of this agreement.

4 (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains
5 insurance with broader coverage, higher limits, or both, than what is required under this
6 agreement, then the County requires and shall be entitled to the broader coverage,
7 higher limits, or both.

8 (E) **Waiver of Subrogation.** The Contractor hereby waives its right to recover from
9 the County, its officers, agents, and employees any amounts paid by the policy of
10 worker's compensation insurance required by this agreement. The Contractor is solely
11 responsible to obtain any policy endorsement that may be necessary to accomplish that
12 waiver, but the Contractor's waiver of subrogation under this paragraph is effective
13 whether or not the Contractor obtains such an endorsement.

14 (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails
15 to keep in effect at all times any insurance coverage required under this agreement, the
16 County may, in addition to any other remedies it may have, suspend or terminate this
17 agreement upon the occurrence of that failure, or purchase such insurance coverage,
18 and charge the cost of that coverage to the Contractor. The County may offset such
19 charges against any amounts owed by the County to the Contractor under this
20 agreement.

21 **Article 11**

22 **Inspections, Audits, and Public Records**

23 11.1 **Inspection of Documents.** The Contractor shall make available to the County, and
24 the County may examine at any time during business hours and as often as the County deems
25 necessary, all of the Contractor's records and data with respect to the matters covered by this
26 agreement. The Contractor shall, upon request by the County, permit the County to audit and

inspect all of such records and data to ensure the Contractor's compliance with the terms of this agreement.

11.2 State Audit Requirements. If the compensation to be paid by the County under this agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this agreement. The Contractor's obligations under this section 11.2 survive the termination of this agreement.

11.3 Public Records Act Requests. If the County receives a request under the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) ("CPRA") or a similar law to disclose any document that is in the Contractor's possession but which is prepared, owned, or used by the County, then the County will promptly notify the Contractor and request the responsive documents that may be in the possession of the Contractor. The notification shall be in writing. Upon receiving that notification, the Contractor has five business days in which to provide responsive documents. The Contractor shall indemnify County for any award of costs or attorney's fees under the CPRA that results from the Contractor's delay in providing responsive documents under this section 11.3. If the County believes that any exemptions from disclosure apply, the County will assert them.

Article 12

General Provisions

12.1 Modification. Except as provided in article 6 of this agreement, this agreement may not be modified, and no waiver is effective, except by another written agreement that is signed by both parties.

12.2 Non-Assignment. This agreement is personal to the Contractor, and the Contractor may not assign any rights or delegate any obligations under this agreement without the prior written consent of the County.

1 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
2 or related to this agreement.

3 12.4 **Jurisdiction and Venue.** This agreement is signed and performed in Fresno
4 County, California. Contractor consents to California jurisdiction for actions arising from or
5 related to this agreement, and, subject to the Government Claims Act, all such actions must be
6 brought and maintained in the Fresno County Superior Court.

7 12.5 **Construction.** The final form of this agreement is the result of the parties' combined
8 efforts. If anything in this agreement is found by a court of competent jurisdiction to be
9 ambiguous, that ambiguity is not to be resolved by construing the terms of this agreement
10 against the drafter.

11 12.6 **Headings.** The headings and section titles in this agreement are for convenience
12 only and are not part of this agreement.

13 12.7 **Severability.** If anything in this agreement is found by a court of competent
14 jurisdiction to be unlawful or otherwise unenforceable, the balance of this agreement remains in
15 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
16 this agreement with terms to accomplish the parties' original intent.

17 12.8 **No Waiver.** Payment, waiver, or discharge of any liability or obligation of the
18 Contractor under this agreement on any one or more occasions is not a waiver of performance
19 of any continuing or other obligation and does not prohibit enforcement by the County of any
20 obligation on any other occasion.

21 12.9 **Entire Agreement.** This agreement, including its exhibits, is the entire agreement
22 between the Contractor and the County with respect to the subject matter of this agreement,
23 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
24 publications, and understandings of any nature unless those things are expressly included in
25 this agreement.

12.10 Third-Party Beneficiaries. This agreement does not and is not intended to create any rights or obligations for any person or entity except for the parties.

12.11 **Counterparts.** This agreement may be signed in counterparts, each of which is an original, and all of which together constitute this agreement.

[SIGNATURE PAGE FOLLOWS]

1 The parties are signing this Hearing Officer Services Agreement on the date stated in
2 the introductory clause.

3 [Name of Contractor]

COUNTY OF FRESNO

4
5 _____
6 [Name], [Title]

Jean M. Rousseau, CPA, County
Administrative Officer

7 [Street Address]

8 [City, State ZIP]

9 For accounting use only:

10 Org No.: 2540

11 Account No.: 7295

12 Fund No.: 0001

13 Subclass No.: 10000
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