

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT is made and entered into this 24th day of August 2021 by and between the **COUNTY OF FRESNO**, a political subdivision of the State of California, hereinafter referred to as "**COUNTY**," and Ferguson, Praet and Sherman, a Professional Corporation, hereinafter referred to as "**ATTORNEY**."

WITNESSETH:

WHEREAS, COUNTY is responsible for the administration and defense of General Liability, Auto Liability, Employment Law and Medical Malpractice claims against COUNTY employee(s).

WHEREAS, COUNTY needs and wishes to engage appropriate legal counsel, who is skilled and knowledgeable in defense of General Liability claims or other claims that are covered under the County's General Liability and Medical Malpractice Programs, and to advise and represent COUNTY employee(s) in connection with the 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 ATTORNEY and paralegals or other legal support staff as ATTORNEY deems necessary, and whom COUNTY Human Resources Department, Risk Management Division approves.

1.2 Each claim will be handled by the ATTORNEY to which the assignment is made unless COUNTY approves the handling by another ATTORNEY in the firm.

1 Associated staff may assist the ATTORNEY as deemed necessary.

2 1.3 Any additional instructions relative to the handling of a claim which are not
3 specified or otherwise alluded to in this Agreement will be included in the letter of
4 engagement for each claim assigned to ATTORNEY. Such instructions will be complied
5 with by ATTORNEY as well as any additional client direction in the management of the
6 claim.

7 **SECTION 2**

8 **SCOPE OF SERVICES**

9 2.1 ATTORNEY shall assist, advise, and represent COUNTY employee(s) in
10 connection with all matters relative to the administration and defense of the claims
11 assigned by Human Resources Department, Risk Management Division staff, as
12 specified by COUNTY and per the terms set forth in this Agreement.

13 2.2 ATTORNEY shall perform such other similar legal services as requested
14 by COUNTY Risk Management in connection with the matters related to the
15 administration and defense of the assigned claims.

16 **SECTION 3**

17 **PERFORMANCE BY ATTORNEY**

18 3.1 ATTORNEY agrees to avoid unnecessary duplicative efforts by
19 ATTORNEY and any associated counsel and/or staff members of ATTORNEY in the
20 performance of services for COUNTY hereunder.

21 3.2 COUNTY shall not be obligated to compensate ATTORNEY for intra-office
22 conferences between or among ATTORNEY, associate ATTORNEYS, and/or other 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, actual, reasonable and necessary, out-of-pocket
26 expenses to ATTORNEY, or both.

1 3.3 In the performance of the tasks identified in Section 2 of 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 3.4 COUNTY must approve the retention of all experts, consultants,
5 investigators, and any other unusual expenditures.

7 SECTION 4

8 COMPENSATION OF ATTORNEY

9 4.1 COUNTY shall be obligated to compensate ATTORNEY pursuant to the
10 terms and conditions of this Agreement and for the performance of those tasks
11 identified in Section 2 of this Agreement, to the reasonable satisfaction of the COUNTY,
12 that take place during the term of this Agreement. It is understood that COUNTY shall
13 not be obligated to compensate ATTORNEY for:

14 (a) any work, services, or functions performed by ATTORNEY that do not
15 arise directly from the performance of tasks identified in Section 2 of this Agreement;
16 and

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

21 4.2 COUNTY agrees to pay and ATTORNEY agrees to accept as full
22 compensation for performance of tasks under this Agreement ATTORNEY's reasonable
23 fees as described in Attachment A, Schedule of Rates.

24 4.3 ATTORNEY shall be reimbursed for actual, reasonable, and necessary
25 out-of-pocket expenses, as follows: telephone charges, facsimile charges, computer
26 research charges, filing fees, postage charges, printing and photographic reproduction
27 expenses, and all other directly-related expenses. It is understood that ATTORNEY
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1 shall not be reimbursed for his secretarial, clerical, word processing or typist services
2 (including overtime hours worked), that is "normal office operating expenses," with the
3 exception of those charges and expenses stated above. In addition, ATTORNEY shall
4 not be reimbursed for such normal office operating expenses incurred, regardless of
5 who performs such services or incurs such expenses.

6 4.4 COUNTY will not reimburse ATTORNEY for any travel within the cities of
7 Fresno and Clovis.

8 4.5 Notwithstanding anything else stated to the contrary in this Agreement, in
9 no event shall the maximum amount paid by COUNTY to ATTORNEY as
10 compensation, and as reimbursement of related, actual, reasonable and necessary, out-
11 of-pocket expenses, exceed one million five hundred thousand dollars (\$1,500,000.00)
12 annually.

13 SECTION 5

14 PAYMENT AND RECORD-KEEPING

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

26 5.2 All such invoices shall have sufficient detail as may be required by the
27 COUNTY Auditor-Controller/Treasurer-Tax Collector, including, but not limited to:
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1 5.2.1 The plaintiff's name, the date of loss, the COUNTY's claim number and
2 any other identifying information that will indicate the file to which billing is to be
3 assigned.

4 5.2.2 The specific nature of each task performed as services under this
5 Agreement;

6 5.2.3 The name of the ATTORNEY or staff member performing each task;

7 5.2.4 The number of hours worked by each such person for each such task;

8 5.2.5 The hourly rate per each such person performing each such task;

9 5.2.6 The related, actual, reasonable and necessary, out-of-pocket expenses
10 incurred, as provided for in Section 4 of this Agreement;

11 5.2.7 A certification by ATTORNEY that each such invoice is true and accurate
12 as to the information and specification contained therein;

13 5.3 In addition to the requirements of Section 5.2, each invoice shall set forth
14 a summary of hours worked by each ATTORNEY and staff member for the applicable
15 billing period. Each invoice shall set forth the product of such summary of hours worked
16 by each person multiplied by each such person's billing rate, as set forth in Attachment
17 A, Schedule of Rates.

18 5.4 In preparing invoices, if requested by COUNTY Human Resources
19 Department, Risk Management Division, ATTORNEY shall segregate each task
20 performed on a daily basis. If so requested by COUNTY, ATTORNEY shall not
21 combine unrelated tasks as a single entry in lieu of setting forth the hours of work
22 performed by an ATTORNEY or staff member on each specific task.

23 5.5 ATTORNEY shall prepare all invoices in an organized manner that
24 facilitates an efficient review of the services performed and the expenses incurred in
25 order to provide COUNTY with a clear and complete picture of how much time was
26 devoted to specific tasks and projects, and the cost associated therewith.

1 5.6 ATTORNEY shall keep complete records of the services provided, as
2 described in this Section 5, together with all related actual, reasonable and necessary,
3 out-of-pocket expenses applicable to the work provided under this Agreement. The
4 County Auditor-Controller/Treasurer-Tax Collector, or his or her duly authorized
5 representatives, shall be given reasonable access to all of these records for the
6 purposes of audit of this Agreement. In addition, ATTORNEY shall be subject to the
7 examination and audit of such records by the State Auditor for a period of three (3)
8 years after final payment under this Agreement, pursuant to Government Code section
9 8546.7, as applicable.

10 5.7 Attorney shall provide to COUNTY a W-9, 1099 and CA Form 590 as
11 appropriate upon execution of the agreement and annually thereafter.

12 SECTION 6

13 TERM OF AGREEMENT

14 6.1 This Agreement shall be effective and shall commence August 24, 2021.
15 This agreement shall continue in full force and effect until August 23, 2024. This
16 Agreement may be extended for two (2) additional consecutive twelve (12) month
17 periods upon written approval of both parties no later than thirty (30) days prior to the
18 first day of the next twelve (12) month extension period. The Director of the Human
19 Resources Department, or his designee, is authorized to execute such written approval
20 on behalf of COUNTY based on ATTORNEY's satisfactory performance. COUNTY
21 may terminate this Agreement at any time for any reason by providing written notice to
22 ATTORNEY.

23 6.2 ATTORNEY may terminate this Agreement for material breach after giving
24 COUNTY written notice and 10 days to correct the breach. However, COUNTY's rights
25 under any pending matter which may arise from ATTORNEY's service hereunder shall
26 not be prejudiced due to such termination, as required by the Rules of Professional
27 Conduct of the State Bar of California. Subject to Section 4 of this Agreement,
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1 ATTORNEY shall be paid for all services performed to the reasonable satisfaction of the
2 COUNTY, to the date of termination of this Agreement.

3 **SECTION 7**

4 **INDEPENDENT CONTRACTOR**

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

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

25 **SECTION 8**

26 **HOLD HARMLESS**

27 8.1 ATTORNEY agrees to indemnify, save, hold harmless, and at COUNTY'S
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1 request, defend the COUNTY, its officers, agents, and employees from any and all costs
2 and expenses (including attorney's fees and costs), damages, liabilities, claims, and
3 losses occurring or resulting to COUNTY in connection with the performance, or failure to
4 perform, by ATTORNEY, its officers, agents, or employees under this Agreement, and
5 from any and all costs and expenses (including attorney's fees and costs), damages,
6 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who
7 may be injured or damaged by the performance, or failure to perform, of ATTORNEY,
8 its officers, agents, or employees under this Agreement.

9 **SECTION 9**

10 **INSURANCE**

11 Without limiting the COUNTY's right to obtain indemnification from ATTORNEY
12 or any third parties, ATTORNEY, at its sole expense, shall maintain in full force and
13 effect, the following insurance policies or a program of self-insurance, including but not
14 limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA)
15 throughout the term of the Agreement:

16 9.1 **Professional Liability**

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

25 9.2 **Automobile Liability**

26 Comprehensive Automobile Liability Insurance with limits of not less than One
27 Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages.

1 Coverage should include any auto used in connection with this Agreement.

2 9.3 Commercial General Liability

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

10 9.4 Workers' Compensation

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

13 9.5 Cyber Liability

14 Cyber Liability Insurance, with limits not less than \$2,000,000 per
15 occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to
16 respond to the duties and obligations as is undertaken by CONTRACTOR in this
17 Agreement and shall include, but not be limited to, claims involving infringement of
18 intellectual property, including but not limited to infringement of copyright, trademark,
19 trade dress, invasion of privacy violations, information theft, damage to or destruction of
20 electronic information, release of private information, alteration of electronic information,
21 extortion and network security. The policy shall provide coverage for breach response
22 costs as well as regulatory fines and penalties as well as credit monitoring expenses
23 with limits sufficient to respond to these obligations.

24 **SECTION 10**

25 **ADDITIONAL INSURANCE TERMS**

26 10.1 ATTORNEY shall obtain endorsements to the Commercial General
27 Liability insurance naming the County of Fresno, its officers, agents, and employees,
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1 individually and collectively, as additional insured, but only insofar as the operations
2 under this Agreement are concerned. Such coverage for additional insured shall apply
3 as primary insurance and any other insurance, or self-insurance, maintained by County,
4 its officers, agents and employees shall be excess only and not contributing with
5 insurance provided under ATTORNEY's policies herein. This insurance shall not be
6 cancelled or changed without a minimum of thirty (30) days advance written notice
7 given to COUNTY.

8 10.2 ATTORNEY hereby waives its right to recover from COUNTY, its officers,
9 agents, and employees any amounts paid by the policy of worker's compensation
10 insurance required by this Agreement. ATTORNEY is solely responsible to obtain any
11 endorsement to such policy that may be necessary to accomplish such waiver of
12 subrogation, but ATTORNEY's waiver of subrogation under this paragraph is effective
13 whether or not ATTORNEY obtains such an endorsement.

14 10.3 Within thirty (30) days from the date ATTORNEY executes this
15 Agreement, ATTORNEY shall provide certificates of insurance and endorsement as
16 stated above for all of the foregoing policies, as required in Section 9 herein, to
17 COUNTY, Human Resources Department, Risk Management Division, stating that such
18 insurance coverage has been obtained and is in full force and effect; that the County of
19 Fresno, its officers, agents and employees will not be responsible for any premiums on
20 the policies; that for such worker's compensation insurance the ATTORNEY has waived
21 its right to recover from the COUNTY, its officers, agents, and employees any amounts
22 paid under the insurance policy and that waiver does not invalidate the insurance policy;
23 that such Commercial General Liability insurance names the COUNTY, its officers,
24 agents and employees, individually and collectively, as additional insured, but only
25 insofar as the operations under this Agreement are concerned; that such coverage for
26 additional insured shall apply as primary insurance and any other insurance, or self-
27 insurance, maintained by COUNTY, its officers, agents and employees, shall be excess
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1 only and not contributing with insurance provided under ATTORNEY's policies herein;
2 and that this insurance shall not be cancelled or changed without a minimum of thirty
3 (30) days advance, written notice given to COUNTY.

4 10.3 In the event ATTORNEY fails to keep in effect at all times insurance
5 coverage as herein provided, the COUNTY may, in addition to other remedies it may
6 have, suspend or terminate this Agreement upon the occurrence of such event.

7 10.4 All policies shall be with admitted insurers licensed to do business in the
8 State of California. Insurance purchased shall be purchased from companies
9 possessing a current A.M. Best, Inc. rating of A, FSC VII or better.

10 **SECTION 11**

11 **AGREEMENT BINDING ON SUCCESSORS**

12 11.1 This Agreement shall be binding upon COUNTY and ATTORNEY and
13 their successors, executors, administrators, legal representatives, and assigns with
14 respect to all the covenants and conditions set forth herein.

15 **SECTION 12**

16 **ASSIGNMENT AND SUBCONTRACTING**

17 12.1 Neither party hereto shall assign, transfer, or sub-contract neither this
18 Agreement nor its rights nor duties hereunder without the written consent of the other.
19 County Risk Manager, or his or her designee, may give such consent on behalf of the
20 COUNTY, provided however, the assignee, transferee or sub-contractor shall carry
21 insurance of a type and in an amount that is acceptable to COUNTY's Risk Manager, or
22 his or her designee.

23 **SECTION 13**

24 **AMENDMENTS**

25 13.1 This Agreement may be amended only in writing signed by the Parties
26 hereto.

1 **SECTION 14**

2 **CONFLICT OF INTEREST**

3 14.1 ATTORNEY promises, covenants, and warrants that the performance of
4 their services and representation of COUNTY under this Agreement do not result in a
5 "conflict of interest" as that term is used in the Rules of Professional Conduct of the
6 State Bar of California. In the event a "conflict of interest" occurs, ATTORNEY will
7 request that COUNTY waive such "conflict of interest" on a case-by-case basis. If the
8 COUNTY does not waive the conflict, ATTORNEY must resolve the conflicting issue in
9 the favor of COUNTY.

10 **SECTION 15**

11 **FURTHER ASSURANCES BY ATTORNEYS**

12 15.1 ATTORNEY represents that it has read and is familiar with Government
13 Code Section 1090 *et seq.* and Section 87100 *et seq.* ATTORNEY promises,
14 covenants, and warrants that the performance of its services under this Agreement shall
15 not result in or cause a violation of Government Code Section 1090 *et seq.* and Section
16 87100 *et seq.*

17 **SECTION 16**

18 **COMPLIANCE WITH LAWS**

19 16.1 ATTORNEY shall comply with all federal, state, and local laws and
20 regulations applicable to the performance of its obligations under this Agreement and
21 maintain all licenses as required in the performance of its duties.

22 **SECTION 17**

23 **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

24 17.1 The parties to this Agreement shall be in strict conformance with all
25 applicable Federal and State of California laws and regulations, including, but not
26 limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions
27 Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR),
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1 Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of
2 the California Code of Regulations, and the Health Insurance Portability and
3 Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title
4 42, United States Code (USC) and its implementing regulations, including, but not
5 limited to, Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information
6 Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality
7 and security of patient information, and the Genetic Information Nondiscrimination Act
8 (GINA) of 2008 regarding the confidentiality of genetic information.

9 Except as otherwise provided in this Agreement, ATTORNEY, as a Business
10 Associate of COUNTY, may use or disclose Protected Health Information (PHI) to
11 perform functions, activities or services for or on behalf of COUNTY, as specified in this
12 Agreement, provided that such use or disclosure shall not violate the Health Insurance
13 Portability and Accountability Act (HIPAA), USC 1320d *et seq.* The uses and
14 disclosures of PHI may not be more expansive than those applicable to COUNTY, as
15 the “Covered Entity” under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as
16 authorized for management, administrative or legal responsibilities of the Business
17 Associate.

18 17.2 ATTORNEY, including its subcontractors and employees, shall protect
19 from unauthorized access, use, or disclosure of names and other identifying
20 information, including genetic information, concerning persons receiving services
21 pursuant to this Agreement, except where permitted in order to carry out data
22 aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i),
23 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons
24 receiving services pursuant to a COUNTY funded program. This requirement applies to
25 electronic PHI. ATTORNEY shall not use such identifying information or genetic
26 information for any purpose other than carrying out ATTORNEY’s obligations under this
27 Agreement.

1 17.3 ATTORNEY, including its subcontractors and employees, shall not
2 disclose any such identifying information or genetic information to any person or entity,
3 except as otherwise specifically permitted by this Agreement, authorized by Subpart E
4 of 45 CFR Part 164 or other law, required by the Secretary, or authorized by the
5 client/patient in writing. In using or disclosing PHI that is permitted by this Agreement or
6 authorized by law, ATTORNEY shall make reasonable efforts to limit PHI to the
7 minimum necessary to accomplish intended purpose of use, disclosure or request.

8 17.4 For purposes of the above sections, identifying information shall include,
9 but not be limited to, name, identifying number, symbol, or other identifying particular
10 assigned to the individual, such as fingerprint or voiceprint, or photograph.

11 17.5 For purposes of the above sections, genetic information shall include
12 genetic tests of family members of an individual or individual(s), manifestation of
13 disease or disorder of family members of an individual, or any request for or receipt of
14 genetic services by individual or family members. Family member means a dependent
15 or any person who is first, second, third, or fourth degree relative.

16 17.6 ATTORNEY shall provide access, at the request of COUNTY, and in the
17 time and manner designated by COUNTY, to PHI in a designated record set (as defined
18 in 45 CFR Section 164.501), to an individual or to COUNTY in order to meet the
19 requirements of 45 CFR Section 164.524 regarding access by individuals to their PHI.
20 With respect to individual requests, access shall be provided within thirty (30) days from
21 request. Access may be extended if ATTORNEY cannot provide access and provides
22 individual with the reasons for the delay and the date when access may be granted.
23 PHI shall be provided in the form and format requested by the individual or COUNTY.

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

27 ATTORNEY shall provide to COUNTY or to an individual, in a time and manner
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1 designated by COUNTY, information collected in accordance with 45 CFR Section
2 164.528, to permit COUNTY to respond to a request by the individual for an accounting
3 of disclosures of PHI in accordance with 45 CFR Section 164.528.

4 17.7 ATTORNEY shall report to COUNTY, in writing, any knowledge or
5 reasonable belief that there has been unauthorized access, viewing, use, disclosure,
6 security incident, or breach of unsecured PHI not permitted by this Agreement of which
7 it becomes aware, immediately and without reasonable delay and in no case later than
8 two (2) business days of discovery. Immediate notification shall be made to COUNTY's
9 Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA
10 Representative, within two (2) business days of discovery. The notification shall
11 include, to the extent possible, the identification of each individual whose unsecured
12 PHI has been, or is reasonably believed to have been, accessed, acquired, used,
13 disclosed, or breached. ATTORNEY shall take prompt corrective action to cure any
14 deficiencies and any action pertaining to such unauthorized disclosure required by
15 applicable Federal and State laws and regulations. ATTORNEY shall investigate such
16 breach and is responsible for all notifications required by law and regulation or deemed
17 necessary by COUNTY and shall provide a written report of the investigation and
18 reporting required to COUNTY's Information Security Officer and Privacy Officer and
19 COUNTY's DPH HIPAA Representative.

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

23
24 County of Fresno
25 Dept. of Public Health Svcs.
26 HIPAA Representative
27 (559) 600-6439
28 P.O. Box 11867
Fresno, CA 93775

County of Fresno
Dept. of Public Health
Privacy Officer
(559) 600-6405
P.O. Box 11867
Fresno, CA 93775

County of Fresno
Information Technology
Information Security Officer
(559) 600-5800
2048 N. Fine Street
Fresno, CA 93727

1 17.8 ATTORNEY shall make its internal practices, books, and records relating
2 to the use and disclosure of PHI received from COUNTY, or created or received by the
3 ATTORNEY on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including,
4 but not limited to, the requirements set forth in Title 45, CFR, Sections 160 and 164.
5 ATTORNEY shall make its internal practices, books, and records relating to the use and
6 disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on
7 behalf of COUNTY, available to the United States Department of Health and Human
8 Services (Secretary) upon demand.

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

15 17.9 Safeguards

16 ATTORNEY shall implement administrative, physical, and technical safeguards
17 as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and
18 appropriately protect the confidentiality, integrity, and availability of PHI, including
19 electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY
20 and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other
21 than as provided for by this Agreement. ATTORNEY shall conduct an accurate and
22 thorough assessment of the potential risks and vulnerabilities to the confidentiality,
23 integrity and availability of electronic PHI. ATTORNEY shall develop and maintain a
24 written information privacy and security program that includes administrative, technical
25 and physical safeguards appropriate to the size and complexity of ATTORNEY's
26 operations and the nature and scope of its activities. Upon COUNTY's request,
27 ATTORNEY shall provide COUNTY with information concerning such safeguards.

1 ATTORNEY shall implement strong access controls and other security
2 safeguards and precautions in order to restrict logical and physical access to
3 confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said
4 safeguards and precautions shall include the following administrative and technical
5 password controls for all systems used to process or store confidential, personal, or
6 sensitive data:

7 1. Passwords must not be:

8 a. Shared or written down where they are accessible or
9 recognizable by anyone else; such as taped to computer screens, stored under
10 keyboards, or visible in a work area;

11 b. A dictionary word; or

12 c. Stored in clear text

13 2. Passwords must be:

14 a. Eight (8) characters or more in length;

15 b. Changed every ninety (90) days;

16 c. Changed immediately if revealed or compromised; and

17 d. Composed of characters from at least three (3) of the

18 following four (4) groups from the standard keyboard:

19 1) Upper case letters (A-Z);

20 2) Lowercase letters (a-z);

21 3) Arabic numerals (0 through 9); and

22 4) Non-alphanumeric characters (punctuation

23 symbols).

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

27 1. Network-based firewall and/or personal firewall;

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- 1 2. Continuously updated anti-virus software; and
- 2 3. Patch management process including installation of all operating
- 3 system/software vendor security patches.

4 ATTORNEY shall utilize a commercial encryption solution that has received FIPS
5 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable
6 electronic media (including, but not limited to, compact disks and thumb drives) and on
7 portable computing devices (including, but not limited to, laptop and notebook
8 computers).

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

16 17.10 Mitigation of Harmful Effects

17 ATTORNEY shall mitigate, to the extent practicable, any harmful effect that is
18 suspected or known to ATTORNEY of an unauthorized access, viewing, use,
19 disclosure, or breach of PHI by ATTORNEY or its subcontractors in violation of the
20 requirements of these provisions. ATTORNEY must document suspected or known
21 harmful effects and the outcome.

22 17.11 ATTORNEY's Subcontractors

23 ATTORNEY shall ensure that any of its contractors, including subcontractors, if
24 applicable, to whom ATTORNEY provides PHI received from or created or received by
25 ATTORNEY on behalf of COUNTY, agree to the same restrictions, safeguards, and
26 conditions that apply to ATTORNEY with respect to such PHI and to incorporate, when
27 applicable, the relevant provisions of these provisions into each subcontract or sub-

1 award to such agents or subcontractors.

2 17.12 Employee Training and Discipline

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

8 17.13 Termination for Cause

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

11 1. Provide an opportunity for ATTORNEY to cure the breach or end
12 the violation and terminate this Agreement if ATTORNEY does not cure the breach or
13 end the violation within the time specified by COUNTY; or

14 2. Immediately terminate this Agreement if ATTORNEY has breached
15 a material term of these provisions and cure is not possible.

16 3. If neither cure nor termination is feasible, the COUNTY's Privacy
17 Officer shall report the violation to the Secretary of the U.S. Department of Health and
18 Human Services.

19 17.14 Judicial or Administrative Proceedings

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

26 17.15 Effect of Termination

27 Upon termination or expiration of this Agreement for any reason, ATTORNEY
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1 shall return or destroy all PHI received from COUNTY (or created or received by
2 ATTORNEY on behalf of COUNTY) that ATTORNEY still maintains in any form, and
3 shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall
4 continue to extend the protections of these provisions to such information, and limit
5 further use of such PHI to those purposes that make the return or destruction of such
6 PHI infeasible. This provision shall apply to PHI that is in the possession of
7 subcontractors or agents, if applicable, of ATTORNEY. If ATTORNEY destroys the PHI
8 data, a certification of date and time of destruction shall be provided to the COUNTY by
9 ATTORNEY.

10 17.16 Disclaimer

11 COUNTY makes no warranty or representation that compliance by ATTORNEY
12 with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be
13 adequate or satisfactory for ATTORNEY's own purposes or that any information in
14 ATTORNEY's possession or control, or transmitted or received by ATTORNEY, is or will
15 be secure from unauthorized access, viewing, use, disclosure, or breach. ATTORNEY
16 is solely responsible for all decisions made by ATTORNEY regarding the safeguarding
17 of PHI.

18 17.17 Amendment

19 The parties acknowledge that Federal and State laws relating to electronic data
20 security and privacy are rapidly evolving and that amendment of these provisions may
21 be required to provide for procedures to ensure compliance with such developments.
22 The parties specifically agree to take such action as is necessary to amend this
23 agreement in order to implement the standards and requirements of HIPAA, the HIPAA
24 regulations, the HITECH Act and other applicable laws relating to the security or privacy
25 of PHI. COUNTY may terminate this Agreement upon thirty (30) days written notice in
26 the event that ATTORNEY does not enter into an amendment providing assurances
27 regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient
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1 to satisfy the standards and requirements of HIPAA, the HIPAA regulations and the
2 HITECH Act.

3 17.18 No Third-Party Beneficiaries

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

8 17.19 Interpretation

9 The terms and conditions in these provisions shall be interpreted as broadly as
10 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable
11 State laws. The parties agree that any ambiguity in the terms and conditions of these
12 provisions shall be resolved in favor of a meaning that complies and is consistent with
13 HIPAA and the HIPAA regulations.

14 17.20 Regulatory References

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

17 17.21 Survival

18 The respective rights and obligations of ATTORNEY as stated in this Section
19 shall survive the termination or expiration of this Agreement.

20 17.22 No Waiver of Obligation

21 No change, waiver or discharge of any liability or obligation hereunder on any
22 one or more occasions shall be deemed a waiver of performance of any continuing or
23 other obligation, or shall prohibit enforcement of any obligation on any other occasion.
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SECTION 18

GOVERNING LAW

18.1 The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

18.2 Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

SECTION 19

DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

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

SECTION 20

NOTICES

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

COUNTY

ATTORNEY

County of Fresno

Fergusson, Praet & Sherman

1 ATTN: Hollis Magill
 2 Director of Human Resources
 2220 Tulare Street, 16th Floor
 3 Fresno, CA 93721

 ATTN: Bruce Praet
 1631 East 18th Street
 Santa Ana, CA 92705-7101

4 20.2 All notices between the COUNTY and ATTORNEY provided for or
 5 permitted under this Agreement must be in writing and delivered either by personal
 6 service, by first-class United States mail, by an overnight commercial courier service, or
 7 by telephonic facsimile transmission. A notice delivered by personal service is effective
 8 upon service to the recipient. A notice delivered by first-class United States mail is
 9 effective three COUNTY business days after deposit in the United States mail, postage
 10 prepaid, addressed to the recipient. A notice delivered by an overnight commercial
 11 courier service is effective one COUNTY business day after deposit with the overnight
 12 commercial courier service, delivery fees prepaid, with delivery instructions given for
 13 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile
 14 is effective when transmission to the recipient is completed (but, if such transmission is
 15 completed outside of COUNTY business hours, then such delivery shall be deemed to
 16 be effective at the next beginning of a COUNTY business day), provided that the sender
 17 maintains a machine record of the completed transmission. For all claims arising out of
 18 or related to this Agreement, nothing in this section establishes, waives, or modifies
 19 any claims presentation requirements or procedures provided by law, including but not
 20 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
 21 beginning with section 810).

22 **SECTION 21**

23 **ELECTRONIC SIGNATURE**

24 21.1 The parties agree that this Agreement may be executed by electronic
 25 signature as provided in this section. An “electronic signature” means any symbol or
 26 process intended by an individual signing this Agreement to represent their signature,
 27 including but not limited to (1) a digital signature; (2) a faxed version of an original
 28 handwritten signature; or (3) an electronically scanned and transmitted (for example by

1 PDF document) of a handwritten signature. Each electronic signature affixed or
2 attached to this Agreement (1) is deemed equivalent to a valid original handwritten
3 signature of the person signing this Agreement for all purposes, including but not limited
4 to evidentiary proof in any administrative or judicial proceeding, and (2) has the same
5 force and effect as the valid original handwritten signature of that person. The
6 provisions of this section satisfy the requirements of Civil Code section 1633.5,
7 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2,
8 Title 2.5, beginning with section 1633.1). Each party using a digital signature
9 represents that it has undertaken and satisfied the requirements of Government Code
10 section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other
11 party may rely upon that representation. This Agreement is not conditioned upon the
12 parties conducting the transactions under it by electronic means and either party may
13 sign this Agreement with an original handwritten signature.

14 **SECTION 22**

15 **ENTIRE AGREEMENT**

16 22.1 This Agreement, and any and all documents referred to or otherwise
17 incorporated by reference herein, constitutes the entire Agreement between COUNTY
18 and ATTORNEY with respect to the specialized legal services to be provided herein and
19 supersedes any previous Agreement concerning the subject matter hereof,
20 negotiations, proposals, commitments, writings, or understandings of any nature
21 whatsoever unless expressly included in this Agreement.

22 22.2 If any part of this Agreement is found violative of any law or is found to be
23 otherwise legally defective, ATTORNEY and COUNTY shall use their best efforts to
24 replace that part of this Agreement with legal terms and conditions most readily
25 approximating the original intent of the parties.
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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTORNEY

(Authorized Signature)

COUNTY OF FRESNO

Steve Brandau, Chairman of the Board of Supervisors of the County of Fresno

BRUCE PAET, PARTNER

Print Name & Title

1631 E. 18TH ST.

Mailing Address

SUNNYVALE, CA. 92705

City, State, ZIP

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

By: Josie Cuyf
Deputy

FOR ACCOUNTING USE ONLY:

Fund: 1060

Subclass: 10000

ORG: 89250100

Account: 7100

ATTACHMENT B
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 that 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 a transaction; and

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 | |
| | | : | |