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**AGREEMENT FOR SPECIALIZED LEGAL SERVICES**

THIS AGREEMENT (the "Agreement") is made and entered into this 23rd 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 McCORMICK BARSTOW LLP, a limited liability partnership, hereinafter referred to as "ATTORNEY."

**WITNESSETH:**

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code, section 31000, to provide specialized legal advice and representation regarding complaints made to the California State Bar against the Fresno County District Attorney ("District Attorney") and individual employees of the District Attorney's Office; 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): Marshall C. Whitney, Mandy Jeffcoach, 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

1 prudent and necessary under the circumstances. It is understood that ATTORNEY may  
2 not replace any of the aforementioned key persons named above without the prior,  
3 express, written approval of County Counsel, or his designee. In case of death, illness  
4 or other incapacity of any of the foregoing key persons, ATTORNEY shall provide a  
5 replacement of at least equal professional ability and experience as the key person  
6 replaced.

7 ATTORNEY shall provide specialized legal advice and representation to  
8 employees of the Fresno County District Attorney's Office regarding complaints made to  
9 the California State Bar against the District Attorney and employees of the District  
10 Attorney's Office. Upon COUNTY'S written request to perform such services, and  
11 ATTORNEY's written acknowledgment that ATTORNEY will provide such services,  
12 ATTORNEY shall perform such services pursuant to the terms and conditions of this  
13 Agreement. Notwithstanding the foregoing provisions of this paragraph, in the event of  
14 exigent circumstances, COUNTY COUNSEL may make such request orally, and  
15 COUNTY and ATTORNEY shall within a reasonable time thereafter document such  
16 request for services and acknowledgment thereof.

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

22 COUNTY shall not be obligated to compensate ATTORNEY for intra-office  
23 conferences between or among ATTORNEY's partners, associate lawyers, and staff  
24 members, unless such intra-office conferences promote efficiency in the performance of  
25 ATTORNEY's work on a matter, or a reduction in the cost of compensation paid or  
26 reimbursement made for related, reasonable and necessary, out-of-pocket expenses to  
27 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 Marshall C. Whitney: \$300 per hour

17 Mandy Jeffcoach: \$250 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.

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

4 In no event shall the maximum amount paid to ATTORNEY as compensation for  
5 ATTORNEY's services performed exceed One Hundred Thousand and No/100 Dollars  
6 (\$100,000) under this Agreement. ATTORNEY shall not be paid for any services or  
7 costs above this limit without a written modification of this Agreement executed by both  
8 parties. ATTORNEY shall notify COUNTY in writing when the value of its accrued  
9 services, whether billed or not yet billed to the COUNTY, has reached the amount of  
10 Thirty-five Thousand and No/100 Dollars (\$35,000).

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

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

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

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

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

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

20 5. Term of Agreement: This Agreement shall be effective December 11,  
21 2017 and will terminate on December 31, 2019. Either party may terminate this  
22 Agreement at any time, either in whole or in part, by giving written notice to the other  
23 party. However, if ATTORNEY elects to terminate this Agreement, COUNTY's rights  
24 under any pending matter which may arise from ATTORNEY's services hereunder shall  
25 not be prejudiced due to such termination as required by the Rules of Professional  
26 Conduct of the State Bar of California. Subject to paragraph 3 of this Agreement,

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1 ATTORNEY shall be paid for all services performed to the date of termination of this  
2 Agreement, which are done to the reasonable satisfaction of COUNTY.

3 6. Independent Contractor: In performance of the work, duties and  
4 obligations assumed by ATTORNEY under this Agreement, it is mutually understood  
5 and agreed that ATTORNEY, including any and all of ATTORNEY's officers, agents,  
6 and employees will at all times be acting and performing as an independent contractor,  
7 and shall act in an independent capacity and not as an officer, agent, servant,  
8 employee, joint venture, partner, or associate of COUNTY. Furthermore, COUNTY  
9 shall have no right to control or supervise or direct the manner or method by which  
10 ATTORNEY shall perform its obligations under this Agreement. However, COUNTY  
11 shall retain the right to administer this Agreement so as to verify that ATTORNEY is  
12 performing its obligations in accordance with the terms and conditions hereof.

13 ATTORNEY and COUNTY shall comply with all applicable provisions of law and the  
14 rules and regulations, if any, of governmental authorities having jurisdiction over matters  
15 of the subject hereof.

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

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

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

10 A. A policy of professional liability insurance with limits of coverage of not  
11 less than One Million Dollars (\$1,000,000.00) per covered event, Two Million Dollars  
12 (\$2,000,000.00) in the annual aggregate;

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

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

23 All such insurance policies shall be issued by insurers who at least have an A.M.  
24 Best rating of B+ FSC VIII, and shall be acceptable to COUNTY. In addition, the  
25 comprehensive general liability insurance policy (and, the automobile liability insurance  
26 policy, if such policy is at any time maintained separately from the comprehensive  
27 general liability insurance policy) shall name the COUNTY, its officers, agents, and  
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1 employees, individually and collectively, as additional insureds, but only insofar as the  
2 operations under this Agreement are concerned. Such coverage for additional insureds  
3 shall apply as primary insurance and any other insurance, or self-insurance, maintained  
4 by the COUNTY, its officers, agents, and employees, shall be excess only and not  
5 contributing with such insurance provided under ATTORNEY's policies herein. This  
6 insurance shall not be canceled, reduced, or changed without a minimum of thirty (30)  
7 calendar days advance written notice given to County Counsel at the address specified  
8 in Section 15. Notices.

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

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

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

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

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

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

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

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

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

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

3                    COUNTY

ATTORNEY

4           Daniel C. Cederborg  
5           County Counsel  
6           2220 Tulare S., Suite 500  
              Fresno, CA 93721

              Marshall C. Whitney  
              McCormick Barstow LLP  
              7647 North Fresno Street  
              Fresno, CA 93729-8912

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

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

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

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

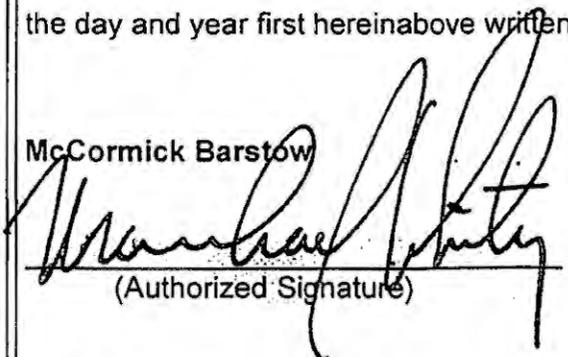
3       18. Entire Agreement: This Agreement constitutes the entire agreement  
4 between COUNTY and ATTORNEY with respect to the specialized legal services to be  
5 provided herein and supersedes any previous agreement concerning the subject matter  
6 hereof, negotiations, proposals, commitments,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

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

McCormick Barstow



(Authorized Signature)

Marshall C. Whitney, Partner  
Print Name & Title

McCormick Barstow  
Fresno, CA 937

COUNTY OF FRESNO

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

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

By: Susan Bishop  
Deputy

FOR ACCOUNTING USE ONLY:

ORG No.: XXXX 2860  
Account No.: XXXX 7295  
Requisition No.: XXXXXXXXXXXX

## SELF-DEALING TRANSACTION DISCLOSURE FORM

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

*"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing this disclosure form.

### INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	