

Professional Services Agreement
by and between the County of Fresno
and the Fresno Local Agency Formation Commission

This Professional Services Agreement ("Agreement") is made and entered into this 17th day of December, 2024 by and between the COUNTY OF FRESNO, a political subdivision of the State of California (the "COUNTY") and the FRESNO LOCAL AGENCY FORMATION COMMISSION, a state mandated independent agency (the "COMMISSION").

RECITALS

WHEREAS, Division 3 of Title 5 of the California Government Code (commencing with Government Code, section 56000), which is also commonly known as the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000 (the "Act"), gives the COMMISSION the power and duty to appoint and assign personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the COMMISSION; and

WHEREAS, the COUNTY and the COMMISSION desire to enter into an agreement whereby the COUNTY, among other things, shall provide certain services to the COMMISSION.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, the receipt and adequacy of which are hereby acknowledged by the parties, the parties agree as follows:

1.0 COMMISSION'S AUTHORITY AND OBLIGATIONS.

1.1 Control. COMMISSION, acting through its commissioners and alternate commissioners, when applicable, shall exercise control over the assets and operation of the COMMISSION, and shall exercise day-to-day oversight of COMMISSION staff. COMMISSION shall retain the authority over the powers of and the responsibility for performing the duties vested in COMMISSION by law, including the Act, provided however, nothing contained in this Section 1.1 shall relieve the COUNTY of, or alter COUNTY's responsibility to perform its professional services and to provide resources herein according to the terms and conditions hereof.

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1 1.2 Obligations relating to Personnel. COMMISSION shall compensate COUNTY, pursuant
2 to Section 3 of this Agreement, for all professional services and resources that COUNTY provides to
3 COMMISSION hereunder.

4 **2. COUNTY'S OBLIGATIONS.**

5 2.1 Provision of Services. COUNTY shall perform those professional services for the
6 COMMISSION and provide those resources to the COMMISSION that are described in this Agreement.
7 In performing such services for COMMISSION, COUNTY personnel shall exercise the same degree of
8 care that they would in performing the same or similar tasks for the COUNTY, consistent with the
9 COUNTY's general employment policies and practices.

10 2.2.1 Fiscal Services. The COUNTY's Auditor-Controller/Treasurer-Tax Collector shall
11 annually apportion the net operation expenses of the COMMISSION, seek payment thereof from the
12 appropriate agencies, and recover its administrative costs for performing such functions pursuant to
13 Government Code, section 56381, as it may be amended and supplemented from time to time, or
14 pursuant to any successor statute that covers the subject of this Section 2.21. The provisions of this
15 Section 2.21 are declaratory of the COUNTY Auditor-Controller/Treasurer-Tax Collector's authority and
16 duties under the law, as it may be amended and supplemented from time to time, with respect to such
17 functions, and neither limit nor expand such authority or duties under such laws.

18 2.2.2 COUNTY's Auditor-Controller/Treasurer-Tax Collector also may provide certain auditing
19 and financial services to the COMMISSION upon COMMISSION's request, provided, however,
20 provision of such additional services are at the discretion of the COUNTY's Auditor-
21 Controller/Treasurer-Tax Collector and will only be performed upon written request by the
22 COMMISSION. However, the provision of any additional services are at the discretion of the
23 COUNTY's Auditor-Controller/Treasurer-Tax Collector, and will only be performed upon written
24 agreement between the COUNTY's Auditor-Controller/Treasurer-Tax Collector and the COMMISSION.

25 2.3.1 Miscellaneous Professional Services. For any other professional services, functions or
26 duties that COUNTY departments normally provide to or perform for the COUNTY, COUNTY, through
27 the relevant COUNTY department, shall provide the same to COMMISSION in the same fashion and at
28 the same level as for COUNTY departments, upon COMMISSION's written request and with the

1 COUNTY'S written consent to provide such services. Without limiting the generality of the foregoing,
2 the following services are examples:

3 2.3.1.1 Assessor-Recorder services (e.g., to review maps and legal descriptions for
4 maps and to record documents with the Office of the County Recorder);

5 2.3.1.2 Computer and Information Technology services (e.g., provision and maintenance
6 of computer hardware, software, and related services, including e-mail, internet, and telephone
7 services);

8 2.3.1.3 Election Office services (e.g., determining whether individuals are registered
9 voters);

10 2.3.1.4 Planning services (e.g., electronic land information mapping, preparing mailing
11 lists of property owners and registered voters);

12 2.3.1.5 Human Resource services related to the participation in health insurance benefits
13 plans by COMMISSION employees and as stipulated in Agreement No. 13-764 (MOU between
14 COUNTY and COMMISSION regarding health benefits).

15 2.3.1.6 Clerk of the Board of Supervisors services relating to the provision of audio/visual
16 support and the provision of an electronic recording of COMMISSION meetings held within the Board of
17 Supervisors chambers.

18 2.3.1.7 Parking passes to be provided to COMMISSION members and staff allowing for
19 parking during COMMISSION meetings in the COUNTY's designated location for Boards and
20 Commissions parking.

21 2.3.1.8 COUNTY security identification to be provided to COMMISSION staff to permit
22 access to Hall of Records basement garage and entrance to basement floors.

23 **3. COMPENSATION.**

24 COMMISSION shall compensate COUNTY for services performed under this Agreement and
25 shall reimburse COUNTY for any out-of-pocket expenses or other expenses directly attributable to
26 providing such services, except for non-chargeable expenses and taxes specifically noted herein.

27 COUNTY's charges for services to be performed shall be deemed to include the cost of any and
28 all expenses incidental to the performance of services herein, including, but not limited to, office

1 overhead, equipment, supplies and any other indirect costs and expenses. Compensation for any
2 services or reimbursement for expenses shall include any applicable taxes that would otherwise be
3 payable by COMMISSION.

4 Nothing herein shall be interpreted to mean that COMMISSION shall pay COUNTY for any
5 charge, cost, fee, tax, payment or expense from which COMMISSION would be exempt under the law.

6 For services performed, COUNTY shall charge COMMISSION at COUNTY's then-current rates
7 for providing the same services to non-COUNTY local governmental entities, provided that the costs of
8 such services charged to COMMISSION shall not exceed the COUNTY's costs of performing such
9 services. Such rates will vary depending on the COUNTY department and staff member(s) providing
10 the services. Such rates and charges will be in accordance with the Master Schedule of Fees as
11 adopted by the COUNTY Board of Supervisors from time to time. In addition, the parties acknowledge
12 that the COUNTY may change any of its rates from time to time without being required to give
13 COMMISSION prior notice of such changes. In that event, the rates in this Agreement shall be
14 immediately deemed to be updated to the current rates duly adopted by the Board of Supervisors and
15 the COUNTY shall provide written notice of the rate change within thirty (30) days following the rate
16 change.

17 **4. INVOICING**

18 COUNTY, through each relevant COUNTY department, shall invoice COMMISSION, to the
19 attention of COMMISSION's Executive Officer, for services performed and expenses incurred on a
20 monthly basis at the address provided in Section 16 herein.

21 Payment shall be made by COMMISSION to the relevant COUNTY department, at the address
22 specified in the invoice within forty-five (45) days of receipt of a properly completed invoice. Invoices
23 shall be itemized to include the name or initials of the key COUNTY personnel performing the service (if
24 applicable), work performed, date the work was performed, and the rate of payment.

25 **5. TERM.**

26 The term of this Agreement shall be for a period of three (3) years, commencing on January 1,
27 2025 ("Effective Date") through and including December 31, 2027 ("Initial Term"). After the Initial Term,
28 this Agreement shall automatically renew for consecutive twelve (12)-month periods (each, a "Renewal

1 Term”), unless and until either party exercises its right to terminate this Agreement by the terminating
2 party giving six (6)-month advance written notice to the other party, as described in Section 6.3 herein,
3 or the Agreement is otherwise earlier terminated pursuant to Section 6 herein. The Initial Term,
4 together with all Renewal Terms, are collectively referred to herein as the “Term”.

5 **6. TERMINATION.**

6 6.1 Non-Allocation of Funds. The terms and conditions of this Agreement, and the services
7 to be provided hereunder, are contingent upon the approval of funds by the appropriating government
8 agencies. Should sufficient funds not be allocated, the services provided may be modified, or this
9 Agreement terminated at any time by either party giving the other party sixty (60) days' advance written
10 notice of such non-allocation of funds.

11 6.2 Material Breach. If either party materially breaches any covenants, terms or conditions of
12 this Agreement in any manner, the breaching party shall have a period of thirty (30) days in which to
13 cure the breach after written notice thereof is given to the breaching party specifying the nature of the
14 breach and requesting that it be cured. In the event the breach remains uncured at the end of the thirty
15 (30) day period after written notice is given, this Agreement may be terminated by the non-breaching
16 party by giving an additional thirty (30) days written notice of termination to the breaching party.

17 6.3 Without Cause. Either party may terminate this Agreement without cause by giving a
18 minimum of six (6) months' written notice of termination to the other.

19 6.4 Mutual Agreement. This Agreement may be terminated at any time by the mutual written
20 agreement of the parties hereto.

21 6.5 Reimbursement Upon Termination. Notwithstanding the above, COUNTY shall be
22 compensated by COMMISSION for services provided by COUNTY to COMMISSION, and shall be
23 reimbursed for allowable expenses incurred up to the termination date of this Agreement.

24 **7. INDEPENDENT CONTRACTOR.**

25 In performance of the work, duties, and obligations assumed by COUNTY under this
26 Agreement, it is mutually understood and agreed that COUNTY, including any and all of COUNTY's
27 officers, agents, and employees will at all times be acting and performing as an independent contractor,
28 and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture,

1 partner, or associate of the COMMISSION. COUNTY and COMMISSION shall comply with all
2 applicable provisions of law and the rules and regulations, if any, of governmental authorities having
3 jurisdiction over matters of the subject thereof. Because of its status as an independent contractor,
4 COUNTY shall have absolutely no right to employment rights and benefits available to COMMISSION
5 employees. COUNTY shall be solely liable and responsible for providing to, or on behalf of, its
6 employees all legally-required employee benefits. In addition, COUNTY shall be solely responsible and
7 save COMMISSION harmless from all matters related to payment of COUNTY's employees, including
8 compliance with social security, withholding, and all other regulations governing such matters. It is
9 acknowledged that during the term of this Agreement, COUNTY may be providing services to others
10 unrelated to the COMMISSION or to this Agreement.

11 **8. ASSIGNMENT AND DELEGATION.**

12 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their
13 respective permitted successors and assigns. Neither party shall in any manner assign, transfer, or
14 subcontract or otherwise delegate its obligations under this Agreement without the prior written consent
15 of the other party.

16 **9. SATISFACTORY REPORTS**

17 All reports and documents produced and submitted by COUNTY pursuant to this Agreement
18 shall be made to the COMMISSION's reasonable satisfaction.

19 **10. INDEMNIFICATION.**

20 Each party to this Agreement agrees to hold harmless, indemnify, and defend (at the request of
21 the other party) the other party, its board, board members, commission, commissioners, alternate
22 commissioners, officers, agents, and employees from any and all losses, costs (including attorney's
23 fees and costs), expenses, claims, damages, suits, and any other liability for bodily or personal injury to
24 or death of any person or loss of any property resulting from or arising out of or in any way connected
25 with any negligent or wrongful acts or omissions of the respective party, its board, board members,
26 commission, commissioners, alternate commissioners, officers, agents, or employees in performing or
27 failing to perform any work services, or function provided for or referred to or in any way connected with
28 any work, services, or functions under this Agreement.

1 The provisions of this Section 10 shall survive termination or expiration of this Agreement.

2 **11. MODIFICATION.**

3 Any matters of this Agreement may be modified from time to time without in any way affecting
4 the remainder, but only by the written consent of the parties.

5 **12. PARTIAL INVALIDITY.**

6 Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict
7 with any law of the United States or the State of California, or otherwise be unenforceable or
8 ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable
9 and shall not be affected thereby, provided such remaining portions or provisions can be construed in
10 substance to constitute the agreement which the parties intended to enter into in the first place.

11 **13. NO WAIVER.**

12 No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other
13 breach, or such provision. Failure of COUNTY or COMMISSION to enforce, at any time, or from time to
14 time, any provision of this Agreement, shall not be construed as a waiver thereof. The remedies herein
15 reserved shall be cumulative and additional to any other remedies in law or equity.

16 **14. SIGNATURE AUTHORITY.**

17 Each individual executing this Agreement on behalf of COMMISSION and COUNTY warrants
18 that he or she is duly authorized to execute the Agreement on behalf of COMMISSION or COUNTY, as
19 applicable, and will be bound by the terms and conditions contained herein.

20 **15. AUDITS AND INSPECTIONS.**

21 15.1 At any time during normal business hours, upon reasonable notice, and as often as either
22 party or any appropriate state agency, or duly authorized representative thereof may deem necessary,
23 either party shall make available to the other party for examination all of its records and data with
24 respect to all matters covered by this Agreement. Either party shall, upon request by the other party,
25 permit the other party to audit and inspect all such records and data necessary to ensure the other
26 party's compliance with the terms and conditions of this Agreement.

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1 15.2 If this Agreement exceeds Ten Thousand dollars (\$10,000), both parties shall be subject
2 to the examination and audit of the State Auditor General for a period of three (3) years after final
3 payment under contract. (Government Code, section 8546.7)

4 15.3 Such records shall be retained and access to the facilities and premises of either party
5 shall be made available during the period of performance of this Agreement, and for three (3) years
6 after the COMMISSION makes final payment under this Agreement.

7 15.4 **Public Records.** The COUNTY is not limited in any manner with respect to its public
8 disclosure of this Agreement or any record or data that COMMISSION may provide to the COUNTY.
9 The COUNTY's public disclosure of this Agreement or any record or data that COMMISSION may
10 provide to the COUNTY may include but is not limited to the following:

11 (A) The COUNTY may voluntarily, or upon request by any member of the public or
12 governmental agency, disclose this Agreement to the public or such governmental agency.

13 (B) The COUNTY may voluntarily, or upon request by any member of the public or
14 governmental agency, disclose to the public or such governmental agency any record or data
15 that COMMISSION may provide to the COUNTY, unless such disclosure is prohibited by court
16 order.

17 (C) This Agreement, and any record or data that COMMISSION may provide to the
18 COUNTY, is subject to public disclosure under the Ralph M. Brown Act (California Government
19 Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

20 (D) This Agreement, and any record or data that COMMISSION may provide to the
21 COUNTY, is subject to public disclosure as a public record under the California Public Records
22 Act (California Government Code, Title 1, Division 10, beginning with section 7920.000)
23 ("CPRA").

24 (E) This Agreement, and any record or data that COMMISSION may provide to the
25 COUNTY, is subject to public disclosure as information concerning the conduct of the people's
26 business of the State of California under California Constitution, Article 1, section 3, subdivision
27 (b).

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1 (F) Any marking of confidentiality or restricted access upon or otherwise made with respect
2 to any record or data that COMMISSION may provide to the COUNTY shall be disregarded and
3 have no effect on the COUNTY's right or duty to disclose to the public or governmental agency
4 any such record or data.

5 **15.5 Public Records Act Requests.** If the COUNTY receives a written or oral request under
6 the CPRA to publicly disclose any record that is in COMMISSION's possession or control, and which
7 the COUNTY has a right, under any provision of this Agreement or applicable law, to possess or
8 control, then the COUNTY may demand, in writing, that COMMISSION deliver to the COUNTY, for
9 purposes of public disclosure, the requested records that may be in the possession or control of
10 COMMISSION. Within five (5) business days after the COUNTY's demand, COMMISSION shall (a)
11 deliver to the COUNTY all of the requested records that are in COMMISSION's possession or control,
12 together with a written statement that COMMISSION, after conducting a diligent search, has produced
13 all requested records that are in COMMISSION's possession or control, or (b) provide to the COUNTY
14 a written statement that COMMISSION, after conducting a diligent search, does not possess or control
15 any of the requested records. COMMISSION shall cooperate with the COUNTY with respect to any
16 COUNTY demand for such records. If COMMISSION wishes to assert that any specific record or data
17 is exempt from disclosure under the CPRA or other applicable law, it must deliver the record or data to
18 the COUNTY and assert the exemption by citation to specific legal authority within the written statement
19 that it provides to the COUNTY under this section. COMMISSION's assertion of any exemption from
20 disclosure is not binding on the COUNTY, but the COUNTY will give at least ten (10) days' advance
21 written notice to COMMISSION before disclosing any record subject to COMMISSION's assertion of
22 exemption from disclosure. COMMISSION shall indemnify the COUNTY for any court-ordered award of
23 costs or attorney's fees under the CPRA that results from COMMISSION's delay, claim of exemption,
24 failure to produce any such records, or failure to cooperate with the COUNTY with respect to any
25 COUNTY demand for any such records.

26 **16. NOTICES.**

27 The persons having authority to give and receive notices under this Agreement include the
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COUNTY:
County Administrative Officer
Hall of Records, Room 304
2281 Tulare Street
Fresno, CA 93721

COMMISSION:
LAFCo Executive Officer
1401 Fulton Street, Suite 800
Fresno, CA 93721

All notices between the COUNTY and the COMMISSION provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, by telephonic facsimile transmission, or by e-mail. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three (3) COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one (1) COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for the next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. A notice delivered by e-mail is effective on the date the notice is e-mailed to the other party; provided, however, that notices given by e-mail shall not be effective unless a duplicate copy of such e-mailed notice is promptly given by first-class mail, postage prepaid, and addressed as provided above; provided further, however, any notice given by e-mail shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a non-COUNTY business day. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modified any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

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1 **17. VENUE/GOVERNING LAW.**

2 This Agreement is signed and performed in Fresno County, California. COMMISSION consents
3 to California jurisdiction for actions arising from or related to this Agreement, and, subject to the
4 Government Claims Act, all such actions must be brought and maintained in Fresno County.

5 The laws of the State of California govern all matters arising from or related to this Agreement.

6 **18. NO THIRD-PARTY BENEFICIARIES.**

7 Notwithstanding anything to the contrary in this Agreement, it is understood between the parties
8 that the COUNTY is providing services herein only to and for the benefit of the COMMISSION and that
9 there shall not be any included third-party beneficiaries of this Agreement.

10 **19. NO PERSONAL LIABILITY OF COUNTY PERSONNEL.**

11 COUNTY personnel performing services under this Agreement shall not be personally liable to
12 the COMMISSION for performing or failing to perform his or her services under this Agreement.

13 **20. 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 effect,
15 and the parties shall make best efforts to replace the unlawful or unenforceable part of this Agreement
16 with lawful and enforceable terms intended to accomplish the parties' original intent.

17 **21. NONDISCRIMINATION.** During the performance of this Agreement, COMMISSION shall
18 not unlawfully discriminate against any employee or applicant for employment, or recipient of services,
19 because of race, religious creed, color, national origin, ancestry, physical disability, mental disability,
20 medical condition, genetic information, marital status, sex, gender, gender identity, gender expression,
21 age, sexual orientation, military status or veteran status pursuant to all applicable State of California
22 and federal statutes and regulation.

23 **22. ENTIRE AGREEMENT.**

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

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1 **23. ELECTRONIC SIGNATURES.** The parties agree that this Agreement may be executed
2 by electronic signature as provided in this section.

3 (A) An “electronic signature” means any symbol or process intended by an individual signing
4 this Agreement to represent their signature, including but not limited to (1) a digital signature; (2)
5 a faxed version of an original handwritten signature; or (3) an electronically scanned and
6 transmitted (for example by PDF document) version of an original handwritten signature.

7 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent
8 to a valid original handwritten signature of the person signing this Agreement for all purposes,
9 including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2)
10 has the same force and effect as the valid original handwritten signature of that person.

11 (C) The provisions of this section satisfy the requirements of Civil Code section 1633.5,
12 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title
13 2.5, beginning with section 1633.1).

14 (D) Each party using a digital signature represents that it has undertaken and satisfied the
15 requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5),
16 and agrees that each other party may rely upon that representation.

17 (E) This Agreement is not conditioned upon the parties conducting the transactions under it
18 by electronic means and either party may sign this Agreement with an original handwritten
19 signature.

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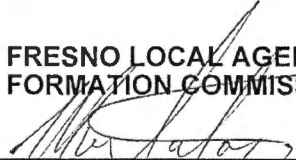
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24. COUNTERPARTS.

This Agreement may be executed by the parties hereto in one or more original counterparts, all of which together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the date stated under that party's name, with this Agreement being effective on the Effective Date.

**FRESNO LOCAL AGENCY
FORMATION COMMISSION**



Buddy Mendes, Chair

Date: _____

COUNTY OF FRESNO




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

Date: 12-17-2024

REVIEWED AND RECOMMENDED
FOR APPROVAL

By: 

Brian Spaunhurst
Executive Officer
REVIEWED AS TO LEGAL FORM

By: 

Jessica S. Johnson
LAFCo Counsel

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

By: 

Deputy