

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 8th day of October, 2019 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 this 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 hereto 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 shall relieve the COUNTY of, or alter

COUNTY's responsibility to perform its professional services and to provide resources according to the terms and conditions herein.

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

2. COUNTY'S OBLIGATIONS.

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

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

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

1 2.3.1 Miscellaneous Professional Services. For any other professional services, functions or
2 duties that COUNTY departments normally provide to or perform for the COUNTY, COUNTY, through
3 the relevant COUNTY department, shall provide the same to COMMISSION in the same fashion and at
4 the same level as for COUNTY departments, upon COMMISSION's request, and with the COUNTY'S
5 consent to provide such services. Without limiting the generality of the foregoing, the following services
6 are examples:

7 2.3.1.1 Assessor-Recorder services (e.g., to review maps and legal descriptions for
8 maps and to record documents with the Office of the County Recorder);

9 2.3.1.2 Computer and Information Technology services (e.g., provision and maintenance
10 of computer hardware, software, and related services, including e-mail, internet, and telephone
11 services);

12 2.3.1.3 Election Office services (e.g., determining whether individuals are registered
13 voters);

14 2.3.1.4 Planning services (e.g., electronic land information mapping, preparing mailing
15 lists of property owners and registered voters);

16 2.3.1.5 Human Resource services related to the participation in health insurance benefits
17 plans by COMMISSION employees, and as stipulated in Agreement No. 13-764 (MOU between
18 COUNTY and COMMISSION regarding health benefits).

19 2.3.1.6 Clerk of the Board of Supervisors services relating to the provision of audio/visual
20 support and the provision of electronic recording of COMMISSION meetings held within the Board of
21 Supervisors chambers.

22 2.3.1.7 Parking passes shall be provided to COMMISSION members and staff allowing
23 for parking during COMMISSION meetings in the COUNTY's designated location for Boards and
24 Commissions parking.

25 2.3.1.8 COUNTY security identification shall be provided to COMMISSION staff to permit
26 access to Hall of Records basement garage and entrance to basement floors.

27 **3. COMPENSATION.**

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

4 COUNTY's charges for services to be performed shall be deemed to include the cost of any and
5 all expenses incidental to the performance of services herein, including, but not limited to, office
6 overhead, equipment, supplies, and any other indirect costs and expenses. Compensation for any
7 services or reimbursement for expenses shall include any applicable taxes that would otherwise be
8 payable by COMMISSION.

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

11 For services performed, COUNTY shall charge COMMISSION at COUNTY's then-current rates
12 for providing the same services to non-COUNTY local governmental entities, which include all of
13 COUNTY's costs for salaries paid and COUNTY benefits provided to COUNTY employees performing
14 such services, provided that the costs of such services charged to COMMISSION shall not exceed the
15 COUNTY's costs of performing such services. Such rates will vary depending on the COUNTY
16 department and staff member(s) providing the services. Such rates and charges will be in accordance
17 with the Master Schedule of Fees as adopted by the COUNTY Board of Supervisors from time to time.
18 In addition, the parties acknowledge that the COUNTY may change any of its rates from time to time
19 without being required to give COMMISSION prior notice of such changes.

20 **4. INVOICING**

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

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

1 **5. TERM.**

2 The term of this Agreement shall be for a period of three (3) years, commencing on January 1,
3 2020, through and including December 31, 2023. This Agreement shall automatically renew for two (2)
4 additional consecutive twelve (12) month periods.

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, the non-breaching party may terminate this Agreement by
16 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 ninety (90) days' written notice of termination to the other party.

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

21 6.5 Reimbursement Upon Termination. Notwithstanding the above, COUNTY shall be
22 compensated by COMMISSION for services actually provided by COUNTY to COMMISSION, and shall
23 be 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,
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1 and shall act in an independent capacity, and not as an officer, agent, servant, employee, joint venture,
2 partner, or associate of the COMMISSION. COUNTY and COMMISSION shall comply with all
3 applicable provisions of law and the rules and regulations, if any, of governmental authorities having
4 jurisdiction over matters of the subject thereof. Because of its status as an independent contractor,
5 COUNTY shall have absolutely no right to employment rights and benefits available to COMMISSION
6 employees. COUNTY shall be solely liable and responsible for providing to, or on behalf of, its
7 employees all legally-required employee benefits. In addition, COUNTY shall be solely responsible and
8 save COMMISSION harmless from all matters related to payment of COUNTY's employees, including
9 compliance with social security, withholding, and all other regulations governing such matters. It is
10 acknowledged that during the term of this Agreement, COUNTY may be providing services to others
11 unrelated to the COMMISSION or to this Agreement.

12 **8. ASSIGNMENT AND DELEGATION.**

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

17 **9. SATISFACTORY REPORTS**

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

20 **10. INDEMNIFICATION.**

21 10.1 Each party to this Agreement shall be solely liable for negligent or wrongful acts or
22 omissions of its board, board members, commission, commissioners, alternate commissioners, officers,
23 agents, and employees occurring in the performance hereof, and if either party becomes liable for any
24 loss, cost, expense, claim or damage as a result of the acts or omissions of its board, board members,
25 commission, commissioners, alternate commissioners, officers, agents, or employees, it shall pay such
26 loss, cost, expense, claim, or damage without contribution from the other party.

1 10.2 Each party to this Agreement agrees to hold harmless, indemnify, and defend (at the
2 request of the other party) the other party, its board, board members, commission, commissioners,
3 alternate commissioners, officers, agents, and employees from any and all losses, costs, expenses,
4 claims, damages, suits, and any other liability for bodily or personal injury to or death of any person or
5 loss of any property resulting from or arising out of or in any way connected with any negligent or
6 wrongful acts or omissions of the respective party, its board, board members, commission,
7 commissioners, alternate commissioners, officers, agents, or employees in performing or failing to
8 perform any work services, or function provided for or referred to or in any way connected with any
9 work, services, or functions under this Agreement.

10 The provisions of this Section 10 shall survive termination of the Agreement.

11 **11. MODIFICATION.**

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

14 **12. PARTIAL INVALIDITY.**

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

20 **13. NO WAIVER.**

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

1 **14. SIGNATURE AUTHORITY.**

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

5 **15. AUDITS AND INSPECTIONS.**

6 15.1 At any time during normal business hours, upon reasonable notice, and as often as either
7 party or any appropriate state agency, or duly authorized representative thereof may deem necessary,
8 either party shall make available to the other party for examination all of its records and data with
9 respect to all matters covered by this Agreement. Either party shall, upon request by the other party,
10 permit the other party to audit and inspect all such records and data necessary to ensure the other
11 party's compliance with the terms and conditions of this Agreement.

12 15.2 If this Agreement exceeds Ten Thousand dollars (\$10,000), both parties shall be subject
13 to the examination and audit of the California State Auditor for a period of three (3) years after final
14 payment under contract. (Government Code, section 8546.7)

15 15.3 Such records shall be retained and access to the facilities and premises of either party
16 shall be made available during the period of performance of this Agreement, and for three (3) years
17 after the COMMISSION makes final payment under this Agreement.

18 **16. NOTICES.**

19 The persons having authority to give and receive notices under this Agreement include the
20 following:

21
22 COUNTY:

23 County Administrative Officer
24 Hall of Records, Room 304
25 2281 Tulare Street
26 Fresno, CA 93721

COMMISSION:

LAFCo Executive Officer
2607 Fresno Street, Suite B
Fresno, CA 93721

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

16 **17. VENUE/GOVERNING LAW.**

17 Venue for any action arising out of or relating to this Agreement shall only be in Fresno County,
18 California. The rights and obligations of the parties and all interpretation and performance of this
19 Agreement shall be governed in all respects by the laws of the State of California. Any references in
20 this Agreement to such laws shall mean the laws of the State of California, which are in effect on the
21 Effective Date, and thereafter amended and supplemented from time to time.

22 **18. NO THIRD PARTY BENEFICIARIES.**

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

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

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

20. ENTIRE AGREEMENT.

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

21. 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.

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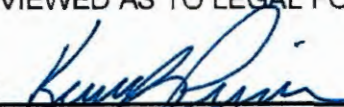
1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
2 and year first hereinabove written.

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4 **FRESNO LOCAL AGENCY
FORMATION COMMISSION**

5 
6 Mario Santoyo, Chair

7 REVIEWED AND RECOMMENDED
8 FOR APPROVAL

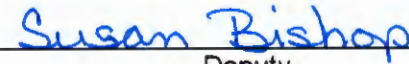
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10 By: 
11 David Fey
Executive Officer
12 REVIEWED AS TO LEGAL FORM

13 By: 
14 Kenneth J. Price
LAFCo Counsel

COUNTY OF FRESNO


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

15 **ATTEST:**
16 Bernice E. Seidel
17 Clerk of the Board of Supervisors
18 County of Fresno, State of California

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20 By: 
21 Deputy
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