

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT is made and entered into this 21st day of February 2017 by and between the **COUNTY OF FRESNO**, a political subdivision of the State of California, hereinafter referred to as "**COUNTY**," and McCormick, Barstow, LLP hereinafter referred to as "**ATTORNEY**."

WITNESSETH:

WHEREAS, COUNTY is in the process of the administration and defense of General Liability, Auto Liability and Medical Malpractice claims against the COUNTY.

WHEREAS, COUNTY needs and wishes to engage appropriate legal counsel, who is skilled and knowledgeable in defense of General Liability Employment Law claims or other claims that are covered under the County's General Liability and Medical Malpractice Programs, and to advise and represent COUNTY in connection with the matters, as provided herein; and

WHEREAS, COUNTY issued Request for Proposal No. 17-007 on August 25, 2016, for the purpose of securing said services; and

WHEREAS, ATTORNEY agrees to the requirements in the RFP; and

WHEREAS, ATTORNEY responded to the Request for Proposal stating 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 ATTORNEYS and paralegals or other legal support staff as

1 ATTORNEY deems necessary, and whom COUNTY Human Resources Department,
2 Risk Management Division approves pursuant to Section 5 of this Agreement.

3 1.2 Each claim will be handled by the ATTORNEY to which the assignment is
4 made unless COUNTY approves the handling by another ATTORNEY in the firm.
5 Associated staff may assist the ATTORNEY as deemed necessary.

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

11 **SECTION 2**

12 **SCOPE OF SERVICES**

13 2.1 ATTORNEY shall assist, advise, and represent COUNTY in connection
14 with all matters relative to the administration and defense of the claims assigned by
15 Human Resources Department, Risk Management Division staff as specified by
16 COUNTY under Request for Proposal No. 17-007, incorporated herein by reference,
17 ATTORNEY's response thereto, also incorporated herein by reference, and per the
18 terms set forth in this Agreement.

19 2.2 ATTORNEY shall perform such other similar legal services as requested
20 by COUNTY Risk Management in connection with the matters related to the
21 administration and defense of the assigned claims.

22 **SECTION 3**

23 **PERFORMANCE BY ATTORNEY**

24 3.1 ATTORNEY agrees to avoid unnecessary duplicative efforts by
25 ATTORNEY and any associated counsel and/or staff members of ATTORNEY in the
26 performance of services for COUNTY hereunder.
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3.2 COUNTY shall not be obligated to compensate ATTORNEY for intra-office conferences between or among ATTORNEY, associate ATTORNEYS, and/or other staff members, unless such intra-office conferences promote efficiency in the performance of ATTORNEY'S work on a matter, or a reduction in the cost of compensation paid or reimbursement made for related, actual, reasonable and necessary, out-of-pocket expenses to ATTORNEY, or both.

3.3 In the performance of the tasks identified in Section 2 of this Agreement, ATTORNEY shall provide only those services which are necessary to carry out such tasks in an efficient and effective manner.

3.4 COUNTY must approve the retention of all experts, consultants, investigators, and any other unusual expenditures.

3.5 ATTORNEY agrees that they will not handle any cases against COUNTY, its officers, agents, or employees unless specifically given permission in writing to do so by Human Resources Department, Risk Management Division staff.

SECTION 4

COMPENSATION OF ATTORNEY

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

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

(b) providing COUNTY with documentation, explanations, or justifications concerning the adequacy or accuracy of ATTORNEY's invoices for the performance of

1 services under this Agreement, and resolving same to the reasonable satisfaction of
2 COUNTY.

3 4.2 COUNTY agrees to pay and ATTORNEY agrees to accept as full
4 compensation for performance of tasks under this Agreement ATTORNEY's reasonable
5 fees as described in Attachment A, Schedule of Rates.

6 4.3 ATTORNEY shall be reimbursed for actual, reasonable, and necessary
7 out-of-pocket expenses, as follows: telephone charges, facsimile charges, computer
8 research charges, filing fees, postage charges, printing and photographic reproduction
9 expenses, and all other directly-related expenses. It is understood that ATTORNEY
10 shall not be reimbursed for his secretarial, clerical, word processing or typist services
11 (including overtime hours worked), that is "normal office operating expenses," with the
12 exception of those charges and expenses stated above. In addition, ATTORNEY shall
13 not be reimbursed for such normal office operating expenses incurred, regardless of
14 who performs such services or incurs such expenses.

15 4.4 COUNTY will not reimburse ATTORNEY for any travel within the cities of
16 Fresno and Clovis.

17 4.5 Notwithstanding anything else stated to the contrary in this Agreement, in
18 no event shall the maximum amount paid by COUNTY to ATTORNEY as
19 compensation, and as reimbursement of related, actual, reasonable and necessary, out-
20 of-pocket expenses, exceed one million five hundred thousand dollars (\$1,500,000.00)
21 annually.

22 SECTION 5

23 PAYMENT AND RECORD-KEEPING

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

8 5.2 All such invoices shall have sufficient detail as may be required by the
9 COUNTY Auditor-Controller/Treasurer-Tax Collector, including, but not limited to:

10 5.2.1 The plaintiff's name, the date of loss, the COUNTY's claim number and
11 any other identifying information that will indicate the file to which billing is to be
12 assigned.

13 5.2.2 The specific nature of each task performed as services under this
14 Agreement;

15 5.2.3 The name of the ATTORNEY or staff member performing each task;

16 5.2.4 The number of hours worked by each such person for each such task;

17 5.2.5 The hourly rate per each such person performing each such task;

18 5.2.6 The related, actual, reasonable and necessary, out-of-pocket expenses
19 incurred, as provided for in Section 4 of this Agreement;

20 5.2.7 A certification by ATTORNEY that each such invoice is true and accurate
21 as to the information and specification contained therein;

22 5.3 In addition to the requirements of Section 5.2, each invoice shall set forth
23 a summary of hours worked by each ATTORNEY and staff member for the applicable
24 billing period. Each invoice shall set forth the product of such summary of hours worked
25 by each person multiplied by each such person's billing rate, as set forth in Attachment
26 A, Schedule of Rates.

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

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

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

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

SECTION 6

TERM OF AGREEMENT

6.1 The Agreement shall be effective and shall commence upon the 21st day of February 2017. This Agreement shall continue in full force and effect until January 12, 2020 unless earlier terminated hereunder by either or both parties. COUNTY may terminate this Agreement at any time for any reason by providing written notice to ATTORNEY. ATTORNEY may terminate this Agreement for material breach after

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

7 **SECTION 7**

8 **INDEPENDENT CONTRACTOR**

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

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

3 SECTION 8

4 HOLD HARMLESS

5 8.1 ATTORNEY shall hold COUNTY, its officers, agents, and employees
6 harmless and indemnify and defend COUNTY, its officers, agents, and employees
7 against payment of any and all costs and expenses (to include legal fees and court
8 costs), claims, suits, losses, damages, and liability arising from or arising out of any
9 wrongful acts or omissions of ATTORNEY, including its officers, agents, and
10 employees, in performing or failing to perform the services provided herein. COUNTY's
11 receipt of any insurance certificates required herein does not in any way relieve
12 ATTORNEY from the obligations under this Section 8 of the Agreement.

13 SECTION 9

14 INSURANCE

15 9.1 Professional Liability

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

24 9.2 Automobile Liability

25 ATTORNEY shall maintain Comprehensive Automobile Liability Insurance
26 with limits for bodily injury of not less than two hundred fifty thousand dollars
27 (\$250,000.00) per person, five hundred thousand dollars (\$500,000.00) per accident,
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1 and for property damages of not less than fifty thousand dollars (\$50,000.00), or such
2 coverage with a combined single limit of five hundred thousand dollars (\$500,000.00).
3 Coverage shall include owned and non-owned vehicles used in connection with this
4 Agreement.

5 9.3 Commercial General Liability

6 ATTORNEY shall maintain Commercial General Liability Insurance with
7 limits of not less than one million dollars (\$1,000,000.00) per occurrence and an annual
8 aggregate of two million dollars (\$2,000,000.00). This policy shall be issued on a per-
9 occurrence basis. COUNTY may require specific coverage including completed
10 operations, product liability, contractual liability, explosion-collapse-underground liability,
11 fire legal liability, or any other liability insurance deemed necessary because of the
12 nature of the contract.

13 9.4 Workers' Compensation

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

16 **SECTION 10**

17 **ADDITIONAL INSURANCE TERMS**

18 10.1 ATTORNEY shall obtain endorsements to the Commercial General
19 Liability insurance naming the County of Fresno, its officers, agents, and employees,
20 individually and collectively, as additional insured, but only insofar as the operations
21 under this Agreement are concerned. Such coverage for additional insured shall apply
22 as primary insurance and any other insurance, or self-insurance, maintained by County,
23 its officers, agents and employees shall be excess only and not contributing with
24 insurance provided under ATTORNEY's policies herein. This insurance shall not be
25 cancelled or changed without a minimum of thirty (30) days advance written notice
26 given to COUNTY.

10.2 Within thirty (30) days from the date ATTORNEY executes this Agreement, ATTORNEY shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required in Section 9 herein, to COUNTY, Human Resources Department, Risk Management Division, stating that such insurance coverage has been obtained and is in full force and effect; that COUNTY, its officers, agents and employees, individually and collectively, have been named as additional insured, but only insofar as the operations under this Agreement are concerned.

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

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

SECTION 11

AGREEMENT BINDING ON SUCCESSORS

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

SECTION 12

ASSIGNMENT AND SUBCONTRACTING

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

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1 aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i),
2 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons
3 receiving services pursuant to a COUNTY funded program. This requirement applies to
4 electronic PHI. ATTORNEY shall not use such identifying information or genetic
5 information for any purpose other than carrying out ATTORNEY's obligations under this
6 Agreement.

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

14 17.4 For purposes of the above sections, identifying information shall include,
15 but not be limited to, name, identifying number, symbol, or other identifying particular
16 assigned to the individual, such as fingerprint or voiceprint, or photograph.

17 17.5 For purposes of the above sections, genetic information shall include
18 genetic tests of family members of an individual or individual(s), manifestation of
19 disease or disorder of family members of an individual, or any request for or receipt of
20 genetic services by individual or family members. Family member means a dependent
21 or any person who is first, second, third, or fourth degree relative.

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

2 PHI shall be provided in the form and format requested by the individual or COUNTY.

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

6 ATTORNEY shall provide to COUNTY or to an individual, in a time and manner
7 designated by COUNTY, information collected in accordance with 45 CFR Section
8 164.528, to permit COUNTY to respond to a request by the individual for an accounting
9 of disclosures of PHI in accordance with 45 CFR Section 164.528.

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

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

County of Fresno	County of Fresno	County of Fresno
Dept. of Public Health Svcs.	Dept. of Public Health	Information Technology
HIPAA Representative	Privacy Officer	Information Security Officer
(559) 600-6439	(559) 600-6405	(559) 600-5800
P.O. Box 11867	P.O. Box 11867	2048 N. Fine Street
Fresno, CA 93775	Fresno, CA 93775	Fresno, CA 93727

17.8 ATTORNEY shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to, the requirements set forth in Title 45, CFR, Sections 160 and 164.

ATTORNEY shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on behalf of COUNTY, available to the United States Department of Health and Human Services (Secretary) upon demand.

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

17.9 Safeguards

ATTORNEY shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other

1 than as provided for by this Agreement. ATTORNEY shall conduct an accurate and
2 thorough assessment of the potential risks and vulnerabilities to the confidentiality,
3 integrity and availability of electronic PHI. ATTORNEY shall develop and maintain a
4 written information privacy and security program that includes administrative, technical
5 and physical safeguards appropriate to the size and complexity of ATTORNEY's
6 operations and the nature and scope of its activities. Upon COUNTY's request,
7 ATTORNEY shall provide COUNTY with information concerning such safeguards.

8 ATTORNEY shall implement strong access controls and other security
9 safeguards and precautions in order to restrict logical and physical access to
10 confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said
11 safeguards and precautions shall include the following administrative and technical
12 password controls for all systems used to process or store confidential, personal, or
13 sensitive data:

14 1. Passwords must not be:

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

18 b. A dictionary word; or

19 c. Stored in clear text

20 2. Passwords must be:

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

22 b. Changed every ninety (90) days;

23 c. Changed immediately if revealed or compromised; and

24 d. Composed of characters from at least three (3) of the
25 following four (4) groups from the standard keyboard:

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

27 2) Lowercase letters (a-z);

- 3) Arabic numerals (0 through 9); and
- 4) Non-alphanumeric characters (punctuation symbols).

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

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

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

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

17.10 Mitigation of Harmful Effects

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

1 harmful effects and the outcome.

2 17.11 ATTORNEY's Subcontractors

3 ATTORNEY shall ensure that any of its contractors, including subcontractors, if
4 applicable, to whom ATTORNEY provides PHI received from or created or received by
5 ATTORNEY on behalf of COUNTY, agree to the same restrictions, safeguards, and
6 conditions that apply to ATTORNEY with respect to such PHI and to incorporate, when
7 applicable, the relevant provisions of these provisions into each subcontract or sub-
8 award to such agents or subcontractors.

9 17.12 Employee Training and Discipline

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

15 17.13 Termination for Cause

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

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

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

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

26 17.14 Judicial or Administrative Proceedings

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

6 17.15 Effect of Termination

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

17 17.16 Disclaimer

18 COUNTY makes no warranty or representation that compliance by ATTORNEY
19 with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be
20 adequate or satisfactory for ATTORNEY's own purposes or that any information in
21 ATTORNEY's possession or control, or transmitted or received by ATTORNEY, is or will
22 be secure from unauthorized access, viewing, use, disclosure, or breach. ATTORNEY
23 is solely responsible for all decisions made by ATTORNEY regarding the safeguarding
24 of PHI.

25 17.17 Amendment

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

10 17.18 No Third-Party Beneficiaries

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

15 17.19 Interpretation

16 The terms and conditions in these provisions shall be interpreted as broadly as
17 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable
18 State laws. The parties agree that any ambiguity in the terms and conditions of these
19 provisions shall be resolved in favor of a meaning that complies and is consistent with
20 HIPAA and the HIPAA regulations.

21 17.20 Regulatory References

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

24 17.21 Survival

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

1 17.22 No Waiver of Obligation

2 No change, waiver or discharge of any liability or obligation hereunder on any
3 one or more occasions shall be deemed a waiver of performance of any continuing or
4 other obligation, or shall prohibit enforcement of any obligation on any other occasion.

5 **SECTION 18**

6 **GOVERNING LAW**

7 18.1 The rights and obligations of the parties and all interpretations and
8 performance of this Agreement shall be governed in all respects by the laws of the State
9 of California.

10 18.2 Venue for any action arising out of or related to this Agreement shall only
11 be in Fresno County, California.

12 **SECTION 19**

13 **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

14 19.1 This provision is only applicable if the CONTRACTOR is operating as a
15 corporation (a for-profit or non-profit corporation) or if, during the term of the agreement,
16 the CONTRACTOR changes its status to operate as a corporation.

17 19.2 Members of the CONTRACTOR's Board of Directors shall disclose any
18 self-dealing transactions that they are a party to while CONTRACTOR is providing
19 goods or performing services under this agreement. A self-dealing transaction shall
20 mean a transaction to which the CONTRACTOR is a party and in which one or more of
21 its directors has a material financial interest. Members of the Board of Directors shall
22 disclose any self-dealing transactions that they are a party to by completing and signing
23 a Self-Dealing Transaction Disclosure Form, attached hereto as Attachment B and
24 incorporated herein by reference, and submitting it to the COUNTY prior to commencing
25 with the self-dealing transaction or immediately thereafter.

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ATTORNEY

McCormick, Barstow LLP
ATTN: Michael Woods
Partner
P.O. Box 28912
Fresno, CA 93729-8912

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1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be
2 executed as of the day and year first above written.

3 ATTORNEY

4 Mart B. Oller III

5 (Authorized Signature)

6 Mart B. Oller III, partner

7 Print Name & Title

8 7647 N. Fresno St.

9 Mailing Address

10 Fresno, CA 93729

11 City, State, ZIP

12 DATE: December 27, 2016

COUNTY OF FRESNO

[Signature]

Chairman, Board of Supervisors

ATTEST:

BERNICE E. SEIDEL, Clerk
Board of Supervisors

By Susan Bishop
Deputy

DATE: Feb. 1, 2017

REVIEWED & RECOMMENDED FOR
APPROVAL

[Signature]

Department Head's Signature

15 APPROVED AS TO LEGAL FORM

16 [Signature]
County Counsel

APPROVED AS TO ACCOUNTING FORM

[Signature]
Auditor-Controller/Treasurer-Tax Collector

18 FOR ACCOUNTING USE ONLY:

19 ORG No.: 89250100

20 Account No.: 7100

21 Requisition No.: 8921600196

Attachment A
SCHEDULE OF RATES
MCCORMICK BARSTOW, LLP

COST PROPOSAL

Michael G. Woods	\$310.00 per hour
David R. McNamara	\$275.00 per hour
Mart B. Oller, IV	\$250.00 per hour
Deborah Byron	\$250.00 per hour (other than appellate work)
Christina Tillman	\$250.00 per hour
Senior Associates	\$210.00 per hour
Associates	\$195.00 per hour

APPELLATE RE EMPLOYMENT MATTERS

Todd Baxter	\$300.00 per hour
Deborah Byron	\$300.00 per hour
Senior Associates	\$210.00 per hour
Associates	\$195.00 per hour

PARALEGALS

Paralegals Providing Litigation Support	\$115.00 per hour
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MATERIALS AND MISCELLANEOUS

Photocopies	\$.25 per page
Computer-assisted legal research	Actual Cost
Faxes	\$.50 per page plus L/D charges
Mileage	IRS approved rate for out of town travel
Messenger Services	Actual Cost
Other Costs	Direct pass-through without surcharge