

1 AGREEMENT FOR SPECIALIZED LEGAL SERVICES

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3 THIS AGREEMENT (the "Agreement") is made and entered into by and between the
4 COUNTY OF FRESNO, a political subdivision of the State of California (the "COUNTY"), and
5 the law firm of EPSTEIN, BECKER and GREEN, a professional law corporation, hereinafter
6 referred to as "ATTORNEY."

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8 WITNESSETH:

9 WHEREAS, COUNTY has received a notice of disallowance of certain expenses by the
10 Department of Health and Human Services and is seeking to appeal such disallowances before
11 the Departmental Appeals Board and, if necessary, federal court; and

12 WHEREAS, COUNTY wishes to obtain specialized services, as authorized by
13 Government Code section 31000, to represent County and to obtain a review and opinion from
14 ATTORNEY of the relative strengths and weaknesses of the COUNTY's appellate position; and

15 WHEREAS, COUNTY wishes to engage the specialized legal services of counsel who is
16 expert in legal matters concerning such issues; and

17 WHEREAS, ATTORNEY represents that it is specially trained and experienced, and that
18 it possesses such expertise; and

19 WHEREAS, such specialized legal services are either not available or expected not to be
20 available in Fresno County's Office of the County Counsel.

21 NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions
22 herein described, the parties hereto agree as follows

23 1. Employment of Attorney: AUTHORITY hereby hires ATTORNEY as an
24 independent contractor through the services of the following key person(s): John Eriksen, and
25 such other partners of and associate lawyers and staff members employed by ATTORNEY as
26 ATTORNEY deems necessary, and which COUNTY's County Counsel ("County Counsel"), or
27 his designee, approves pursuant to paragraph 3 of this Agreement, except that the foregoing key
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1 persons may, from time to time, consult with such of ATTORNEY's other lawyers on a "limited
2 basis" (as hereinafter defined) as ATTORNEY reasonably deems prudent and necessary under
3 the circumstances. It is understood that ATTORNEY may not replace any of the aforementioned
4 key persons named above without the prior, express, written approval of County Counsel, or his
5 designee. In case of death, illness or other incapacity of any of the foregoing key persons,
6 ATTORNEY shall provide a replacement of at least equal professional ability and experience as
7 the key person replaced.

8 ATTORNEY shall perform specialized legal services in connection with disallowance of
9 certain expenses by the Department of Health and Human Services and is seeking to appeal such
10 disallowances before the Departmental Appeals Board and, if necessary, federal court of certain
11 disallowances. In addition, from time to time, County Counsel, or his designee, may request
12 ATTORNEY to perform additional specialized legal services in connection with this
13 investigation on behalf of COUNTY. Upon County Counsel's, or his designee's, written request
14 to perform such services, and ATTORNEY's written acknowledgment that ATTORNEY will
15 provide such services, ATTORNEY shall perform such services pursuant to the terms and
16 conditions of this Agreement. Notwithstanding the foregoing provisions of this paragraph, in the
17 event of exigent circumstances, County Counsel may make such request orally, and County
18 Counsel and ATTORNEY shall within a reasonable time thereafter document such request for
19 services and acknowledgment thereof.

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

24 COUNTY shall not be obligated to compensate ATTORNEY for intra-office conferences
25 between or among ATTORNEY's partners, associate lawyers, and staff members, unless such
26 intra-office conferences promote efficiency in the performance of ATTORNEY's work on a
27 matter, or a reduction in the cost of compensation paid or reimbursement made for related,
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1 reasonable and necessary, out-of-pocket expenses to ATTORNEY, or both. In the performance
2 of the tasks identified in paragraph 1 under this Agreement, ATTORNEY shall provide only
3 those services which are necessary to carry out such tasks in an efficient and effective manner.

4 3. Compensation of ATTORNEY: COUNTY shall be obligated to compensate
5 ATTORNEY pursuant to the terms and conditions of this Agreement only for the performance of
6 those tasks, to the reasonable satisfaction of COUNTY, which are related to the subject matter of
7 this Agreement. It is understood that COUNTY shall not be obligated to compensate
8 ATTORNEY for any work, services, or functions performed by ATTORNEYS: (i) in seeking to
9 obtain COUNTY's business or negotiating with COUNTY to enter into this Agreement or (ii) in
10 providing COUNTY with documentation, explanations, or justifications concerning the
11 adequacy or accuracy of its invoices for the performance of services under this Agreement and
12 resolving same to the reasonable satisfaction of COUNTY.

13 COUNTY agrees to pay and ATTORNEY agrees to accept as full compensation for
14 performance of tasks under this Agreement the following sum per hour per person:

15 John Eriksen: \$575 per hour

16 George Breen: \$720 per hour

17 Robert Wanerman: \$600 per hour

18 Other Attorneys of the firm that may be utilized from time to time with rates ranging
19 from \$225 to \$950

20 In addition, ATTORNEY shall be reimbursed for reasonable and necessary out-of-pocket
21 expenses, which shall not be included as compensation, as follows: telephone charges,
22 telephonic facsimile transmission charges, computer research charges, filing fees, courier
23 charges, postage charges, printing and photographic reproduction expenses, in-State travel, and
24 all such directly-related expenses. It is understood that ATTORNEY shall not be reimbursed for
25 its secretarial or clerical services (including overtime hours worked), or normal office operating
26 expenses, with the exception of those charges and expenses stated above. In addition,
27 ATTORNEY shall not be reimbursed for such secretarial or clerical services performed or
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1 expenses incurred, regardless of whether such tasks are performed or expenses are incurred by
2 ATTORNEY's partners, associate lawyers, or anyone else. Furthermore, COUNTY shall not
3 compensate ATTORNEY for work performed by paralegals where such work ordinarily is
4 performed by licensed attorneys, including legal research and legal document drafting.

5 In no event shall the maximum amount paid to ATTORNEY as compensation for
6 ATTORNEY's services performed exceed Forty Thousand and No/100 Dollars (\$40,000) under
7 this Agreement unless the parties agree to expand the scope of services through written
8 amendment. ATTORNEY shall not be paid for any services or costs above this limit without a
9 written modification of this Agreement executed by both parties. ATTORNEY shall notify
10 COUNTY in writing when the value of its accrued services, whether billed or not yet billed to
11 the COUNTY, has reached the amount of Thirty Thousand and No/100 Dollars (\$30,000) and
12 again when and if the value of its accrued services, whether billed or not yet billed to the
13 COUNTY, has reached the amount of Thirty Five Thousand and No/100 Dollars (\$35,000).

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

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

- 26 A. The specific nature of each task performed as services under this Agreement;
27 B. The name of the partner or associate lawyer performing each such task;

- 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 incurred, as provided
4 for in paragraph 3 of this Agreement.

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

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

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

18 5. Term of Agreement: This Agreement shall be effective as of March 1, 2017 and
19 will continue in effect ending on December 31, 2017. Either party may terminate this
20 Agreement at any time, either in whole or in part. However, if ATTORNEY elects to terminate
21 this Agreement, COUNTY's rights under any pending matter which may arise from
22 ATTORNEY's services hereunder shall not be prejudiced due to such termination as required by
23 the Rules of Professional Conduct of the State Bar of California. Subject to paragraph 3 of this
24 Agreement, COUNTY shall be paid for all services performed to the date of termination of this
25 Agreement, which are done to the reasonable satisfaction of COUNTY.

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

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

19 7. Hold Harmless: ATTORNEY shall hold COUNTY, its officers, agents, and
20 employees harmless and indemnify and defend AUTHORITY, its officer, agents and employees
21 against payment of any and all costs and expenses, claims, suits, losses, damages and liability
22 arising from or arising out of any actual negligent or wrongful acts or omissions of ATTORNEY,
23 including its partners, officers, agents and employees, **and only as consistent with and subject**
24 **to the California laws related to professional negligence**, in performing or failing to perform
25 the services provided herein. COUNTY's receipt of any insurance certificates required herein
26 does not in any way relieve the ATTORNEY from its obligations under this paragraph 7 of this
27 Agreement.

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

4 A. A policy of professional liability insurance with limits of coverage of not less
5 than One Million and No/100 Dollars (\$1,000,000.00) per covered event, Two Million and
6 No/100 Dollars (\$2,000,000.00) in the annual aggregate;

7 B. A policy of comprehensive general liability insurance with limits of coverage
8 of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. (Such
9 insurance shall include automobile insurance coverage, provided however, if ATTORNEY
10 maintains comprehensive general liability insurance that does not cover a loss in connection with
11 an automobile, ATTORNEY shall also obtain and maintain automobile liability insurance
12 coverage with limits of coverage of not less than One Hundred Thousand and No/100 Dollars
13 (\$100,000.00) per person and Three Hundred Thousand and No/100 Dollars (\$300,000.00) per
14 occurrence); and

15 C. A policy of workers compensation insurance as is required by the California
16 Labor Code.

17 All such insurance policies shall be issued by insurers who at least have an A.M. Best
18 rating of B+ FSC VIII, and shall be acceptable to COUNTY. This insurance shall not be
19 canceled, reduced, or changed without a minimum of thirty (30) calendar days advance, written
20 notice given to County Counsel (at the address for notices to County Counsel provided herein).

21 In addition to its obligations set forth hereinabove, ATTORNEY agrees that it shall
22 maintain, at its sole expense, in full force and effect for a period of three (3) years following the
23 termination of this Agreement a policy of professional liability insurance with limits of coverage
24 of not less than One Million and No/100 Dollars (\$1,000,000.00) per claim; provided, however,
25 in the event that ATTORNEY does not maintain such policy of insurance for such entire three
26 (3) year period, ATTORNEY shall maintain, at its sole expense, in full force and effect extended
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1 claims reporting coverage insurance in lieu thereof in the amount of not less than One Million
2 and No/100 Dollars (\$1,000,000.00).

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

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

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

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

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

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

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

26 COUNTY

27 Daniel C. Cederborg
28 Fresno County Counsel

ATTORNEY

John Eriksen
Epstein, Becker & Green

1 2220 Tulare S., Suite 500
2 Fresno, CA 93721

1227 25th Street, NW
Washington, DC 20037

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

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

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

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

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

4 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
5 as of the day and year first above written.

6 EPSTEIN BECKER and GREEN, a professional law corporation

7
8 By  (John Erikson) Partner

9 COUNTY OF FRESNO

10
11 By 

12 Gary Cornuelle,
13 Purchasing Manager

14 REVIEWED AND RECOMMENDED FOR APPROVAL:

15 By 

16 DANIEL C. CEDERBORG, COUNTY COUNSEL

17
18 APPROVED AS TO ACCOUNTING FORM:
19 OSCAR J. GARCIA, CPA,
20 AUDITOR-CONTROLLER/TREASURER-
21 TAX COLLECTOR

22 By 

23 Deputy

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25
26 APPROVED AS TO LEGAL FORM:
27 DANIEL C. CEDERBORG, COUNTY COUNSEL

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By Daniel C. Cedulov
Deputy

Fund/Subclass: 0001/10000
Organization: 0710
Acct/Program: 7295