

1 AGREEMENT FOR SPECIALIZED LEGAL SERVICES

2 THIS AGREEMENT is made and entered into this 23rd day of October, 2018, by
3 and between the COUNTY OF FRESNO, a political subdivision of the State of
4 California, hereinafter referred to as "COUNTY," and McCormick Barstow, LLP,
5 hereinafter referred to as "ATTORNEY."

6 WITNESSETH

7 WHEREAS, COUNTY is in the process of defending various claims against
8 COUNTY and its employees in Phillips v. State of California et al. (Fresno County
9 Superior Court Case Number 15CECG02201); and

10 WHEREAS, COUNTY wishes to obtain specialized services, as authorized by
11 Government Code section 31000, to represent COUNTY in the suit; and

12 WHEREAS, ATTORNEY represents that it is specially trained and experienced,
13 and the it possesses such expertise; and

14 WEHREAS, such specialized legal services are either not available or expected
15 not to be available in Fresno County's Office of the County Counsel.

16 NOW THEREFORE, in consideration of the mutual covenants, terms, and
17 conditions herein described, the parties hereto agree as follows:

18 SECTION I

19 ENGAGEMENT OF ATTORNEY

20 COUNTY hereby engages ATTORNEY as an independent contractor through the
21 services of the following key person(s): Marty Oller, and such other partners of and
22 associate lawyers as set forth in Attachment A, as well as such other partners of and
23 associate lawyers and staff members employed by ATTORNEY as ATTORNEY deems
24 necessary, and which COUNTY's County Counsel ("County Counsel"), or his designee,
25 approves pursuant to paragraph 3 of this Agreement, except that the foregoing key
26 persons may, from time to time, consult with such of ATTORNEY's other lawyers on a
27 "limited basis" (as hereinafter defined) as ATTORNEY reasonably deems prudent and
28

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

6 ATTORNEY shall perform specialized legal services in connection with the
7 defense of the COUNTY and County employees in the Phillips v. State of California et
8 al. litigation. In addition, from time to time, County counsel, or his designee, may
9 request ATTORNEY to perform additional specialized legal services in connection with
10 this litigation on behalf of COUNTY. Upon County Counsel's, or his designee's, written
11 request to perform such services, ATTORNEY shall perform such services pursuant to
12 the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of
13 this paragraph, in the event of exigent circumstances, County Counsel may make such
14 request orally, and County Counsel and ATTORNEY shall within a reasonable time
15 thereafter document such request for services and acknowledgment thereof.

16 SECTION II

17 PERFORMANCE BY ATTORNEY

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

22 COUNTY shall not be obligated to compensate ATTORNEY for intra-office
23 conferences between or among ATTORNEY's partners, associate lawyers, and staff
24 members, unless such intra-office conferences promote efficiency in the performance of
25 ATTORNEY's work on a matter, or a reduction in the cost of compensation paid or
26 reimbursement made for related, reasonable and necessary, out-of-pocket expenses to
27 ATTORNEY, or both. In the performance of the tasks identified in paragraph 1 under
28

1 this Agreement, ATTORNEY shall provide only those services that are necessary to
2 carry out such tasks in an efficient and effective manner.

3 III

4 COMPENSATION OF ATTORNEY

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

15 COUNTY agrees to pay and ATTORNEY agrees to accept as full compensation
16 for performance of tasks under this Agreement the sums per hour per person as set
17 forth in Attachment A, attached hereto and incorporated herein by this reference.

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

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

4 In no event shall the maximum amount paid to ATTORNEY as compensation for
5 ATTORNEY's services performed under this Agreement exceed Three Hundred Fifty
6 Thousand and No/100 Dollars (\$350,000), unless the parties agree to expand the scope
7 of services through written amendment. ATTORNEY shall not be paid for any services
8 or costs above this limit without a written modification of this Agreement executed by
9 both parties.

10 IV.

11 PAYMENT AND RECORD-KEEPING

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

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

24 A. The specific nature of each task performed as services under this
25 Agreement;

26 B. The name of the partner or associate lawyer performing each such task;

27 C. The number of hours worked by each such person for each such task;
28

1 D. The hourly rate per each such person performing each such task; and

2 E. The related, reasonable and necessary, out-of-pocket expenses incurred, as
3 provided for in paragraph 3 of this Agreement.

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

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

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

19 V

20 TERM OF AGREEMENT

21 This Agreement is effective September 11, 2018 and shall continue in effect
22 through September 10, 2021, unless earlier terminated hereunder by either or both
23 parties. Either party may terminate this Agreement in writing at any time, either in whole
24 or in part. However, if ATTORNEY elects to terminate this Agreement, COUNTY's
25 rights under any pending matter which may arise from ATTORNEY's services
26 hereunder shall not be prejudiced due to such termination as required by the Rules of
27 Professional Conduct of the State Bar of California. Subject to paragraph 3 of this
28

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

4 VI

5 INDEPENDENT CONTRACTOR

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

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

VII

HOLD HARMLESS

ATTORNEY shall hold COUNTY, its officers, agents, and employees harmless and indemnify and defend COUNTY, its officers, agents and employees against payment of any and all costs and expenses (to include legal fees and court costs), claims, suits, losses, damages and liability occurring or resulting to COUNTY in connection with the performance, or failure to perform, by ATTORNEY, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of ATTORNEY, its officers, agents, or employees under this Agreement. COUNTY's receipt of any insurance certificates required herein does not in any way relieve the ATTORNEY from its obligations under this paragraph 7 of this Agreement.

VIII

INSURANCE

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

A. Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate;

B. Comprehensive General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per occurrence basis.

COUNTY may require specific coverages including completed operations, products

1 liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any
2 other liability insurance deemed necessary because of the nature of this Agreement;

3 C. Comprehensive Automobile Liability Insurance with limits of not less
4 than One Million Dollars (\$1,000,000) per accident for bodily injury and for property
5 damages. Coverage should include any auto used in connection with this Agreement;
6 and

7 D. A policy of workers compensation insurance as may be required by the
8 California Labor Code.

9 ATTORNEY shall obtain endorsements to the Commercial General Liability
10 insurance naming the County of Fresno, its officers, agents, and employees, individually
11 and collectively, as additional insured, but only insofar as the operations under this
12 Agreement are concerned. Such coverage for additional insured shall apply as primary
13 insurance and any other insurance, or self-insurance, maintained by COUNTY, its
14 officers, agents and employees shall be excess only and not contributing with insurance
15 provided under ATTORNEY's policies herein. This insurance shall not be cancelled or
16 changed without a minimum of thirty (30) days advance written notice given to
17 COUNTY.

18 Within Thirty (30) days from the date ATTORNEY signs and executes this
19 Agreement, ATTORNEY shall provide certificates of insurance and endorsement as
20 stated above for all of the foregoing policies, as required herein, to the County of
21 Fresno, County Counsel's Office, Attn: Joan Cuadros, 2220 Tulare Street, Suite 500,
22 Fresno, California, 93721, stating that such insurance coverage has been obtained and
23 are in full force; that the COUNTY, its officers, agents and employees will not be
24 responsible for any premiums on the policies; that for such worker's compensation
25 insurance the ATTORNEY has waived its right to recover from the COUNTY, its
26 officers, agents, and employees any amounts paid under the insurance policy and that
27 waiver does not invalidate the insurance policy; that such Commercial General Liability
28

1 insurance names the COUNTY, its officers, agents and employees, individually and
2 collectively, as additional insured, but only insofar as the operations under this
3 Agreement are concerned; that such coverage for additional insured shall apply as
4 primary insurance and any other insurance, or self-insurance, maintained by COUNTY,
5 its officers, agents and employees, shall be excess only and not contributing with
6 insurance provided under ATTORNEY's policies herein, and that this insurance shall
7 not be cancelled or changed without a minimum of thirty (30) days advance, written
8 notice given to COUNTY.

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

12 All policies shall be issued by admitted insurers licensed to do business in the
13 State of California, and such insurance shall be purchased from companies possessing
14 a current A.M. Best, Inc. rating of A FSC VII or better.

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

23 IX

24 AGREEMENT IS BINDING UPON SUCCESSORS

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

1 X

2 ASSIGNMENT AND SUBCONTRACTING

3 Notwithstanding anything stated to the contrary in paragraph 9 of this Agreement,
4 neither party hereto shall assign, transfer, or sub-contract this Agreement nor its rights
5 or duties hereunder without the written consent of the other.

6 XI

7 AMENDMENTS

8 This Agreement may only be amended in writing signed by the parties hereto.

9 XII

10 CONFLICT OF INTEREST

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

17 XIII

18 FURTHER ASSURANCES BY ATTORNEY

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

24 XIV

25 COMPLIANCE WITH LAWS

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

1 XV

2 AUDITS AND INSPECTIONS

3 ATTORNEY shall at any time during business hours, and as often as the
4 COUNTY may deem necessary, make available to the COUNTY for examination all of
5 its records and data with respect to the matters covered by this Agreement.

6 ATTORNEY shall, upon request by the COUNTY, permit the COUNTY to audit and
7 inspect all of such records and data necessary to ensure ATTORNEY's compliance with
8 the terms of this Agreement.

9 If this agreement exceeds ten thousand dollars (\$10,000), ATTORNEY shall be
10 subject to the examination and audit of the Auditor General for a period of three (3)
11 years after final payment under contract (Government Code Section 8546.7).

12 XVI

13 NOTICES

14 The persons and their addresses having authority to give and receive notices
15 under this Agreement include the following:

16 COUNTY

ATTORNEY

17 Daniel C. Cederborg
18 County Counsel
Fresno County Counsel's Office
19 2220 Tulare Street, Suite 500
Fresno, CA 93721

Marty Oller
McCormick Barstow, LLP
5 River Park Place East
Fresno, CA 93720

20 All notices between the COUNTY and ATTORNEY provided for or permitted under this
21 Agreement must be in writing and delivered either by personal service, by first-class
22 United States mail, by an overnight commercial courier service, or by telephonic
23 facsimile transmission. A notice delivered by personal service is effective upon service
24 to the recipient. A notice delivered by first-class United States mail is effective three
25 COUNTY business days after deposit in the United States mail, postage prepaid,
26 addressed to the recipient. A notice delivered by an overnight commercial courier
27 service is effective one COUNTY business day after deposit with the overnight
28

1 commercial courier service, delivery fees prepaid, with delivery instructions given for
2 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile
3 is effective when transmission to the recipient is completed (but, if such transmission is
4 completed outside of COUNTY business hours, then such delivery shall be deemed to
5 be effective at the next beginning of an COUNTY business day), provided that the
6 sender maintains a machine record of the completed transmission. For all claims
7 arising out of or related to this Agreement, nothing in this section establishes, waives, or
8 modifies any claims presentation requirements or procedures provided by laws,
9 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the
10 Government Code, beginning with section 810).

11 XVII

12 VENUE AND GOVERNING LAW

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

17 XVIII

18 DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

22 Members of ATTORNEY's Board of Directors shall disclose any self-dealing
23 transactions that they are a party to while ATTORNEY is providing goods or performing
24 services under this Agreement. A self-dealing transaction shall mean a transaction to
25 which ATTORNEY is a party and in which one or more of its directors has a material
26 financial interest. Members of the Board of Directors shall disclose any self-dealing
27 transactions that they are a party to by completing and signing a Self-Dealing
28

Transaction Disclosure Form, attached hereto as Attachment B and by this reference incorporated herein, and submitting it to COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

XIXI

ENTIRE AGREEMENT

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

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

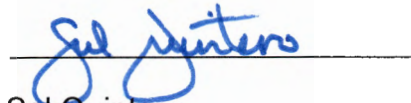
McCormick Barstow, LLP

COUNTY OF FRESNO

By



Marty Oller,
Partner



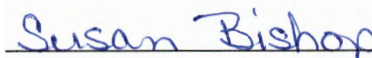
Sal Quintero,
Chairperson of the Board of Supervisors of
The County of Fresno

For Accounting Use Only:

Org: 2540
Account No.: 7295
Requisition No.: 0710190011

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

By:



Deputy

Attachment A
SCHEDULE OF RATES
MCCORMICK BARSTOW, LLP

COST PROPOSAL

Michael G. Woods	\$310.00 per hour
Timothy Buchanan	\$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
Laura Wolfe	\$250.00 per hour
Senior Associates	\$210.00 per hour
Associates	\$195.00 per hour

APPELLATE 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
---	-------------------

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

SELF-DEALING TRANSACTION DISCLOSURE FORM

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

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

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

INSTRUCTIONS

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

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