

AGREEMENT FOR SERVICES OF CONTRACTOR ON PAYROLL

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY), and Hudson Hornick (hereafter CONTRACTOR), wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY's Contractor on Payroll Policy ("COP Policy") defines a Contractor on Payroll as an at-will employee who: (1) is employed through a contract; (2) does not fill a regular, allocated position; and (3) does not meet the Internal Revenue Service (IRS) definition of an independent contractor; and

WHEREAS, COUNTY's COP Policy permits hiring a COP if: (1) there is a need for specialized work to be performed; (2) the work cannot be performed by an independent contractor; (3) there is a temporary funding source for the work; and (4) the work is sporadic and does not warrant a full or part-time regular position; and

WHEREAS, the Office of County Counsel has a need for legal work to be performed that meets the foregoing requirements, and COUNTY has met and conferred with the Civil Attorneys Association on this subject; and

WHEREAS, under Section 31000 of the California Government Code, COUNTY's Board of Supervisors may contract for legal services with persons specially trained, experienced, expert, and competent to perform those services; and

WHEREAS, CONTRACTOR represents that CONTRACTOR is specially trained, experienced, expert, and competent to perform the legal services required by COUNTY, and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE**. Chief Assistant County Counsel Rachel Van Mullem, at telephone number (805) 568-2950, is COUNTY's authorized representative and will administer this Agreement on COUNTY's behalf. Hudson Hornick, at telephone number (805) 883-8181 is CONTRACTOR's authorized representative. Changes in designated representatives shall be made only after advance written notice to the other party.
2. **NOTICES**. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing by personal delivery, facsimile, email, or, with postage prepaid, first class or certified mail, or express courier service, as follows:

To COUNTY: Rachel Van Mullem
 Office of Santa Barbara County Counsel
 105 East Anapamu Street, #201
 Santa Barbara, CA 93101
 Fax (805) 568-2982
 Email rvanmull@co.santa-barbara.ca.us

To CONTRACTOR: Hudson Hornick
 1774 "B" Prospect Ave.
 Santa Barbara, CA 93103
 Email hudson.hornick@gmail.com

or at such other address or to such other person as the parties may from time to time designate in accordance with this section. If sent by first class mail, notices and consents under this section shall be deemed received five (5) days following their deposit in the U.S. mail. This section shall not be construed to alter the legal requirements for service of process.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A, attached hereto and incorporated by reference.
4. **TERM.** CONTRACTOR shall commence performance on October 08, 2018, and shall end performance upon completion, but no later than June 30, 2019 unless otherwise directed by COUNTY or terminated earlier.
5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B, attached hereto and incorporated by reference. The “not-to-exceed” maximum payment amount shall not be exceeded without written amendment of this Agreement.
6. **CONTRACTOR ON PAYROLL STATUS.** CONTRACTOR understands and agrees that CONTRACTOR’s term of work is governed solely by this Agreement; that no right of tenure is created hereby; that CONTRACTOR does not and will not, by virtue of this Agreement, hold a position in any department or office of COUNTY; and that CONTRACTOR’s services to COUNTY under this Agreement are authorized pursuant to Government Code Section 31000. The employment created by this Agreement is at-will, and shall remain at-will unless and until the parties expressly state their intention to make it otherwise, in a writing signed by CONTRACTOR and a duly-authorized representative of COUNTY. CONTRACTOR warrants that CONTRACTOR is fully licensed to perform all work contemplated in this Agreement, and CONTRACTOR agrees to submit verification of licensure.
7. **BENEFITS.**
 - A. **Standard benefits:** COUNTY shall pay the following costs: employer’s share of either Social Security (aka FICA) or the Social Security Alternative Plan (aka SSAP); employer’s share of federal Medicare health insurance; County workers’ compensation insurance; State unemployment insurance; and travel expense reimbursement for mileage claims with prior written authorization.
 - B. **Paid leave:** CONTRACTOR shall receive paid leave as specified in Exhibit B. Paid leave shall be taken at a time determined and agreed upon in advance between CONTRACTOR and COUNTY’s designated representative. Accumulated paid leave must be taken within the contract period, as paid leave cannot be accrued to subsequent agreements; unused paid leave will be lost upon expiration of the Agreement. Unused paid leave will be paid out if the contract is terminated early by COUNTY. CONTRACTOR may use his or her paid leave specified in Exhibit B for holidays, vacations, sickness, jury duty, and any other absence from work, and is not otherwise entitled to any additional paid holidays, vacation, sick leave or other leave. Special requirements may apply to CONTRACTOR’s coding of his or her time card in order to be able to receive paid leave.
 - C. **Retirement:** CONTRACTOR shall be a member of the Santa Barbara County Employees’ Retirement System ONLY if both of these conditions are true: 1) CONTRACTOR is required to work at least forty (40) hours per bi-weekly pay period; and 2) CONTRACTOR’s assignment is not deemed by COUNTY to be temporary, intermittent, or seasonal. Retirement benefits shall be pro-rated according to the applicable percentage of a full-time equivalent (i.e. .5, .6, .625, .75, .8, .875, .9, or 1.0).

D. Other:

- (i) CONTRACTOR will be offered health insurance coverage upon execution of the contract if CONTRACTOR is scheduled to work at least 30 hours per week during the contract period. CONTRACTOR will be offered health insurance coverage if CONTRACTOR works an average at least 30 hours or more per week, over a standard measurement period of 26 pay periods.
- (ii) CONTRACTOR is responsible for licensure fees, subscriptions to journals and other professional expenses not specifically detailed in this Agreement.
- (iii) CONTRACTOR may be permitted to use COUNTY vehicles as part of CONTRACTOR's assignment and shall maintain a valid California Driver's License.
- (iv) COUNTY may reimburse CONTRACTOR for necessary and pre-approved out-of-pocket expenses while performing required services for COUNTY, in accordance with COUNTY policy. All travel claims and other claim documents, when applicable, must include the Board contract number. If the invoice does not properly reference the contract number, those invoices may be returned, delaying payment.
- (v) Except as required by law, CONTRACTOR is not eligible for any other job benefits accruable to an employee in the classified service of COUNTY, unless otherwise specified herein or in Exhibit B.

- 8. STANDARD OF PERFORMANCE.** CONTRACTOR represents that CONTRACTOR has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.
- 9. TAXES.** COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement, payable upon biweekly submission of a time card, and such payment shall be subject to deductions and include withholding of state and federal taxes as specified in Section 7(A) herein.
- 10. CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no employment or interest, and shall not acquire any employment or interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
- 11. NONAPPROPRIATION.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated and budgeted or funds are otherwise not available for payments in the fiscal year covered by the term of the Agreement, then COUNTY will immediately notify CONTRACTOR of such occurrence and the Agreement may be terminated by COUNTY, with or without the prior notice specified in the Termination section of this Agreement. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
- 12. OWNERSHIP OF INFORMATION AND MATERIALS.** COUNTY shall be the sole owner of all information and materials, in any form whatsoever, incidental to or arising from this Agreement. For

purposes of this section, "information" and "materials" include, without limitation, "writings" as defined by California Evidence Code § 250, inventions, designs, technologies, and software. COUNTY ownership shall survive expiration or termination of this Agreement, whether or not performance under this Agreement is completed or terminated prior to completion. No such information or materials shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part any such information or materials. CONTRACTOR shall not release any such information or materials to any other party unless authorized by COUNTY.

- 13. DEFENSE AND INDEMNIFICATION.** COUNTY will defend and indemnify CONTRACTOR against any claim, lawsuit, or judgment arising out of CONTRACTOR's performance of duties under this Agreement. CONTRACTOR agrees to notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. CONTRACTOR shall bear the cost of CONTRACTOR's own defense and liability for any act or omission not arising out of CONTRACTOR's performance of duties under this Agreement. Nothing contained herein shall be deemed to increase COUNTY's liability beyond limitations set forth by law.
- 14. NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR, and CONTRACTOR hereby acknowledges, that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement, and is incorporated herein. CONTRACTOR agrees to comply with that ordinance, and with COUNTY's Anti-Harassment Policy.
- 15. NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others for the same or similar services as those provided by CONTRACTOR, as COUNTY desires.
- 16. ASSIGNMENT.** CONTRACTOR shall not assign any of rights or transfer any obligations under this Agreement without COUNTY's prior written consent, and any attempt to do so without such consent shall be void and without legal effect, and shall constitute grounds for termination.
- 17. TERMINATION.** Either of the parties hereto may, for any reason, prior to the expiration date of this Agreement, cancel and terminate this Agreement upon thirty (30) days' written notice to the other. Upon a material breach of the terms and conditions of the Agreement by one of the parties, the non-breaching party (including Designated Representative's superiors) may terminate this Agreement upon the mailing of a written notice of termination to the breaching party. Written notification as required under this paragraph shall be given by CONTRACTOR to COUNTY's Designated Representative. Written notification by COUNTY shall be given to CONTRACTOR. In the case of material breach (including but not limited to: grossly negligent conduct, malpractice or criminal conduct, etc.) by CONTRACTOR, COUNTY's Designated Representative or designee may immediately terminate the Agreement. Upon termination, CONTRACTOR shall cease work (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers CONTRACTOR may have accumulated or produced under this Agreement, whether completed or in process. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination, to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the Agreement's maximum payment amount, or for unperformed services.
- 18. SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.
- 19. SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held

to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.
21. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.
22. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
23. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.
24. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at CONTRACTOR's sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.
25. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.
26. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
27. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

28. PRECEDENCE. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions contained in the numbered sections shall prevail over those in the Exhibits.

29. SURVIVAL. All provisions which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:
Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:
County Counsel

CONTRACTOR:

By: _____
Michael C. Ghizzoni, County Counsel

By: _____
Hudson Hornick
Attorney at Law

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel

APPROVED AS TO ACCOUNTING FORM:
THEODORE A. FALLATI, CPA
Auditor-Controller

By: _____
Martin McKenzie, Chief of Litigation

By: _____
Deputy

APPROVED AS TO FORM:
Risk Management

By: _____
Ray Aromatorio, Risk Manager

**EXHIBIT A
STATEMENT OF WORK**

CONTRACTOR agrees to provide services to COUNTY comparable to those performed by incumbents in the position of Deputy County Counsel I. Those services are described generally in the class specifications published by COUNTY's Human Resources Department, as follows:

Under general direction, to perform professional legal work, including civil litigation; to prepare legal pleadings and give legal counsel to assigned departments, boards, and districts; and, to do related work as required.

In accordance with Government Code § 25203, COUNTY's Board of Supervisors, acting by and through the County Counsel, directs and controls the conduct of litigation in which COUNTY is a party.

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