

ATTACHMENT "A"

Agreement for Professional Legal Services

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

This Agreement is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY), the Santa Barbara County Fire Protection District (hereafter DISTRICT), and Hooper, Lundy & Bookman, P.C. (hereafter CONTRACTOR), wherein CONTRACTOR agrees to provide and COUNTY and DISTRICT agree to accept the services specified herein.

WHEREAS, COUNTY and DISTRICT require the services of legal counsel to assist in providing legal advice and representation in the specialized area of emergency medical services law, including the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act; and,

WHEREAS, under Section 25203 of the California Government Code, COUNTY's Board of Supervisors may employ counsel to assist in the conduct of litigation in which COUNTY or DISTRICT is a party; and,

WHEREAS, CONTRACTOR represents that CONTRACTOR is specially trained, skilled, experienced, expert, and competent to perform the special services required by COUNTY and DISTRICT, and COUNTY and DISTRICT desire 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**. Santa Barbara County Counsel Senior Deputy Brian Pettit, at telephone number (805) 568-2950 is the authorized representative of COUNTY and DISTRICT and will administer this Agreement for and on behalf of COUNTY and DISTRICT. Jordan Kearney, at telephone number (415) 875-8497 is the authorized representative for CONTRACTOR. 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 or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY/DISTRICT: Brian Pettit
Senior Deputy County Counsel
Office of Santa Barbara County Counsel
105 East Anapamu Street, #201
Santa Barbara, CA 93101

To CONTRACTOR: Jordan Kearney
Hooper, Lundy & Bookman, P.C.
44 Montgomery Street, Suite 3500
San Francisco, CA 94104

or at such other address or to such other person as the parties may from time to time designate in accordance with this Notices 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 Notices 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 and DISTRICT in accordance with EXHIBIT A, which is attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on October 10, 2023 and end performance upon completion, but no later than June 30, 2025 unless otherwise directed by COUNTY and DISTRICT or unless earlier terminated.
5. **COMPENSATION OF CONTRACTOR.** In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B, attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and DISTRICT and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.
6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees) shall perform all of its services under this Agreement as an independent contractor as to COUNTY and DISTRICT, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY or DISTRICT. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY and DISTRICT shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY or DISTRICT employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible for and save COUNTY and DISTRICT harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to COUNTY and DISTRICT or to this Agreement.
7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it 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 and DISTRICT pursuant to this Agreement shall be prepared in a first class and workman-like 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 or DISTRICT's request, without additional compensation. All required permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.
8. **DEBARMENT AND SUSPENSION.** CONTRACTOR certifies to COUNTY and DISTRICT that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.
9. **TAXES.** CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY and DISTRICT shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY or DISTRICT be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY and DISTRICT for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA

(Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

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, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR has conducted a conflicts evaluation and has discovered no potential conflicts other than those (if any) CONTRACTOR disclosed to COUNTY and DISTRICT prior to this Agreement. CONTRACTOR shall inform COUNTY and DISTRICT immediately upon learning of any potential ethical issues or conflicts in the future. COUNTY and DISTRICT retain the right to waive a conflict of interest if COUNTY and DISTRICT determine it to be immaterial. Such waiver shall be effective only if given by COUNTY and DISTRICT to CONTRACTOR in writing.
11. **EXPERTS/CONSULTANTS/OTHER LAW FIRMS.** CONTRACTOR shall get COUNTY's and DISTRICT's written approval prior to retaining any expert, consultant, or other law firm to assist with any matter covered by this Agreement.
12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** COUNTY and DISTRICT shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY and DISTRICT. Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY and DISTRICT all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to herein as "Copyrightable Works and Inventions"). COUNTY and DISTRICT shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY and DISTRICT against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon any intellectual property or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY and DISTRICT in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.
13. **NO PUBLICITY OR ENDORSEMENT.** CONTRACTOR shall not use COUNTY's or DISTRICT's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's or DISTRICT'S name or logo in any manner that would give the appearance that COUNTY or DISTRICT is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY or DISTRICT. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning COUNTY/DISTRICT or its projects without obtaining the prior written approval of COUNTY or DISTRICT.

- 14. COUNTY/DISTRICT PROPERTY AND INFORMATION.** All of COUNTY's or DISTRICT's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's or DISTRICT'S property, and CONTRACTOR shall return any such items whenever requested by COUNTY or DISTRICT and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY or DISTRICT property, documents, or information without COUNTY's or DISTRICT's prior written consent.
- 15. RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY and DISTRICT shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of COUNTY and DISTRICT or as part of any audit of COUNTY and DISTRICT, for a period of three (3) years after final payment under the Agreement (Cal. Gov. Code § 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY and DISTRICT or the State, at no charge to COUNTY and DISTRICT. If federal, state or county audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or county governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY and DISTRICT, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY and DISTRICT as specified by COUNTY and DISTRICT in the notification.
- 16. INDEMNIFICATION AND INSURANCE.** CONTRACTOR agrees to the indemnification and insurance provisions set forth in EXHIBIT C, which is attached hereto and incorporated herein by reference.
- 17. NONDISCRIMINATION.** COUNTY and DISTRICT hereby notify CONTRACTOR 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 by this reference with the same force and effect as if the ordinance were specifically set out herein, and CONTRACTOR agrees to comply with said ordinance.
- 18. NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY and DISTRICT shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR, as COUNTY and DISTRICT desire.
- 19. NON-ASSIGNMENT.** CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and DISTRICT, and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect, and shall constitute grounds for termination.
- 20. TERMINATION.**
- A. By COUNTY and DISTRICT. COUNTY and DISTRICT may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's or DISTRICT's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. For Convenience. COUNTY and DISTRICT may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY and DISTRICT, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY and DISTRICT from such winding down and cessation of services.
 2. For Non-appropriation of Funds. Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or county governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY and DISTRICT will notify CONTRACTOR of such occurrence and COUNTY and DISTRICT may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY and DISTRICT shall have no obligation to make payments with regard to the remainder of the term.
 3. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY and DISTRICT may, at COUNTY's and DISTRICT's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY and DISTRICT as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. By CONTRACTOR. CONTRACTOR may terminate this Agreement if COUNTY or DISTRICT request an action that is contrary to law or CONTRACTOR's ethical obligations; nonpayment of fees, expenses, or costs, which remains unpaid within thirty (30) days written notice to COUNTY; being untruthful or failure to disclose material facts; failure to cooperate; engaging in conduct contrary to CONTRACTOR's advice; repeated and persistent non-responsiveness to communications; or the development of a conflict of interest with another client. To the extent practicable, CONTRACTOR will endeavor to identify the circumstance and provide advance written notice regarding any situation which may lead to CONTRACTOR's withdrawal or termination. Notwithstanding anything to the contrary in this Agreement, unless previously terminated, COUNTY and DISTRICT will be considered a former, rather than a current, client of the CONTRACTOR upon the earlier of the CONTRACTOR's transmittal of an invoice describing the final services provided in connection with the engagement, or six (6) months following the last date on which the CONTRACTOR has provided services to COUNTY or DISTRICT.
- C. Upon termination, CONTRACTOR shall deliver to COUNTY and DISTRICT all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY and DISTRICT may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY and DISTRICT shall pay CONTRACTOR for satisfactory services 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 full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY and DISTRICT such financial information as in the judgment of COUNTY and DISTRICT is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY and DISTRICT shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY and DISTRICT may have in law or equity.

21. **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.
22. **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.
23. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY and DISTRICT 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.
24. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.
25. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY and DISTRICT 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 and DISTRICT shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY and DISTRICT.
26. **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.
27. **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.
28. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at its 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 or DISTRICT are 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 or DISTRICT.
29. **CALIFORNIA LAW AND JURISDICTION.** 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.
30. **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.

31. **AUTHORITY.** All signatories and 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.
32. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.
33. **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 of the Exhibits shall prevail over those in the numbered sections.
34. **EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement shall be the date it is signed by the Chair or Vice-Chair of COUNTY's Board of Supervisors.
35. **POTENTIAL CONFLICT OF INTEREST.** CONTRACTOR advised COUNTY and DISTRICT of the potential conflicts of interest associated with CONTRACTOR jointly representing COUNTY and DISTRICT, and of the consequences associated with such joint representation. COUNTY AND DISTRICT nevertheless want CONTRACTOR to represent COUNTY and DISTRICT and COUNTY and DISTRICT waive such conflicts. This is confirmed by the Chair of the Board of Supervisors signing this Agreement.

Please note that it is possible, at a later date, for developments to occur that make it inadvisable for CONTRACTOR to continue jointly representing COUNTY and DISTRICT, including a divergence of interests between COUNTY and DISTRICT. In such case, CONTRACTOR reserves the discretion to represent COUNTY and DISTRICT will not object to CONTRACTOR'S continued representation of COUNTY. COUNTY and DISTRICT remain free to obtain separate counsel at any time.

This document is now complete.

CLOSE

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(Agreement for Professional Legal Services between County of Santa Barbara and Hooper, Lundy & Bookman, P.C.)

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 AND
SANTA BARBARA COUNTY FIRE
PROTECTION DISTRICT**

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors
Chair, Board of Directors

Date: _____

**RECOMMENDED FOR APPROVAL AND
APPROVED AS TO FORM:**
County Counsel

CONTRACTOR:
Hooper, Lundy & Bookman, P.C.

By: DocuSigned by:
Rachel Van Mullem
Rachel Van Mullem, County Counsel

By: DocuSigned by:
Jordan Kearney
Authorized Representative
Name: Jordan Kearney
Title: Attorney at Law

APPROVED AS TO FORM:
Risk Management

APPROVED AS TO ACCOUNTING FORM:
BETSY SCHAFFER, CPA
Auditor-Controller

By: DocuSigned by:
Greg Milligan
Greg Milligan, Risk Manager

By: DocuSigned by:
Robert Guis
Deputy

DocuSign Envelope ID: 9E570B88-0814-4280-A4AF-8DD656D8D8B8

**EXHIBIT A
STATEMENT OF WORK**

As requested by COUNTY and DISTRICT, CONTRACTOR shall assist COUNTY and DISTRICT by providing legal advice and representation in *American Medical Response West v. County et al.*, Santa Barbara County Superior Court Case No. 23CV04250.

COUNTY and DISTRICT agree that CONTRACTOR's acceptance of this engagement does not involve an undertaking to represent COUNTY or DISTRICT in any matter other than that described in the paragraph above, unless and until the scope of the representation is expanded in writing.

Unless previously agreed in writing by COUNTY's and DISTRICT's Designated Representative, the primary

**EXHIBIT A
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COUNTY and DISTRICT agree that CONTRACTOR's acceptance of this engagement does not involve an undertaking to represent COUNTY or DISTRICT in any matter other than that described in the paragraph above, unless and until the scope of the representation is expanded in writing.

Unless previously agreed in writing by COUNTY's and DISTRICT's Designated Representative, the primary attorney through which CONTRACTOR will provide services under this Agreement is Jordan Kearney. COUNTY and DISTRICT may, in their sole discretion, request CONTRACTOR to discontinue the services of any person providing services to COUNTY and DISTRICT under this Agreement, whereupon CONTRACTOR shall promptly do so.

Pursuant to California Government Code Section 25203, COUNTY's Board of Supervisors directs and controls the conduct of litigation in which COUNTY or DISTRICT is a party. COUNTY and DISTRICT, acting by and through County Counsel, retain control over the course and conduct of the case. CONTRACTOR and County Counsel, in consultation with the Board of Supervisors, will review and decide, among other matters, the following specific issues: (1) ultimate disposition of the case, including but not limited to settlement, (2) witnesses and evidence to be presented at trial, (3) waiver of jury trial, (4) final approval of all dispositive motions and any oppositions to such motions, (5) selection of consultants and experts, (6) approval of any expert reports, (7) overall discovery approach, and (8) all other questions of litigation and trial strategy. County Counsel retains veto power over any decisions made or proposed to be made by CONTRACTOR. Decisions regarding settlement of the case are reserved exclusively to the discretion of COUNTY's and DISTRICT's Board, through County Counsel. Any party in the litigation may contact County Counsel directly without having to confer with CONTRACTOR.

EXHIBIT B
PAYMENT ARRANGEMENTS
Periodic Compensation (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed Six Hundred Fifty Thousand Dollars (\$650,000).
- B. Payment for services and/or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY and DISTRICT. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B-1** must contain sufficient detail to enable an audit of the charges, and CONTRACTOR must provide supporting documentation if requested.
- C. Monthly, CONTRACTOR shall submit to COUNTY's and DISTRICT's Designated Representative an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY and DISTRICT Designated Representative shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1**, shall initiate payment processing. COUNTY and DISTRICT shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. COUNTY's and DISTRICT's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's and DISTRICT's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

**ATTACHMENT B-1
(Schedule of Fees)**

HOURLY RATES

CONTRACTOR's hourly rates shall not exceed the following:

<u>ATTORNEY/TITLE</u>	<u>RATE</u>
Jordan Kearney	\$770
Erin Sclar	\$580
Partners	\$760-950
Associates	\$430-750

COSTS AND EXPENSES

COUNTY and DISTRICT shall reimburse CONTRACTOR for certain costs and expenses actually incurred and reasonably necessary for completing the matter for which COUNTY and DISTRICT have engaged CONTRACTOR, as long as CONTRACTOR's charges for costs and expenses are competitive with other sources of the same products or services. COUNTY and DISTRICT shall reimburse CONTRACTOR in accordance with the following guidelines:

Billable costs and expenses: COUNTY and DISTRICT shall reimburse CONTRACTOR at COUNTY's and DISTRICT's reimbursement rates for reasonable costs and expenses incurred by CONTRACTOR in performing services for COUNTY and DISTRICT, such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals, and transportation), long-distance telephone, and filing fees.

Non-billable overhead and administration: COUNTY and DISTRICT do not expect to be charged for and will not pay for any of the following: attorney time spent preparing time sheets or bills, conflicts checks, local phone service, local travel costs, secretarial services, word processing services, librarian services, other clerical activities such as creating, organizing and maintaining files, distributing documents, overtime, or any other services traditionally considered overhead or administrative.

Photocopying: COUNTY and DISTRICT will reimburse CONTRACTOR at a maximum of \$.15 per page for normal photocopying and will not be responsible for time spent by photocopying personnel. CONTRACTOR shall give COUNTY and DISTRICT an opportunity to use its own internal staff to duplicate documents or an outside photocopying vendor if certain jobs can be less expensively performed by COUNTY and DISTRICT or by the vendor.

Computerized research: CONTRACTOR shall perform any computerized research in a low-cost manner. Computerized research charges such as Lexis/Nexis or Westlaw that are billed to COUNTY and DISTRICT shall be billed at CONTRACTOR's cost and shall be accompanied by a copy of the invoice received by CONTRACTOR.

Document delivery: For document delivery costs that are billed to COUNTY and DISTRICT, CONTRACTOR shall use the most economical delivery method or service available. To help minimize such costs, CONTRACTOR shall use messengers and overnight delivery only where necessary in the interests of urgency and reliability.

Multiple billing: If an attorney works simultaneously on a COUNTY/DISTRICT matter and a matter for another client of CONTRACTOR's firm, COUNTY and DISTRICT shall be billed only for the proportionate amount of time spent on the COUNTY/DISTRICT matter.

Travel: COUNTY and DISTRICT will reimburse CONTRACTOR at COUNTY's and DISTRICT's reimbursement rates for reasonable travel expenses directly related to CONTRACTOR's work for COUNTY and DISTRICT when CONTRACTOR has obtained COUNTY's and DISTRICT's prior approval. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. CONTRACTOR shall not bill for travel time, unless CONTRACTOR is engaged in provision of legal services during such travel.

BILLING PROCEDURE

All invoices must include the following information, in addition to the information specified in Exhibit B:

- Matter description and number;
- A chronological listing and informative description of all legal activity performed (whether or not billed) broken down by date, identity of timekeeper, time spent in increments of one-tenth of an hour, and amounts billed;
- A summary of the names and corresponding billing rates of each attorney or other personnel working on the matter with the total number of hours billed by each during the time period covered by the invoice;
- The total number of hours billed for the matter during the time period covered by the invoice;
- The total charges for the matter for the time period covered by the invoice, for the year to date, and for the matter to date; and
- The last payment, the total payments made by COUNTY and DISTRICT, and any outstanding balances for the matter.

Reimbursable expenses must be included on each bill and broken down by category.

EXHIBIT C

Indemnification and Insurance Requirements (For Professional Contracts)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY and DISTRICT) and hold harmless COUNTY and DISTRICT and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of the services provided by CONTRACTOR under this Agreement or caused by the employees or contractors of CONTRACTOR and for any costs or expenses (including but not limited to reasonable attorneys' fees) incurred by COUNTY and DISTRICT on account of any claim except where such indemnification is prohibited by law.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY and DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. ***(Not required if CONTRACTOR provides written verification that it has no employees)***
4. **Professional Liability:** (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY and DISTRICT require and shall be entitled to the broader coverage and/or the higher limits maintained by the CONTRACTOR. Any available

insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY and DISTRICT.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY and DISTRICT, their officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY and DISTRICT, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY and DISTRICT, their officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY and DISTRICT.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY and DISTRICT a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY or DISTRICT by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY and DISTRICT have received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY and DISTRICT. The COUNTY and DISTRICT may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY and DISTRICT with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY and DISTRICT before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY and DISTRICT reserve the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY and DISTRICT have the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY and DISTRICT as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY and DISTRICT are additional insureds on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY and DISTRICT reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY and DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY and DISTRICT.