



**County of Santa Barbara
BOARD OF SUPERVISORS**

Minute Order

August 28, 2018

Present: 5 - Supervisor Williams, Supervisor Wolf, Supervisor Hartmann, Supervisor Adam, and Supervisor Lavagnino

COUNTY COUNSEL

File Reference No. 18-00700

RE: Consider recommendations regarding an agreement for professional legal services with outside counsel Meyers/Nave, as follows: (4/5 Vote Required)

- a) Approve and authorize the Chair to execute the agreement for professional legal services between the County of Santa Barbara and the Meyers/Nave law firm in an amount not to exceed \$250,000.00 without written amendment; and
- b) Determine that the above action is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15378(b)(4) and 15378(b)(5) because it consists of government administrative or fiscal activities that will not result in direct or indirect physical changes in the environment.

A motion was made by Supervisor Wolf, seconded by Supervisor Lavagnino, that this matter be Acted on as follows:

- a) Approved and authorized; Chair to execute; and
- b) Approved.

The motion carried by the following vote:

Ayes: 5 - Supervisor Williams, Supervisor Wolf, Supervisor Hartmann, Supervisor Adam, and Supervisor Lavagnino

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), and the Meyers/Nave law firm (hereafter CONTRACTOR), wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY requires the services of legal counsel to assist in providing legal advice and representation in the specialized area of public entity defense in tort and property rights litigation; 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 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 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.** Santa Barbara County Counsel Chief of Litigation Martin McKenzie, at telephone number 805-568-2950 is the authorized representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Deborah J. Fox, at telephone number (213) 626-2906 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: Martin McKenzie
 Chief of Litigation
 Office of Santa Barbara County Counsel
 105 East Anapamu Street, #201
 Santa Barbara, CA 93101
 Fax (805) 568-2982

To CONTRACTOR: Deborah J. Fox, Attorney at Law
 Meyers/Nave
 707 Wilshire Boulevard, 24th Floor
 Los Angeles, CA 90017
 Fax (213) 626-0215

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 in accordance with EXHIBIT A, which is attached hereto and incorporated herein by reference.
4. **TERM.** CONTRACTOR shall commence performance on August 28, 2018 and end performance upon completion, but no later than August 27, 2020 unless otherwise directed by COUNTY 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 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 not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. 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 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 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 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 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 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 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 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 shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY 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 prior to this Agreement. CONTRACTOR shall inform COUNTY immediately upon learning of any potential ethical issues or conflicts in the future. COUNTY retains the right to waive a conflict of interest if COUNTY determines it to be immaterial. Such waiver shall be effective only if given by COUNTY to CONTRACTOR in writing.

11. **EXPERTS/CONSULTANTS/OTHER LAW FIRMS.** CONTRACTOR shall get COUNTY's written approval prior to retaining any expert, consultant, or other attorney to assist with any matter covered by this Agreement.
12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** COUNTY 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. Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY 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 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 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 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 name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning COUNTY or its projects without obtaining the prior written approval of COUNTY.
14. **COUNTY PROPERTY AND INFORMATION.** All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY 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 property, documents, or information without COUNTY'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

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 or as part of any audit of COUNTY, 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 or the State, at no charge to COUNTY. 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, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY 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 hereby notifies 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 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 desires.

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 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.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. **For Convenience.** COUNTY 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, 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 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 will notify CONTRACTOR of such occurrence and COUNTY 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 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 may, at COUNTY'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 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. Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option, terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
- C. Upon termination, CONTRACTOR shall deliver to COUNTY 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 may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY 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 such financial information as in the judgment of COUNTY 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 shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY 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 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 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.
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 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.
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.

(Agreement for Services of Independent Contractor between County of Santa Barbara and Meyers/Nave)

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

By: 
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: 
Chair, Board of Supervisors

Date: 8/26/18

RECOMMENDED FOR APPROVAL:

County Counsel

By: 
Michael C. Ghizzoni, County Counsel

CONTRACTOR:

Meyers/Nave

By: _____
Authorized Representative
Name: Deborah J. Fox
Title: Attorney at Law

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 
Martin G. McKenzie, Chief of Litigation

APPROVED AS TO ACCOUNTING FORM:

THEODORE A. FALLATI, CPA
Auditor-Controller

By: 
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Ray Aromatorio, Risk Manager

(Agreement for Services of Independent Contractor between County of Santa Barbara and Meyers/Nave)

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:
Meyers/Nave

By: _____
Michael C. Ghizzoni, County Counsel

By: Deborah J. Fox 8/21/2018
Authorized Representative
Name: Deborah J. Fox
Title: 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 G. McKenzie, Chief of Litigation

By: _____
Deputy

APPROVED AS TO FORM:
Risk Management

By: Ray Aromatorio
Ray Aromatorio, Risk Manager

(Agreement for Services of Independent Contractor between County of Santa Barbara and Meyers/Nave)

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:
Meyers/Nave

By: _____
Michael C. Ghizzoni, County Counsel

By: Deborah J. Fox 8/21/2018
Authorized Representative
Name: Deborah J. Fox
Title: 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 G. McKenzie, Chief of Litigation

By: _____
Deputy

APPROVED AS TO FORM:
Risk Management

By: _____
Ray Aromatorio, Risk Manager

**EXHIBIT A
STATEMENT OF WORK**

As requested by COUNTY, CONTRACTOR shall assist COUNTY by providing legal advice and representation in the specialized area of public entity defense in tort and property rights litigation. COUNTY agrees that CONTRACTOR's acceptance of this engagement does not involve an undertaking to represent COUNTY 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 Designated Representative, the only attorneys through which CONTRACTOR will provide services under this Agreement are Deborah Fox, Brenda Aguilar-Guerrero, Jennifer Riggs, Steven Burke, and Anne Smiddy. COUNTY may, in its sole discretion, request CONTRACTOR to discontinue the services of any person providing services to COUNTY 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 is a party. COUNTY, acting by and through County Counsel, retains 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 Board of Supervisors, 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 Two Hundred Fifty Thousand dollars (\$250,000).
- 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. 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 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 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 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 failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY'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:

TITLE	RATE
Sr. Principal	\$450
Principal	\$425
Sr. Of Counsel	\$395
Of Counsel	\$375
Sr. Associate	\$325
Law Clerk	\$195
Trial Technologist	\$195
Paralegal	\$175

COSTS AND EXPENSES

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

Billable costs and expenses: COUNTY shall reimburse CONTRACTOR at COUNTY's reimbursement rates for reasonable costs and expenses incurred by CONTRACTOR in performing services for COUNTY, 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 does 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 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 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 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 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, 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 matter and a matter for another client of CONTRACTOR's firm, COUNTY shall be billed only for the proportionate amount of time spent on the COUNTY matter.

Travel: COUNTY will reimburse CONTRACTOR at COUNTY's reimbursement rates for reasonable travel expenses directly related to CONTRACTOR's work for COUNTY when CONTRACTOR has obtained COUNTY'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.

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 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)

1. **INDEMNIFICATION.** CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY 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 this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.
2. **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS.** CONTRACTOR shall notify COUNTY 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.
3. **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 CONTRACTOR, CONTRACTOR's 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:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to CONTRACTOR'S profession, with limit of no less than \$500,000 per occurrence or claim, \$1,500,000 aggregate.

If CONTRACTOR maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to COUNTY.

B. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its 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 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 CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

2. **Primary Coverage** – For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, agents or volunteers shall be excess of 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 COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against COUNTY 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 COUNTY has 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 COUNTY. COUNTY may require 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 COUNTY 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 COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR's obligation to provide them. CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. COUNTY reserves 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 has 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 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 is an additional insured 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, CONTRACTOR must

purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

11. Special Risks or Circumstances – COUNTY reserves 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 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.