

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

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 Ervin Cohen & Jessup LLP, with an address at 9401 Wilshire Boulevard, 12th Floor, Beverly Hills, California 90212 (hereafter ATTORNEY) wherein ATTORNEY 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 patent litigation, including as to claims of patent infringement; 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, ATTORNEY represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY, COUNTY acknowledges ATTORNEY is qualified to perform the legal services required under this Agreement, and COUNTY desires to retain the services of ATTORNEY 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**. Amber Holderness at phone number 805-568-2955 is the designated representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Kelly Cunningham, at phone number 310-281-6339 is the designated representative for ATTORNEY. Changes in designated representatives shall be made only after advance written notice to the other party. ATTORNEY shall take direction from and report to the designated representative for the COUNTY. ATTORNEY shall not commence litigation except with the consent of the designated representative.

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 e-mail, personal delivery, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Amber Holderness
Office of County Counsel
County of Santa Barbara
105 E. Anapamu St., Room 201
Santa Barbara, CA 93101
aholderness@countyofsb.org

To ATTORNEY: Kelly Cunningham
Ervin Cohen & Jessup LLP
9401 Wilshire Boulevard, 12th Floor
Beverly Hills, California 90212
kcunningham@ecjlaw.com

or at such other address or to such other person that 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 to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. **SCOPE OF SERVICES.** ATTORNEY agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** ATTORNEY shall commence performance on May 1, 2024, and end performance upon completion, but no later than June 30, 2026, unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF ATTORNEY.** In consideration for ATTORNEY's services, ATTORNEY 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 ATTORNEY, (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 ATTORNEY shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that ATTORNEY is performing its obligations in accordance with the terms and conditions hereof. ATTORNEY 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. ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, ATTORNEY shall be solely responsible and save COUNTY harmless from all matters relating to payment of ATTORNEY'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, ATTORNEY may be providing services to others unrelated to the COUNTY or to this Agreement.

7. **STANDARD OF PERFORMANCE.** ATTORNEY represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNEY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNEY is engaged. All products of whatsoever nature, which ATTORNEY 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 ATTORNEY's profession. ATTORNEY 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 ATTORNEY without additional compensation.

8. **DEBARMENT AND SUSPENSION.** ATTORNEY 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. ATTORNEY certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** ATTORNEY 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 ATTORNEY's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, ATTORNEY 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. ATTORNEY covenants that ATTORNEY 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. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by ATTORNEY. ATTORNEY has conducted a conflicts evaluation and has discovered no potential conflicts. ATTORNEY shall inform COUNTY immediately of any potential ethical issues or conflicts that may arise in the course of ATTORNEY's representation of the COUNTY in this matter or at any time in the future, as soon as such an issue or conflict becomes known. COUNTY retains the right to waive a conflict of interest disclosed by ATTORNEY if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to ATTORNEY in writing.

11. EXPERTS/CONSULTANTS/OTHER LAW FIRMS. ATTORNEY shall get COUNTY's written approval prior to retaining any expert/consultant, or other outside 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. ATTORNEY shall not release any of such items to other parties except after prior written approval of COUNTY. Unless otherwise specified in Exhibit A, ATTORNEY 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 ATTORNEY 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. ATTORNEY 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. ATTORNEY 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. ATTORNEY 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 ATTORNEY hereunder infringe upon any intellectual property or other proprietary rights of a third party, and ATTORNEY 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 the Agreement.

13. NO PUBLICITY OR ENDORSEMENT. ATTORNEY shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. ATTORNEY shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing ATTORNEY. ATTORNEY shall not in any way contract on behalf of or in the name of COUNTY. ATTORNEY shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the 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 ATTORNEY's use in connection with the services shall remain COUNTY's property, and ATTORNEY shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. ATTORNEY may use such items only in connection with providing the services. ATTORNEY shall not disseminate any COUNTY property,

documents, or information without COUNTY's prior written consent.

15. RECORDS, AUDIT, AND REVIEW. ATTORNEY shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of ATTORNEY's profession and, except as otherwise provided in Exhibit B, 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 practices. COUNTY shall have the right to audit and review all such documents and records at any time during ATTORNEY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) ATTORNEY shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ATTORNEY shall participate in any audits and review, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, ATTORNEY 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, ATTORNEY shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

16. INSURANCE. ATTORNEY agrees to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

17. NONDISCRIMINATION. COUNTY hereby notifies ATTORNEY 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 ATTORNEY agrees to comply with said ordinance.

18. NONEXCLUSIVE AGREEMENT. ATTORNEY 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 ATTORNEY as the COUNTY desires.

19. NON-ASSIGNMENT. ATTORNEY 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 ATTORNEY, terminate this Agreement in whole or in part, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of ATTORNEY 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, ATTORNEY 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 Nonappropriation 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 ATTORNEY 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 ATTORNEY 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, ATTORNEY 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 ATTORNEY, unless the notice directs otherwise.

4. Notwithstanding the foregoing, COUNTY acknowledges that the Court adjudicating the subject action, entitled, Emerging Acquisitions, LLC v. Leslie Wells, et al. ("the Action"), might refuse to allow ATTORNEY to withdraw from representing COUNTY in the Action without first receiving a notice of appearance or substitution by an acceptable substitute counsel for COUNTY in the Action.

B. By ATTORNEY. Should COUNTY fail to pay ATTORNEY all or any part of the payment set forth in EXHIBIT B, ATTORNEY may, at ATTORNEY'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, ATTORNEY 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 ATTORNEY in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit ATTORNEY to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay ATTORNEY for satisfactory services performed to the date of termination to include a prorated amounts of compensation due hereunder less payments, if any, previously made. In no event shall ATTORNEY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNEY 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 ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, the decision of COUNTY shall be final. The forgoing 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, including the exhibits hereto, 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. ATTORNEY 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 ATTORNEY in any action or proceeding against ATTORNEY, whether COUNTY is a party thereto or not, that ATTORNEY has violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNEY 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, ATTORNEY hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which ATTORNEY 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.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Ervin Cohen & Jessup LLP**

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: _____

RECOMMENDED FOR APPROVAL AND APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By: 
Deputy County Counsel

CONTRACTOR:

Ervin Cohen & Jessup LLP

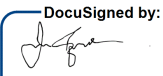
By: 
Authorized Representative

Name: Kelly Cunningham

Title: Partner

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA

By: 
Deputy Auditor-Controller

APPROVED AS TO FORM:

Risk Management


By: 
Risk Management

EXHIBIT A

STATEMENT OF WORK

As requested by COUNTY, ATTORNEY shall assist COUNTY by providing legal advice and representation in *Emerging Acquisitions, LLC v. Leslie Wells et al.*, U.S. District Court, Central District of California, Case No.: 8:23-cv-00329-CJC-ADS.

As such, under California Rules of Ethics, ATTORNEY's duties in this matter are solely to COUNTY, the attorney-client privilege is solely between ATTORNEY and COUNTY, and the client files and papers in the matter belong exclusively to COUNTY.

COUNTY agrees that ATTORNEY'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 primary attorney through which ATTORNEY will provide services under this Agreement is Kelly Cunningham. COUNTY may, in its sole discretion, request ATTORNEY to discontinue the services of any person providing services to COUNTY under this Agreement, whereupon ATTORNEY 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, retain control over the course and conduct of the case. ATTORNEY 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 ATTORNEY. Decisions regarding settlement of the case are reserved exclusively to the discretion of COUNTY's Board, through County Counsel. Any party in the litigation may contact County Counsel directly without having to confer with ATTORNEY.

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

- A. For ATTORNEY services to be rendered under this Agreement, ATTORNEY shall be paid a total contract amount, including cost reimbursements, not to exceed \$500,000. This is not a cap or a guarantee that all of the intended services by ATTORNEY can be rendered within this stated amount. Should the amounts paid to ATTORNEY approach or exceed this stated amount, the Parties will negotiate in good faith to adjust this stated amount as necessary, and ATTORNEY will be permitted to terminate this Agreement and its representation of COUNTY if the amounts owed it exceed this stated amount and the Parties have not agreed to an adjusted stated amount.
- B. Payment for services and/or reimbursement of costs shall be made monthly upon ATTORNEY'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 must contain sufficient detail to enable an audit of the charges and ATTORNEY must provide supporting documentation if requested.
- C. Monthly, ATTORNEY shall submit to the COUNTY 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 REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory 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 ATTORNEY.
- 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.
- E. Retainer. The up-front retainer for this representation will be \$15,000, which is not intended to constitute an estimate of the full cost of the representation. The retainer will be an evergreen retainer, which means that ATTORNEY will use it to offset the last invoice to the Client, although should ECJ decide to use any portion of the retainer to pay an earlier invoice, ATTORNEY will have the right to demand that the Client replenish the retainer within thirty (30) days of such demand. At the end of the Client representation, ATTORNEY will refund to the Client any unused portion of the retainer.
- F. Basis of Billing. During the relationship, ATTORNEY will bill the Client monthly for services rendered, expenses incurred and incidental in-house services provided, and Client will be responsible for the then-current amount on the bill regardless of the evergreen retainer.

ATTACHMENT B-1**Schedule of Fees****HOURLY RATES**

ATTORNEY's hourly rates shall not exceed the following:

<u>ATTORNEY/TITLE</u>	<u>RATE</u>
Kelly Cunningham	\$755
Banu Naraghi	\$575
Paralegals	\$340-350

COSTS AND EXPENSES

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

Billable costs and expenses: COUNTY shall reimburse ATTORNEY at the COUNTY's reimbursement rates for reasonable costs and expenses incurred by it in performing services for the 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.

Nonbillable 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 ATTORNEY at a maximum of \$.15 per page for normal photocopying and will not be responsible for time spent by photocopying personnel. ATTORNEY 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 the COUNTY or by the vendor.

Computerized research: ATTORNEY 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 ATTORNEY's cost and shall be accompanied by a copy of the invoice received by ATTORNEY.

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

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

Travel: COUNTY will reimburse ATTORNEY at the COUNTY's reimbursement rates for reasonable travel expenses directly related to ATTORNEY's work for COUNTY when ATTORNEY has obtained COUNTY's prior approval. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. ATTORNEY 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 the COUNTY and any outstanding balances for the matter.

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

EXHIBIT C

Indemnification and Insurance Requirements (For Professional Contracts)

INDEMNIFICATION

ATTORNEY 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. ATTORNEY'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.

Notwithstanding the foregoing Paragraph, ATTORNEY will not be held liable to indemnify, defend, or 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 the Action itself.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

ATTORNEY 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.

INSURANCE

ATTORNEY 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 ATTORNEY, 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 ATTORNEY 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 ATTORNEY provides written verification that it has no employees)***
4. **Professional Liability:** (Errors and Omissions) Insurance appropriate to the ATTORNEY'S profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the ATTORNEY maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the ATTORNEY. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the 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 the ATTORNEY 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 ATTORNEY'S insurance at least as broad as 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 ATTORNEY'S insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the ATTORNEY'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.
4. **Waiver of Subrogation Rights** – ATTORNEY hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said ATTORNEY may acquire against the COUNTY by virtue of the payment of any loss under such insurance. ATTORNEY agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the 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 the COUNTY. The COUNTY may require the ATTORNEY 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** – ATTORNEY shall furnish the 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 the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ATTORNEY'S obligation to provide them. The ATTORNEY shall furnish evidence of renewal of coverage throughout the term of the Agreement. The 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** – ATTORNEY shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ATTORNEY 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, the ATTORNEY 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. ATTORNEY 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.

ADDENDUM

ATTORNEY'S STANDARD TERMS & CONDITIONS

Billing

It is the policy of the Firm to cease work and withdraw from or terminate representation on matters when there are unpaid invoices more than 90 days old. Please call me immediately if at any time you have any questions about an invoice.

Your Duties as Client

In addition to your timely payment of our invoices, it is also a material condition of our representation that you and your authorized agents, officers or representatives will be available to us to assist in factual inquiries and factual determinations, Court determinations, transactions and other matters regarding the work for which we have been retained and will be responsive to our requests and truthful at all times. You must notify us promptly of any material change in facts relating to the matter(s) for which you have engaged us, or of any change in circumstances which may affect our representation of you. We reserve the right to terminate our representation if you do not adequately cooperate with us to accomplish the objectives for which we have been retained.

Referrals To Experts And Professionals

The Firm may refer you to professionals, expert witnesses, consultants and other service providers or product vendors ("Professionals"). You are free to select Professionals other than those recommended by the Firm. We do not guarantee the performance of Professionals and it is understood that you agree to hold the Firm harmless for any act or omission (including negligence) of any of these Professionals, including any Professional recommended to you by us. You agree to be responsible for paying all fees and costs incurred by these Professionals. We will direct the Professionals to contract directly with you, and to make direct payment arrangements with you.

Use of Contracted Vendors

The Firm uses contracted vendors to perform certain services on a more efficient and economic basis. In performing those services, those vendors have access to documents or electronic files containing information which may be covered by the attorney-client privilege or the attorney work product doctrine. Our contracts with those vendors contain provisions for the confidentiality, safeguard and non-disclosure of the documents and electronic files containing your information except as specifically authorized by the lawyers working on your matter.

No Guarantee of Outcome or Estimates

We do not guarantee the outcome or disposition of any matter with respect to which we are representing you, and you agree to pay our fees and other charges regardless of any outcome unless we have a specific written agreement with you to the contrary.

From time to time you may wish to ask us for estimates of the fees and charges for the work we will perform. We will be happy to provide you with these estimates, but they will be just estimates. We cannot guarantee estimated amounts because business and personal transactions often involve unexpected complications that take time and effort to resolve. Likewise, litigation often involves unexpected difficulties of facts and law. We cannot anticipate the number, length or complexity of negotiations, conferences, motions, depositions, interrogatories and other discovery matters, or the length of trial. These and other matters make the cost and outcome of any legal matter unpredictable.

Fee Dispute/Binding Arbitration

In the event of any dispute over fees, you have the right to mandatory fee arbitration ("MFA") regarding issues of fees and costs, and we have the right to ask you to agree to MFA under Business and Professions Code section 6200(c). The MFA is non-binding unless we both agree at that time. You do not have to participate in this procedure. After the MFA, or if you elect not to ask for or agree to MFA, any claim or controversy arising out of or relating to our engagement, this agreement, or our performance or non-performance of services, including any dispute over fees not resolved through the MFA procedure, will be determined by binding arbitration before ADR Services, Inc. in Century City, Los Angeles, California, unless we mutually select another venue. The arbitration will utilize the then-prevailing commercial arbitration rules of ADR Services, Inc., except that discovery may be taken in that arbitration pursuant to the California Code of Civil Procedure. The claims or controversies subject to this provision shall include, without limitation, any claim of professional negligence or malpractice. You consent to jurisdiction in California for the binding arbitration and all other issues related to or arising from our engagement, including but not limited to claims of professional negligence, malpractice, breach of fiduciary duty, and the like. Judgment may be entered upon the arbitrator's award by any court having jurisdiction. Should you refuse or neglect to appear or participate in the binding arbitration proceedings or pay for your share of the arbitration fees and costs, the arbitrator is empowered to decide the claim or controversy in accordance with the evidence presented. You should realize that by accepting the arbitration provision, YOU WILL WAIVE YOUR RIGHT TO A JURY TRIAL AND THE RIGHT, EXCEPT UNDER LIMITED CIRCUMSTANCES, TO APPEAL THE ARBITRATOR'S DECISION.

Retention of Files/Subsequent Proceedings

We will consider our representation concluded at the end of each matter, and we will generally close your file concurrently. We normally keep each client's legal files for five years after closing. After five years the file will generally be destroyed unless you request in writing that it be returned to you. We may keep a copy of your file, made at your expense, if you ask us to return or transfer your file prior to its normal destruction date. That copy will be retained and ultimately destroyed under our five-year retention policy. Emails and other electronically-stored information are generally not printed and added to client files. They will be destroyed in accordance with the firm's internal procedures as modified from time-to-time.

If ATTORNEY is required to respond to a subpoena or other formal request from a third party or a governmental agency for records or other information relating to the Representation, or to testify by deposition or otherwise concerning the Representation (a "Request"), ATTORNEY will first, to the extent permitted by applicable law, consult with the Client as to whether it is the Client's wish that ATTORNEY comply with the Request or resist it, to the extent that there is a basis for doing so. The Client will reimburse ATTORNEY for its time and expense incurred in responding to any such Request, including time and expense incurred in reviewing documents, appearing at depositions or hearings, and otherwise addressing issues raised by the Request, and search and photocopy costs.