

**AGREEMENT FOR
PROFESSIONAL SERVICES**

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 NIELSEN, MERKSAMER, PARRINELLO, GROSS & LEONI LLP with an address at 1415 L Street, Suite 1200 Sacramento, CA 95814 (hereafter ATTORNEY) wherein ATTORNEY agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, ATTORNEY represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of ATTORNEY pursuant to the terms, covenants, and conditions herein set forth for the purposes of providing consultation on tribal relations and negotiations;

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

1. DESIGNATED REPRESENTATIVE

Rachel Van Mullem, Chief Assistant County Counsel at phone number (805) 568-2950 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Cathy Christian at phone number (916) 446-6752 is the authorized representative for ATTORNEY. 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: Rachel Van Mullem, Chief Assistant County Counsel
County of Santa Barbara
105 E. Anapamu Street, Suite #201
Santa Barbara, CA 93101

To ATTORNEY: Cathy Christian
NIELSEN, MERKSAMER, PARRINELLO, GROSS & LEONI LLP
1415 L Street, Suite 1200
Sacramento, CA 95814

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 Tribal Relations services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

ATTORNEY shall commence performance upon execution of this agreement by both parties and ends on June 30, 2018. This contract may be earlier terminated by COUNTY or ATTORNEY as provided herein.

5. COMPENSATION OF ATTORNEY

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 ATTORNEY

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 ATTORNEY 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. 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. COUNTY certifies that it shall not contract with an ATTORNEY 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

COUNTY acknowledges that ATTORNEY represents many clients who participate in the governmental and political process primarily in California but also nationwide. Since 1975, ATTORNEY has represented thousands of clients in dealing with, and/or litigating for or against, various governmental agencies and complying with federal, state and local political laws, and is accepting new engagements all the time. It is likely that ATTORNEY will work on projects for other clients having different governmental or political objectives, beliefs or views from COUNTY. California counties and pertinent agencies currently utilizing the services of Cathy Christian via the firm of NIELSEN, MERKSAMER, PARRINELLO, GROSS & LEONI LLP include:

- Contra Costa County – tribal issues and general government issues
- San Diego County - tribal issues and general government issues
- Marin County - tribal issues and general government issues
- Yolo County – tribal issues and general government issues
- Amador County - tribal issues
- Tulare County – tribal issues
- Coalition for Energy Independence – oil industry issues

Additionally, ATTORNEY performs a variety of professional services for its clients, including general counsel matters, litigation, legislative advocacy, regulatory law, political and strategic advice, coalition building, fundraising, and ballot measure and PAC compliance (including preparing federal, state or local disclosure forms). It is possible that ATTORNEY will represent these and future clients on matters that may or will be adverse in some way to COUNTY'S interests but which are not directly related to the matter for which ATTORNEY is retained by COUNTY.

Further, ATTORNEY represents the clients listed above whose interests are or in the future may be contrary to COUNTY'S with regard to the listed issues. Based on the information that has been provided to ATTORNEY, ATTORNEY does not believe that its representation of COUNTY currently involves any actual conflict of interest.

COUNTY acknowledges that it has discussed these matters with ATTORNEY, and confirms that it does not object to ATTORNEY'S representation of clients on matters where their governmental or political objectives and/or positions may be different from or adverse to COUNTY, and that COUNTY does not object to ATTORNEY'S representation of such clients on such matters, and COUNTY waives any conflict that arises with clients listed above so that ATTORNEY may continue to represent them. COUNTY further agrees that it will not assert any conflict of interest concerning such representation or attempt to disqualify ATTORNEY from representing such clients notwithstanding such adversity.

If conflicts arise between COUNTY and the clients listed above, relating to listed issues, ATTORNEY will attempt to resolve those conflicts by bringing COUNTY and those clients together to see whether it is possible to resolve the conflict. If the conflict cannot be resolved, COUNTY is free to terminate its relationship with ATTORNEY, but agrees that ATTORNEY nonetheless will be free to represent such clients even on those matters which COUNTY considers adverse, and that COUNTY waives any conflict of interest in connection therewith.

Should an actual conflict of interest arise, ATTORNEY will apprise COUNTY promptly so that COUNTY can decide whether COUNTY wishes to obtain independent counsel.

COUNTY acknowledges that the scope of this agreement does not confer "consultant" status on any of the attorneys and other Nielsen Merksamer personnel providing services under this agreement; therefore said attorneys

and other Nielsen Merksamer personnel are not subject to the public disclosure requirements as a "public official" under County's conflict of interest code. COUNTY acknowledges that this engagement does not, under County's conflict of interest code, qualify any Nielsen Merksamer attorney or other personnel as public officials. In this regard, it is understood and agreed that ATTORNEY in performing services hereunder is subject to the direction and control of County Counsel and County, that County Counsel and County retain control over virtually all decisions regarding any litigation matter that may be handled hereunder, that ATTORNEY is not serving hereunder in a County staff capacity, and that ATTORNEY's responsibilities hereunder do not include making governmental decisions.

11. 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 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 intellectual 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 this Agreement.

12. 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.

13. 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.

14. 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 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 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 California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, 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 reviews, whether by COUNTY or the State.

15. INDEMNIFICATION AND INSURANCE

ATTORNEY agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. 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.

17. 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.

18. 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.

19. TERMINATION

- A. By COUNTY. COUNTY may, by written notice to ATTORNEY, 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 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.

B. By ATTORNEY.

1. 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.
2. ATTORNEY may terminate this Agreement upon thirty (30) days written notice, so long as such withdrawal is not inconsistent with the Rules of Professional Conduct of the State Bar of California.

- 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 amount 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 foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

20. 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.

21. 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.

22. 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.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

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Agreement for Services of Independent ATTORNEY between the COUNTY OF SANTA BARBARA and NIELSEN, MERKSAMER, PARRINELLO, GROSS & LEONI, 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

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

**RECOMMENDED FOR APPROVAL:
COUNTY EXECUTIVE OFFICER**

**ATTORNEY:
NIELSEN, MERKSAMER,
PARRINELLO, GROSS & LEONI, LLP**

By: _____
Mona Miyasato

By: Cathy Christian
Cathy Christian

Name: Cathy Christian
Title: Partner

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore P. Fallati, CPA
Auditor-Controller

By: [Signature]
Deputy County Counsel

By: [Signature]
Deputy

APPROVED AS TO FORM:

Risk Management

By: [Signature]
Risk Management

