

## **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, 2016. 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 ATTORNEY:

- 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  
Name: Cathy Christian  
Title: Partner

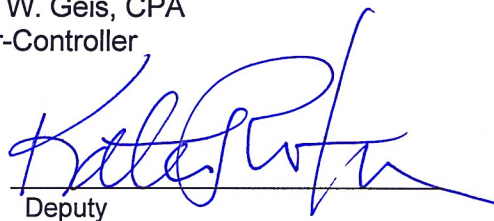
**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Robert W. Geis, CPA  
Auditor-Controller

By:   
Deputy County Counsel

By:   
Deputy

**APPROVED AS TO FORM:**

Risk Management

By:   
Risk Management

# Board Contract Summary

BC 16 - 147

For use with Expenditure Contracts submitted to the Board for approval. Complete information below, print, obtain signature of authorized departmental representative, and submit this form, along with attachments, to the appropriate departments for signature. See also: *Auditor-Controller Intranet Policies->Contracts*.

D1.	Fiscal Year .....	2015-2016
D2.	Department Name .....	County Counsel
D3.	Contact Person .....	Rachel Van Mullem or Susan McKenzie
D4.	Telephone .....	x2950

K1.	Contract Type (check one): <input checked="" type="checkbox"/> Personal Service <input type="checkbox"/> Capital	
K2.	Brief Summary of Contract Description/Purpose .....	Legal Services Agreement
K3.	Department Project Number .....	
K4.	Original Contract Amount .....	\$ 25,000
K5.	Contract Begin Date .....	on contract execution
K6.	Original Contract End Date .....	June 30, 2016
K7.	Amendment? (Yes or No) .....	No
K8.	- New Contract End Date .....	N/A
K9.	- Total Number of Amendments .....	N/A
K10.	- This Amendment Amount .....	\$ N/A
K11.	- Total Previous Amendment Amounts .....	\$ N/A
K12.	- Revised Total Contract Amount .....	\$ N/A

B1.	Intended Board Agenda Date .....	12-08-2015
B2.	Number of Workers Displaced (if any) .....	N/A
B3.	Number of Competitive Bids (if any) .....	N/A
B4.	Lowest Bid Amount (if bid) .....	N/A
B5.	If Board waived bids, show Agenda Date .....	N/A
	and Agenda Item Number .....	
B6.	Boilerplate Contract Text Changed? (If Yes, cite Paragraph) .....	

F1.	Fund Number .....	0001
F2.	Department Number .....	013
F3.	Line Item Account Number .....	7650
F4.	Project Number (if applicable) .....	
F5.	Program Number (if applicable) .....	1000
F6.	Org Unit Number (if applicable) .....	
F7.	Payment Terms .....	

V1.	Auditor-Controller Vendor Number .....	PENDING 093059
V2.	Payee/Contractor Name .....	NIELSEN, MERKSAMER, PARRINEL
V3.	Mailing Address .....	1415 L Street, Suite 1200
V4.	City State (two-letter) Zip (include +4 if known) .....	SACRAMENTO
V5.	Telephone Number .....	916-446-6752
V6.	Vendor Contact Person .....	
V7.	Workers Comp Insurance Expiration Date .....	
V8.	Liability Insurance Expiration Date .....	7-1-2016
V9.	Professional License Number .....	83196
V10.	Verified by (print name of county staff) .....	Karen Libby

V11 Company Type (Check one): ☐ Individual ☐ Sole Proprietorship ☒ Partnership ☐ Corporation

I certify information is complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date: Nov 18, 15 Authorized Signature: [Signature]

## EXHIBIT A

### STATEMENT OF WORK

At the request of either the COUNTY Executive, or designee, ATTORNEY shall furnish and perform in a manner satisfactory to the COUNTY's Office of County Counsel limited legal services concerning the COUNTY'S relationship with the Santa Ynez Band of the Chumash Indians as follows: consultation on Tribal Relations including statewide issues, consultation on fee to trust acquisitions, environmental issues, mitigation measures, and best practices, and advise on negotiations with the Tribe including to secure judicially enforceable agreements. Attorney shall not participate in litigation or provide direct legal services; rather ATTORNEY shall provide consultation on tribal issues as noted above in the areas above.

Cathy Christian shall be the individual(s) personally responsible for providing all services hereunder. ATTORNEY may not substitute other persons without the prior written approval of COUNTY's designated representative.

**Suspension for Convenience.** COUNTY may, without cause, order ATTORNEY in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 60 days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

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## EXHIBIT B

### PAYMENT ARRANGEMENTS

#### Periodic Compensation (with attached Schedule of Fees)

- A. For ATTORNEY services to be rendered under this Agreement, ATTORNEY shall be paid a total contract amount, including cost reimbursements, not to exceed \$25,000.
- B. Payment for services and /or reimbursement of costs shall be made 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 B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- 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 DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B1** 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 ATTORNEY to correct such work or billings or seek any other legal remedy.

## ATTACHMENT B-1

### SCHEDULE OF FEES

#### HOURLY RATES

ATTORNEY'S hourly rates are as follows:

Cathy Christian: \$650.00 per hour (any increase in rate should be approved by COUNTY)

Cathy Christian will be the lead attorney, but may from time to time be assisted by other attorneys in the firm upon approval of the County. COUNTY acknowledges that the firm's hourly rates may be increased from time to time for business purposes, however, any increase in rate should be approved by the County and be in writing.

#### 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.

*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. Travel time outside of customary business hours (8 a.m. – 5:30 p.m.) should be billed only when productive work actually is being performed for the COUNTY.

### **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.

### **RESPONSE TO AUDIT INQUIRIES**

If COUNTY asks ATTORNEY to assist in connection with the issuance of an auditor's report on COUNTY's financial statements, ATTORNEY may be requested to respond to an inquiry from COUNTY's auditors based upon accounting standards that require COUNTY's auditors to make inquiry of COUNTY's lawyers as to their knowledge of certain "loss contingencies." Upon receipt of an audit inquiry ATTORNEY will, among other things, search ATTORNEY's databases to identify lawyers devoting time to COUNTY's matters, make inquiry of those lawyers as to their knowledge of any reportable matters and prepare a written response to COUNTY's auditors and to COUNTY. Absent special circumstances, ATTORNEY's fee structure for the preparation of these letters is a minimum of \$200 and a maximum of \$500, depending on the extent and number of any matters reported. However, under limited circumstances, the fee may exceed \$500 if the letter requires extensive substantive attention to disclosure or other related issues. This charge will appear on ATTORNEY's invoice as a line item for "Services rendered in connection with preparation of response to audit inquiry." Charges for audit inquiry letters may be changed periodically without prior notice, typically after the end of each calendar year.



## Exhibit C

### Indemnification and Insurance Requirements

#### INDEMNIFICATION

ATTORNEY shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof, to the extent caused by the negligence or willful misconduct of ATTORNEY or his agents or employees or other independent contractors directly responsible to him; except claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities to the extent caused by the negligence or willful misconduct of the COUNTY, its officers, agents or employees, or any other entity engaged by the COUNTY.

ATTORNEY shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### 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:** ISO Form Number CA 00 01 covering any auto (Code 1), or if ATTORNEY 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 the ATTORNEY'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the ATTORNEY maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for 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 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, the ATTORNEY's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
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 effect 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.