

AGREEMENT
BY AND BETWEEN
THE COUNTY OF ORANGE
AND FOLEY & LARDNER LLP
FOR PROFESSIONAL LEGAL SERVICES

October __, 2017

**Agreement
for
Professional Legal Services**

This Agreement for Professional Legal Services ("Agreement") is effective October __, 2017 by and between the County of Orange, a political subdivision of the State of California ("County") and Foley & Lardner LLP ("Attorneys"). County and Attorneys are sometimes herein referred to individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the County desires to contract for professional legal services; and

WHEREAS, Attorneys provide professional legal services, and are particularly qualified to perform required services due to their legal competence and expertise; and

WHEREAS, County desires to retain Attorneys' services in connection with the scope of services provided herein.

NOW, THEREFORE, the Parties mutually agree as follows:

AGREEMENT

1. **Scope of Services:** The Scope of Services for this Agreement is attached hereto as Attachment A and incorporated herein by reference.
2. **Compensation:** The compensation to be paid to Attorneys for performing services in accordance with this Agreement is specified in Attachment B, which is attached hereto and incorporated herein by reference, and includes full compensation for providing all services performed under this Agreement. The list of Attorneys' personnel classifications under this Agreement and their respective hourly rates are set forth on Attachment B, which list of personnel may be amended from time to time as necessary by the Attorneys and the Office of the Orange County Counsel ("County Counsel") through letter agreements. However, the approved hourly rates set forth in this Agreement may not be amended or increased without approval of the County Board of Supervisors.
3. **Invoicing/Payment:** All invoicing and payment for services performed under this Agreement shall be as specified in Attachment B hereto.
4. **Agreement Term:** The Term of this Agreement shall commence on the date of execution by the County Counsel and shall continue until completion of the matters for which Attorneys have been retained, unless sooner terminated as provided for herein.
5. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

“It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment.

“Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action.”

If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

6. General Conflicts of Interest: The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents and relatives; sub-tier Attorneys and third parties associated with performing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ or offer employment to any County employee for any purpose.

7. Confidentiality and Communication: Attorneys shall maintain the confidentiality of all information which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with the County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through the County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from the County or its officers, employees and agents in connection with said relationships or proceedings. Attorneys understand that the County Counsel is the legally empowered legal representative of County and its officers and employees and Attorneys shall not without specific direction from the County Counsel communicate with, advise or represent County officers or employees (with the exception that members of the Board of Supervisors may

of course engage in attorney-client privileged communications directly with Attorneys without such prior direction to Attorneys from County Counsel). These confidentiality obligations shall survive this Agreement's termination or expiration.

8. **Independent Contractors:** Attorneys shall be considered as independent contractors and neither Attorneys, its employees, nor anyone working under Attorneys shall be considered an agent or an employee of the County. Neither Attorneys, their employees, nor anyone working under Attorneys shall qualify for workers' compensation or other fringe benefits of any kind through the County.

9. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Attorneys without the express written consent of the County. Any attempt by Attorneys to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of the County shall be invalid and shall constitute a material breach of this Agreement. However, Attorneys may retain consultants or experts as Attorneys deem appropriate after receiving County Counsel's written approval in an amount not to exceed \$150,000 per contract, or in amounts in excess of \$150,000 if approved by the County Board of Supervisors (see Attachment B).

10. **Performance:** Attorneys shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to County's satisfaction. Attorneys shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Attorneys under this Agreement. Attorneys shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefor; shall at their sole expense obtain and maintain all permits and licenses required by public authorities, including those of the County required in its governmental capacity, in connection with performance of the services hereunder; and, if permitted to subcontract, shall fully be responsible for all works performed by their subcontractor(s).

11. **Compliance with Laws:** Attorneys represent and warrant that services to be provided under this Agreement shall fully comply, at Attorneys' expense, with all standards, laws, statutes, restrictions, ordinances, requirements and regulations (collectively "Laws"), including, but not limited to, those issued by the County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by the County. Attorneys acknowledge that the County is relying on Attorneys to ensure such compliance, and Attorneys agree that, pursuant to the requirements of Section 15, below, they shall defend, indemnify and hold the County and the County Indemnitees (as defined below) harmless from all liability, damages, costs and expenses arising from or related to a violation of such Laws.

12. **Attorneys Personnel:** Attorneys warrant that all Attorneys' personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. The County expressly retains the right to have any of the Attorneys' personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by County Counsel. County Counsel's Supervising Attorney (defined below) shall submit the request in writing to the Attorneys. The County is not required to provide any reason, rationale or additional factual

information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys' Supervising Attorney(s) for this Agreement shall be [INSERT NAME]. Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to County Counsel's written approval. Any change in Attorneys' Supervising Attorney shall be first authorized in writing by the County Counsel's Supervising Attorney.

County Counsel's designated Supervising Attorney under this Agreement shall be Senior Deputy County Counsel John P. Cleveland]. County Counsel's Supervising Attorney shall have authority to act for the County, within the scope of his or her authority, on all daily operational matters under this Agreement and shall review and approve all Attorneys' reports, whether written or verbal, and any change in Attorneys' Supervising Attorney or Lead Counsel. Whenever County Counsel designates a Supervising Attorney or change in Supervising Attorney, he, she or his or her designee shall notify Attorneys in writing.

13. Reports/Meetings: The Attorneys shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Agreement. The County and the Attorneys will meet on reasonable notice to discuss the Attorneys' performance and progress under this Agreement. If requested, the Attorneys' personnel shall attend all meetings. The Attorneys shall provide such information that is requested by the County for the purpose of monitoring progress under this Agreement.

14. Patent/Copyright Materials/Proprietary Infringement: Attorneys shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement. Attorneys warrant that any materials and software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Attorneys agree that, in accordance with the more specific requirements contained in Section 15 (Indemnification), below, they shall indemnify, defend and hold the County and the County Indemnitees (as defined below) harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

15. Indemnification: Attorneys agree to indemnify, defend with counsel approved in writing by the County, and hold harmless the County, its elected and appointed officials, officers, employees, agents, and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any and all claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, caused by Attorneys' willful misconduct or negligent performance of services under this Agreement. If judgment is entered against Attorneys and the County and/or the County Indemnitees by a court of competent jurisdiction because of the concurrent active negligence of Attorneys and the County and/or the County Indemnitees, the Parties agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Attorneys (i.e. Foley & Lardner LLP) is a limited liability partnership under the laws of Wisconsin. This means the County's right to recover damages in a legal malpractice action that may exceed Attorneys' insurance and the firm's assets is limited to the personal assets of the attorneys whose acts or omissions gave rise to the County's claims.

16. Insurance Provisions: Prior to the provision of services under this Agreement, the Attorneys agree to purchase all required insurance at Attorneys' expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with. Attorneys agree to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of Attorneys pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Agreement.

Attorneys shall ensure that all subcontractors performing work on behalf of Attorneys pursuant to this Agreement shall be covered under Attorneys' insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Attorneys. Attorneys shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Attorneys under this Agreement. It is the obligation of Attorneys to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Attorneys throughout the term this Agreement for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Attorneys' current audited financial report. If Attorneys' SIR is approved, Attorneys, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Attorneys', its agents, employee's or subcontractor's performance of this Agreement, Attorneys shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Attorneys' duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Attorneys' SIR provision shall be interpreted as though the Agreement was an insurer and the County was the insured.

If the Attorneys fail to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Attorneys shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Attorneys' insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys' Professional Liability is a "Claims-Made" policy, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to County of Orange, Office of County Counsel, Attn: _____, P.O. Box 1379, Santa Ana, CA 92702-1379.

If the Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by County, award may be made to the next qualified Attorneys.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement which shall be mutually agreed upon.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys' liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

17. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Agreement by the Attorneys. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Attorneys without the express written consent of the County.

18. Title to Data: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Attorneys in the performance of this Agreement will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Attorneys after completion or termination of this Agreement without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Agreement.

Following the conclusion of the services provided hereunder, Attorneys will maintain the confidentiality of any of the County's confidential information provided to Attorneys ~~us~~ in accordance with applicable rules of professional conduct. Attorneys will attempt to return to the County any original documents provided by the County, or provided by a third party, unless the County provides written authorization to destroy them.

Attorneys has internal policies that determine the retention period for closed representation files, which includes all electronic or hard copy records related to the services provided hereunder. Therefore, Attorneys will retain the files pertaining to the services provided hereunder, including material prepared by or for the internal use of our attorneys, for a minimum period of ten (10) years following the conclusion of the Matter. Therefore, if the County does not request return of this file material prior to the expiration of the retention period, Attorneys reserve the right to destroy it at the end of the defined retention period without further notice to the County. Upon the County's reasonable request, Attorneys will provide such portions of these file materials to the County as required by the applicable rules of professional responsibility or other legal requirements. Unless applicable rules of professional responsibility require an earlier return, Attorneys may retain such file material pending receipt of payment of any outstanding fees or costs.

19. **Records:** The Attorneys shall keep an accurate record of time expended by Attorneys and the subcontractors working for Attorneys in the performance of this Agreement. Such record shall be available for periodic inspection by the County at reasonable times.

20. **Audits/Inspections:** Attorneys agree to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Attorneys for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Attorneys' records before final payment is made.

Attorneys agree to maintain such records for possible audit for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. Attorneys agree to allow interviews of any employees or others who might reasonably have information related to such records. Further, Attorneys agree to include a similar right to the County to audit records and interview staff of any subcontractors related to performance of this Agreement.

Should the Attorneys cease to exist as a legal entity, the Attorneys' records pertaining to this Agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the Office of County Counsel.

21. **Termination for County's Convenience:** Services performed under this Agreement may be terminated in whole or in part at any time the County deems termination of this Agreement to be in its best interests. The County's Supervisory Attorney shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated

and the effective termination date. After receiving a Termination Notice and unless otherwise directed by the County Counsel's Supervising Attorney, Attorneys shall:

- a) Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.
- b) Complete services not terminated by the Termination Notice.
- c) Complete and submit a written Closing Report within thirty (30) days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys' engagement.
- d) Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, the County may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After the County makes a determination, it shall pay Attorneys that amount. The County's determination shall be final.
- e) Provide the County's Supervising Attorney with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by the County. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by the County's Supervising Attorney, Attorneys shall file with the court the appropriate substitution of counsel.

22. Breach of Agreement: The failure of the Attorneys to comply with any of the terms, provisions, covenants or conditions of this Agreement shall constitute a material breach of this Agreement. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:

- a) Afford the Attorneys written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Agreement within which to cure the breach; and/or
- b) Discontinue payment to the Attorneys for and during the period in which the Attorneys are in breach; and offset against any monies billed by the Attorneys but yet unpaid by the County those monies disallowed pursuant to the above; and/or
- c) Terminate the Agreement immediately, without penalty to the County.

23. Consent to Breach Not Waiver: No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

24. Remedies Not Exclusive: The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.

25. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the

work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For Attorneys:	Name:	Foley & Lardner LLP
	Address:	555 South Flower Street, Suite 3500
	Attn.:	Michael R. Overly
	Title:	Partner
	Phone:	(213) 972-4533
	Fax:	(213) 486-0065
	email:	moverly@folely.com

For County:	Name:	Office of the Orange County Counsel
	Address:	P.O. Box 1379
		Santa Ana, CA 92702-1397
	Attn.:	John P. Cleveland
	Title:	Senior Deputy
	Phone:	(714) 834-7052
	Fax:	(714) 834-2359
	email:	john.cleveland@coco.ocgov.com

26. County Child Support Enforcement: In order to comply with child support enforcement requirements of the County, within 30 days of the effective date of this Agreement, Attorneys agree to furnish to the County's Supervising Attorney a fully completed and executed certification on, or in the form shown on, Attachment D. It is expressly understood that this data will be transmitted to government agencies charged with the establishment and enforcement of child support orders, and for no other purposes.

Failure of the Attorneys to timely submit the data and/or certification required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Agreement.

27. Employee Eligibility Verification: The Attorneys warrant that they fully comply with all Federal and State statutes and regulations regarding the employment of aliens and others and that all Attorneys' employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Attorneys shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Attorneys shall retain all such documentation for all covered employees for the period prescribed by the law. The Attorneys shall indemnify, defend with counsel approved in writing by the County, and hold harmless the

County and/or the County Indemnitees from employer sanctions and any other liability which may be assessed against, or attributable to, the County and/or the County Indemnitees or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

28. **Conflicts of Interest/California Political Reform Act:** Attorneys may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may be materially affected by services provided under this Agreement, (2) prohibits such persons from making, or participating in making, decisions that could reasonably affect such interest; and (3) may require the filing a Statement of Economic Interest (Form 700). If subject to the Act, Attorneys shall conform to all requirements of the Act. Failure to do so shall constitute a material breach and is grounds for immediate termination of this Agreement by County. Pursuant to Section 15 "Indemnification," Attorneys shall indemnify and hold harmless County for any and all claims for damages resulting from Attorneys' violation of this Section.

29. **Entire Agreement:** This Agreement, including Attachments, A, B, C, and D, which are attached hereto and incorporated herein by this reference, contain the entire agreement between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

30. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

31. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

32. **Appropriation/Contingency of Funds:** This Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the County's Board of Supervisors for each fiscal year during the Term of this Agreement. If such appropriations are not approved, the Agreement will be immediately terminated without penalty to the County.

33. **Taxes:** Unless otherwise provided herein or by law, the compensation provided for herein includes California state sales or use tax applicable now or in the future.

34. **Change of Ownership:** Attorneys agree that if there is a change or transfer in ownership of Attorneys' business prior to completion of this Agreement, the new owner(s) or successor(s) shall be required to provide documentation satisfactory to the County that the new owner(s) or successor(s) to Attorneys have assumed and will assume Attorneys' duties and obligations contained in this Agreement and that this Agreement constitutes a valid and fully binding agreement of such new owner(s) or successor(s).

35. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Agreement, are to be released by Attorneys and/or anyone acting under the supervision of

Attorneys to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.

36. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

37. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

39. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

40. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

41. **Authority:** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

42. **Counterparts and .pdf/facsimile signatures:** This Agreement may be signed in counterparts, which together shall constitute one original, and such counterpart signature pages may be exchanged and compiled using facsimile and/or .pdf file versions, which shall be deemed to be original signatures.

SIGNATURES ON FOLLOWING PAGE

The Parties hereto have executed this Agreement on the dates shown opposite their respective signatures below.

Dated: _____, 2017

County:

By: _____

Leon J. Page
County Counsel

Dated: _____, 2017

Attorneys:

By: _____

Michael R. Overly
Partner

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: 
Deputy

Date: Oct. 23, 2017

**Agreement
For
Professional Legal Services
Attachment A – Scope of Services**

Attorneys shall be required to provide personnel and all necessary support and equipment, including computer hardware and software, sufficient to perform the services described herein. Attorneys or law firms may be asked to, and shall, prepare written interim and final reports, updates, and summaries of work, as requested by County Counsel.

Attorneys shall perform all required legal services described herein, including, but not limited to, any and all of the following services and others as directed by County Counsel:

- (1) Perform all normal and customary duties required of counsel in connection with the providing legal services related to preparing IT outsourcing agreements; creating, drafting, and negotiating service level agreements; IT procurement including government procurement of intellectual property rights in technical data, computer software, information technology, and computer equipment; scope of work development; the development and review of request for proposals; contract drafting and negotiation; technology implementation; contract/vendor/performance management matters; protecting the County's rights and assets during the disentanglement phase of outsourcing contract(s) and facilitating the transition of obligations between existing and successor IT outsourcing vendor(s); and other post-award advisory matters (collectively, "County IT Legal Services").
- (2) Advise and assist County staff, using the IT industry best practices, IT technical expertise, government IT procurement experience, and deep sourcing experience, on all aspects of the County's competitive IT solicitation and contracting process including, but not limited to, the following: development of solicitation documentation, development of evaluation criteria, review of vendor proposals, bid protest responses, service level development (creating, drafting, and negotiating), and contract drafting.
- (3) Advise and assist County staff on all aspects of contract negotiation and contract revision related to the County's competitive IT solicitation and contracting process including, but not limited to, the following: development of the County's contract negotiation strategy, leading contract negotiations (meetings and calls) with potential and actual vendors, prompt revision of contract documents, and all other tasks necessary to ensure that contract negotiations result in favorable terms that meet the County's requirements.
- (4) Advise County staff as to the procedures, legality of documents, policy concerns, and legal implications concerning the County IT Legal Services.
- (5) Advise County regarding the requirements of state, federal, and local laws, and procurement policies relevant to the County IT Legal Services.

- (6) Assist County in the negotiation, drafting, and implementation of contracts, correspondence, and related documents arising out of or related to the County IT Legal Services and/or the applicable area of County operations.
- (7) Meet with County Counsel, members of the Board of Supervisors, County agencies and departments, County representatives, and other County employees, as requested by County Counsel.
- (8) Attend meetings of the Board of Supervisors and other relevant meetings, as requested by County Counsel.
- (9) Prepare contract components, amendments, submissions, resolutions, notices, and other legal documents necessary for the County IT Legal Services or applicable area of County operations.
- (10) Perform the necessary legal tasks at the least costly billing category as is acceptable to the County Counsel's office.
- (11) Provide promptly and without delay all legal services requested by County Counsel within or reasonably related to this scope of services.
- (12) Obtain written approval of County Counsel prior to retaining any consultant or subcontractor.
- (13) Obtain written approval of County Counsel prior to undertaking legal research of more than twelve (12) hours on any particular issue.
- (14) Obtain written approval of County Counsel prior to travel outside the counties of Orange, Los Angeles, Riverside, Imperial, Kern, San Bernardino, Ventura, Santa Barbara or San Diego.
- (15) Consult with County Counsel on strategic and tactical decisions.

**Agreement
For
Professional Legal Services
Attachment B – Compensation, Invoicing and Payment**

I. Hourly Rate Schedule

Staffing Level	Hourly Rate*
Lead Partner	\$615
Partner	\$615
Senior Associate	\$615
Associate	\$615
Paralegal	N/A
Law Clerk	N/A

*Attorneys will charge a blended hourly rate of \$615 per hour for all attorneys providing services hereunder and shall ensure the mix of partner time shall be at least 35% of the total hours charged over the contract year.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, UNLESS ATTORNEYS RECEIVE PRIOR WRITTEN APPROVAL OF THE COUNTY COUNSEL'S SUPERVISING ATTORNEY, THE COUNTY WILL NOT COMPENSATE ATTORNEYS FOR THE ATTENDANCE OR PARTICIPATION OF MORE THAN ONE ATTORNEY (INCLUDING ATTORNEYS' STAFF) IN ANY MEETING, CONFERENCE CALL, DEPOSITION, COURT APPEARANCE OR SIMILAR MATTER. IN THE EVENT MORE THAN ONE ATTORNEY OR STAFF MEMBER ATTENDS ANY MATTER, THE COUNTY WILL COMPENSATE ATTORNEYS AT THE HOURLY RATE FOR THE MOST SENIOR ATTORNEY PRESENT.

THE COUNTY WILL NOT PAY ANY ATTORNEY HOURLY RATE FOR TIME SPENT TRAVELING, REGARDLESS OF THE FORM OF TRANSPORTATION (AUTOMOBILE, AIR, ETC.). FOR POLICIES RELATED TO TRAVEL EXPENSE REIMBURSEMENT SEE SECTION II.2.c.

II. Expenses

1. County shall reimburse Attorneys for their actual out-of-pocket expenses but without any additional costs for having advanced the funds or for expenses generally considered as overhead already reflected in the Attorneys' hourly rates. Attorneys shall note that County is exempt from all filing fee charges.

Reimbursable ordinary expenses shall include, but not be limited to:

- a. Transcript fees.
- b. Postage.
- c. Messenger service.
- d. Process service.
- e. Document reproduction by outside vendor.
- f. In-house document reproduction.

If amount of ordinary expenses, listed above, charged in any one month exceeds \$500.00, prior County Counsel approval shall be obtained.

2. Reimbursable extraordinary expenses include charges of which Attorneys have obtained County Counsel's prior approval. Such expenses include, but shall not be limited to:
 - a. Consultants, up to \$150,000 per contract, unless otherwise authorized by the County's Board of Supervisors.
 - b. Expert witnesses up to \$150,000 per contract, unless otherwise authorized by the County's Board of Supervisors.
 - c. Travel outside the Counties of Orange, Los Angeles, San Bernardino, Riverside, Imperial, Kern, Ventura, Santa Barbara and San Diego. **Such extraordinary expenses shall be reimbursed at the IRS rate for mileage only.**
 - d. Investigative services.
 - e. Any expense item exceeding Five Hundred Dollars (\$500.00).
3. Non-reimbursable expenses include, but not be limited to:
 - a. Staff time or overtime for performing secretarial, clerical, or word processing functions.
 - b. Charges for time spent to provide necessary information for County audits or billing inquiries.
 - c. Charges for work performed which had not been authorized by County Counsel. Such work shall be a gratuitous effort by Attorneys.
 - d. Mileage, travel expenses or telephone expenses within the counties of Orange, Los Angeles, San Bernardino, Riverside, Imperial, Kern, Ventura, Santa Barbara, and San Diego.

III. BILLINGS AND PAYMENTS

A. Billings

Attorneys shall submit monthly billing statements in arrears, no later than the tenth (10th) of the month following the month service was rendered. The original billing statement(s) shall be submitted to:

County of Orange
Office of the County Counsel
333. W. Santa Ana Blvd, 4th Floor
Post Office Box 1379
Santa Ana, California 92702-1379
ATTN: John P. Cleveland

The original of each billing statement shall include a declaration of Attorneys' Supervising Attorney or Lead Counsel as provided in Attachment C.

Each billing statement shall be identified by a unique number and shall be itemized to include:

1. Matter or case name and court number.
2. Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal.
 - (i) Each activity shall be billed separately as a line item in a time reporting format acceptable to the County.
 - (ii) A detailed description of specific activities for each attorney and/or paralegal.
3. Total current and cumulative monthly fees billed for each staffing level.
4. Total current monthly expenses billed in the following categories:
 - (i) Consultant and expert witness expenses;
 - (ii) Deposition and transcript expenses; and
 - (iii) Other miscellaneous expenses.
5. Total cumulative expenses to date billed in (4) directly above.

Itemized receipts/backup documentation for reimbursable expenses must be submitted with the invoice.

B. Payments

The County shall make payment(s) for services rendered under this Agreement monthly in arrears based on the monthly itemized billing statement(s) Attorneys submit to the County. The County shall make its best effort to process payments promptly after receiving Attorneys' monthly billing statement. The County shall not pay interest or finance charges on any outstanding balance(s).

**Agreement
For
Professional Legal Services
Attachment C – Attorneys' Declaration on Billing Statement**

The following declaration shall be made on the original of each billing statement and personally signed and dated by Attorneys' Supervising Attorney or Lead Counsel.

"I have personally examined this billing statement. All entries are in accordance with the Agreement For Professional Legal Services, are correct and reasonable for the services performed and costs incurred, and no item on this statement has been previously billed to the County."

DATE

SIGNATURE

NAME

TITLE

(Supervising Attorney or Lead Counsel)

**Agreement
For
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Attachment D – Orange County Child Support Enforcement Certification Requirements

In order to enhance the child support collection efforts of the County's Child Support Services, all contractors are required to provide the following information as listed on the attached form:

- If the Contractor is an individual contractor: Name, date of birth, social security number, and residence address.
- If Contractor is doing business in a form other than as an individual: Name, date of birth, social security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity.

In addition, all contractors must provide:

- A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees, and
- A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

In order to comply with child support enforcement requirements of the County, within ten (10) days of award of this Agreement, Attorneys agree to furnish the required Attorney data and certifications to _____, Deputy County Counsel.

Information provided herein shall be submitted to the Child Support Office, which has been charged with the establishment and enforcement of child support orders. Copies shall not be retained by the Office of County Counsel.

Failure of the Attorneys to submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

The Attorneys may use the forms supplied herein to furnish required information listed above.

COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS FORM

- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

- B. In the case of Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity:

Note: If no individual owns ten (10) percent or more, write "NA"

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

(Additional sheets may be used if necessary)

CHILD SUPPORT ENFORCEMENT CERTIFICATE

"I certify that [INSERT NAME OF ATTORNEYS] is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of [INSERT AGREEMENT NAME] with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract without cost to the County."

Authorized Signature

Typed or Printed Name

Title