

AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES

THIS AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES (“Agreement”) is made and entered by and between the **COUNTY OF MONTEREY** (“COUNTY”), on behalf of Natividad Medical Center (“Natividad”), COUNTY’s owned and operated acute care facility, and **FOLEY & LARDNER**, a Limited Liability Partnership, (“ATTORNEY”).

RECITALS

This Agreement is made with respect to the following facts:

A. The COUNTY Board of Supervisors may contract for legal services for the COUNTY when it is necessary and appropriate that special legal services be performed for the COUNTY and its officers and employees.

B. COUNTY desires to retain ATTORNEY to provide legal services to the COUNTY with respect to the provision of healthcare legal services.

C. ATTORNEY is specially trained, experienced, expert, and competent to perform the legal services required.

NOW, THEREFORE, the parties agree as follows:

1. EFFECTIVE DATE AND TERM

1.01 This Agreement shall be effective as of July 1, 2021, and shall terminate on June 30, 2026, unless earlier terminated as set forth below. This Agreement may be amended from time-to-time upon the written mutual agreement of the parties.

2. SERVICES TO BE PERFORMED

2.01. Services to be Performed by ATTORNEY. COUNTY hereby hires ATTORNEY to render independent legal services to COUNTY, subject to the terms of this Agreement. The primary attorney providing services hereunder shall be Diane Ung, although other attorneys in the firm may be utilized on an as-needed basis. ATTORNEY shall perform said services faithfully and well, when needed by and as requested by COUNTY. The services to be performed under this Agreement shall consist of providing advice to COUNTY regarding healthcare legal services. A specific scope of work is enclosed as Exhibit A and incorporated herein by reference. ATTORNEY shall perform only such services as are within the expertise of the individual attorneys on ATTORNEY’s staff, and ATTORNEY shall notify COUNTY promptly if any work requested is beyond such expertise. ATTORNEY shall diligently provide such legal services as are necessary and approved by COUNTY in a professional, timely manner. ATTORNEY shall perform all of its services with due regard to ethical guidelines and the client’s interests.

2.02. No Conflicts of Interest.

2.02.01. ATTORNEY does not have an actual or potential interest adverse to COUNTY.

2.02.02. ATTORNEY agrees that it shall not represent a person or firm with an interest that is either actually or potentially adverse to COUNTY without the COUNTY's written consent.

2.02.03. This section shall be governed by and interpreted in accordance with the applicable Rules of Professional Conduct.

2.03. Direction from and Consultation with County Counsel. ATTORNEY shall coordinate and consult with and receive direction from County Counsel in providing services under this Agreement. The primary attorneys from the County Counsel's Office working with ATTORNEY with respect to this agreement shall be Stacy L. Saetta, although other deputies in the County Counsel's Office may be designated from time-to-time to work on the matter. Unless otherwise directed by County Counsel, if ATTORNEY prepares any court pleadings or COUNTY documents in the performance of services under this Agreement, including but not limited to COUNTY resolutions, staff reports, and memoranda to the Board of Supervisors, Natividad Board of Trustees, or other County legislative or advisory bodies, ATTORNEY shall provide such drafts to County Counsel for review and consultation prior to finalizing any such drafts.

2.04. Reporting Requirements. ATTORNEY shall provide COUNTY with such reports as may be requested by COUNTY in connection with the performance of services hereunder.

2.05. Closing Report. If this Agreement is terminated as set forth herein, or if for any reason ATTORNEY is no longer retained by COUNTY with respect to this matter, ATTORNEY shall submit a Closing Report describing the status of the matter, setting forth any information needed by another attorney to handle the matter. The Closing Report will be expeditiously submitted, together with necessary executed Substitutions of Attorneys, to County Counsel.

2.06. Oral Reports. ATTORNEY shall immediately report orally to County Counsel, in person or by telephone, any event or discovery which is of an urgent nature or requires the immediate attention of COUNTY. ATTORNEY shall promptly follow up such oral report with a Status Report or Status Update reiterating such event or discovery. ATTORNEY shall immediately advise County Counsel in writing if an actual or potential conflict of interest arises or is discovered.

3. COMPENSATION

3.01. Compensation to Attorney. As consideration for ATTORNEY's performance of services under this Agreement, COUNTY shall pay to ATTORNEY the fees and necessary expenses calculated in accordance with the hourly rate and expense method of billing. Fees and expenses are to be charged in accordance with the terms of this agreement and in accordance with the hourly rates for partners, associates, paralegals, and planners, if any, of ATTORNEY

and any other terms governing fees set forth in Exhibit B, attached hereto and incorporated herein by reference. COUNTY will pay ATTORNEY for travel time only with prior approval of COUNTY.

3.02. Budget. ATTORNEY and COUNTY agree that the initial budget for services pursuant to this Agreement is the sum of \$500,000.00. ATTORNEY and COUNTY shall revise the budget as necessary to reflect additional fees and expenses required for services, and this Agreement shall be amended accordingly to provide for such budget increases. Proposed budget increases must be approved by COUNTY before increased charges or expenditures are paid. ATTORNEY shall notify the County Counsel in writing when fifty percent (50%) and seventy-five percent (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby agrees that ATTORNEY has the right to terminate work on the matter and that ATTORNEY need not perform further services pursuant to this Agreement. COUNTY will compensate ATTORNEY for all necessary and reasonable costs incurred on behalf of COUNTY as set forth herein.

3.03. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 3.04) shall include the initial budget amount and any revised budget amount as provided in paragraph 3.02.

3.04. Reimbursement for Expenses.

(a) COUNTY shall reimburse ATTORNEY for all actual and necessary expenses for the following items:

- (1) Deposition and transcript fees;
- (2) Filing fees;
- (3) Postage;
- (4) Consultant and expert witness fees;
- (5) Photocopying;
- (6) Computerized legal research; and
- (7) Other expenses when approved in advance.

(b) COUNTY will not reimburse ATTORNEY for any non-attorney staff time or overtime for secretarial, clerical, or word processing costs connected with preparing required status reports. COUNTY will not pay ATTORNEY for time spent to provide information for a fee audit, or for work not authorized by COUNTY.

3.05. Monthly Claims by Attorney. Not later than 30 days after the last day of each month in which services were provided, ATTORNEY shall submit to COUNTY a claim, on a form or in a format approved by COUNTY, setting forth in detail any hourly time and expense items incurred by ATTORNEY during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as COUNTY may require. The fees charges shall be calculated correctly, contain no charges previously billed, and be consistent with

the approved fee and expense schedule set forth in Exhibit B. The following information, to the extent applicable to the services performed, shall be set forth accurately in or attached to the billing invoice:

(a) Case name, court number, County Counsel file number or other identification of subject matter for which ATTORNEY rendered services;

(b) Staffing level, hourly rate, and detailed time and activity descriptions for each attorney, paralegal, and/or planner, including but not limited to time spent with respect to conferences, correspondence, telephone calls, hearings, meetings, research, project review, depositions, document filing, and trials; and

(c) Invoices supporting all outside costs.

3.06. Payment of Monthly Claims by COUNTY. COUNTY, through the Office of the County Counsel, shall review ATTORNEY's claim and approve such claim either in the requested amount or in such other amount as County Counsel approves in conformity with this Agreement. County Counsel shall promptly submit such claim to Natividad. Natividad shall certify ATTORNEY's claim, either in the requested amount or in such other amount as Natividad approves in conformity with this Agreement, and thereafter County Auditor-Controller shall pay the balance of the certified claim not later than 30 days after County Auditor-Controller's receipt from Natividad of the certified claim.

3.07. Disputed Payment Amount. If for any claim COUNTY certifies a lesser amount than the amount requested, and if ATTORNEY desires to dispute the amount so certified, ATTORNEY must submit a written notice of protest to COUNTY within 20 days after ATTORNEY's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

4. INDEMNIFICATION AND INSURANCE

4.01. Indemnification. ATTORNEY shall indemnify the COUNTY from any claim, liability, loss, injury or damage caused by ATTORNEY'S and/or its agents' or employees' negligent acts or omissions in the performance of this Agreement, excepting only loss, injury or damage caused by the negligence or willful misconduct of COUNTY and their officers, agents, or employees. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the COUNTY subject to the terms and limits of ATTORNEY'S insurance coverage.

4.02. Evidence of Coverage. Prior to commencement of this Agreement, ATTORNEY shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, ATTORNEY upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to the COUNTY, unless otherwise directed. This approval of insurance shall neither relieve nor decrease the liability of ATTORNEY.

4.03. Qualifying Insurers. All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide, Fitch, or a company of equal financial stability that is approved by COUNTY.

4.04. Insurance Coverage Requirements. Without limiting ATTORNEY's duty to indemnify, ATTORNEY shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

(a) Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached as Exhibit C; subject to approval).

(b) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached as Exhibit C; subject to approval).

(c) Workers' Compensation Insurance, if ATTORNEY employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached as Exhibit C; subject to approval).

(d) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the ATTORNEY shall, upon the expiration or earlier termination of this Agreement, make best efforts to maintain or obtain extended reporting coverage ("tail coverage") with substantially the same liability limits as stated above. Any such tail coverage shall, to the extent available, continue for at least one year following the expiration or earlier termination of this Agreement ("Initial Year"). As required by California Corporations Code Section 16956 (a)(1)(A), in the event of the dissolution and winding up of the CONTRACTOR, the CONTRACTOR shall, with respect to any insurance policy or policies then maintained pursuant to this Agreement, maintain or obtain an extended reporting period endorsement or equivalent tail coverage provision for at least the maximum total aggregate limit of liability required to comply with this Agreement for a minimum of three years beyond the Initial Year if reasonably available from an insurer.

Modification (Justification attached; subject to approval).

(e) Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date ATTORNEY completes its performance of services under this Agreement.

ATTORNEY shall give COUNTY notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal of each liability policy. Each policy shall provide coverage for ATTORNEY and additional insureds (for those liability policies where ATTORNEY is required to name additional insureds under the terms of this Agreement, specifically commercial general liability and automobile liability) with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the COUNTY and County of Monterey, and their officers, agents, and employees as Additional Insureds with respect to liability arising out of the ATTORNEY's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the COUNTY or County of Monterey and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the ATTORNEY's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by COUNTY, ATTORNEY shall file certificates of insurance with the COUNTY showing that the ATTORNEY has in effect the insurance required by this Agreement. The ATTORNEY shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

ATTORNEY shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by COUNTY, annual certificates to COUNTY. If the certificate is not received by the expiration date, COUNTY shall notify ATTORNEY and ATTORNEY shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by ATTORNEY to maintain such insurance is a default of this Agreement which entitles COUNTY, at its sole

discretion, to terminate this Agreement immediately.

5. TERMINATION

5.01. Termination by COUNTY. COUNTY may terminate this Agreement at any time for its convenience and without cause. Upon such termination, ATTORNEY shall promptly comply with the provisions of paragraph 2.05. COUNTY shall pay to ATTORNEY all sums then due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

5.02. Termination by ATTORNEY.

5.02.01 ATTORNEY may terminate this agreement at any time upon giving thirty (30) days written notice to COUNTY.

5.02.02 With respect to an active litigation matter only, upon such termination under this section, and unless COUNTY notifies ATTORNEY in writing that it will not need a substitute co-counsel, ATTORNEY shall continue to provide such services as COUNTY may require until such time as COUNTY is able to identify a substitute co-counsel to render necessary services. COUNTY shall not unreasonably delay in identifying such substitute co-counsel or in providing written notice that it will not require a substitute co-counsel. ATTORNEY shall also immediately comply with the provisions of paragraph 2.05. Notwithstanding section 3.02, COUNTY shall pay to ATTORNEY all sums due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

5.02.03. This section shall be governed by and interpreted in accordance with the applicable Rules of Professional Conduct.

6. GENERAL PROVISIONS

6.01. Nonassignment. ATTORNEY shall not assign or transfer this Agreement, or any part thereof, without the written consent of COUNTY, nor shall ATTORNEY assign any monies due or to become due to ATTORNEY hereunder without the previous written consent of COUNTY.

6.02. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make ATTORNEY anything but an independent contractor and in all ATTORNEY's activities and operations pursuant to this Agreement, ATTORNEY shall for no purposes be considered an employee or agent of COUNTY.

6.03. Authority to Bind COUNTY. It is understood that ATTORNEY, in the performance of any and all duties under this Agreement, has no authority to bind COUNTY to any agreements or undertakings with respect to any and all persons or entities with whom ATTORNEY deals in the course of business.

6.04. Nondisclosure of Information. ATTORNEY shall not disclose, without express written consent of COUNTY, any information relating to COUNTY business which has been submitted by COUNTY to ATTORNEY pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, ATTORNEY shall immediately return to COUNTY all papers, documents and the like belonging to COUNTY.

Notwithstanding the foregoing, pursuant to the ATTORNEY'S document retention policy and Rules of Professional Conduct, ATTORNEY may retain the files pertaining to the matters handled by ATTORNEY for a minimum of 10 years following the conclusion of any such matter. After that time, ATTORNEY reserves the right to dispose of file materials without further notice, other than certain original trust and estate planning documents. ATTORNEY reserves the right to retain a copy of the COUNTY's files.

6.05. Notices.

(a) Notices permitted or required to be given to the respective parties under this Agreement shall be deemed given (1) when personally delivered to COUNTY care of the Office of the County Counsel or to ATTORNEY's principal partner contact; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the office of the Monterey County Counsel in Salinas, California, or to ATTORNEY's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) 3 days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below.

(b) Notices mailed to the parties shall be addressed as follows:

To COUNTY:

Stacy L. Saetta
Deputy County Counsel
Office of the County Counsel
County of Monterey
168 West Alisal Street, Third Floor
Salinas, California 93901
Phone Number: (831) 755-5045
Fax Number: (831) 755-5283

To ATTORNEY:

Diane Ung, Esq.
Foley & Lardner, LLP
555 South Flower Street, Suite 3300
Los Angeles, CA 90071-2418
Phone Number: (213) 972-4500
Fax Number: (213) 486-0065

(c) The mailing addresses and fax numbers specified in paragraph (b) may be changed by either party, by giving notice to the other in the manner provided herein.

6.06. Subcontracting. ATTORNEY shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of

COUNTY. Any and all subcontracts shall be subject to the provisions contained in this Agreement.

6.07. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

6.08. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by ATTORNEY. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

6.09. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

6.10. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

6.11. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

6.12. Exhibits. The following exhibits are attached hereto:

- Exhibit A - Scope of Services
- Exhibit B - Fees and Expenses

IN WITNESS WHEREOF, COUNTY and ATTORNEY have caused this Agreement to be executed:

DATED: _____


COUNTY

By _____

Leslie J. Girard, Esq.
County Counsel-Risk Manager
County of Monterey

DATED: June 10, 2021

FOLEY & LARDNER, LLP

By 

Jeffery R. Atkin, Managing Partner

APPROVED AS TO FORM AND LEGALITY

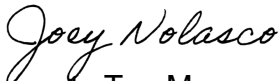
LESLIE J. GIRARD
County Counsel-Risk Manager

DATED: 6/10/2021

By 

Stacy L. Saetta, Esq.
Deputy County Counsel

Reviewed and approved as to fiscal provisions



Property Tax Manager
6/11/2021

EXHIBIT A

SCOPE OF SERVICES

ATTORNEY shall provide independent legal services to the COUNTY consisting of providing advice to COUNTY with respect to healthcare matters, including but not limited to Medicaid financing for safety net providers, healthcare transactions, provider agreements, and technology, privacy, and security matters.

EXHIBIT B

FEES AND EXPENSES

COUNTY shall pay ATTORNEY the fees and necessary expenses for services performed under this Agreement. The attorney fees and expenses shall be calculated and charged in accordance with the hourly rates identified below and with the expense method of billing identified in this Agreement. ATTORNEY shall bill COUNTY for the professional services of its attorneys at their standard hourly billing rate applicable for the particular fiscal period, or rate as may otherwise be discounted and applied. These rates may change from time to time. Changes in attorney fees and expenses are not binding unless mutually agreed upon in a writing signed by the parties.

FEE SCHEDULE EFFECTIVE JULY 1, 2021 THROUGH JUNE 30, 2023

PARTNERS

(All Offices) \$615 -- \$1150

OF COUNSEL, SPECIAL COUNSEL

(All Offices) \$595 -- \$995

SENIOR COUNSEL

(All Offices) \$550 -- \$695

ASSOCIATES

(All Offices) \$340 -- \$625

PARALEGALS

(All Offices) \$285 -- \$335

SUMMER ASSOCIATES

(All Offices) \$250

Rates will reflect discount from the firm's published rates.