



Contract Number

21-714

SAP Number

Board of Supervisors

Department Contract Representative	<u>Curt Hagman, Chairman</u>
Telephone Number	<u></u>
Contractor	<u>Olivarez Madruga Lemieux O'Neill</u> <u>LLP</u>
Contractor Representative	<u>Steven O'Neill</u>
Telephone Number	<u>805-495-4770</u>
Contract Term	<u>10/6/21-12/31/21</u>
Original Contract Amount	<u>Not to Exceed \$250,000</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>Not to Exceed \$250,000</u>
Cost Center	<u></u>

This PROFESSIONAL SERVICES AGREEMENT FOR INTERIM COUNTY COUNSEL SERVICES (Agreement) is entered into as of the 6th day of October 2021, by and between the law firm of Olivarez Madruga Lemieux O'Neill, LLP (OMLO) and San Bernardino County, a political subdivision of the State of California (County).

BACKGROUND

County Counsel provides legal services to the Board of Supervisors (Board) and County Departments pursuant to Government Code sections 26526 and 27640 et seq. and County Code sections 12.1901 et seq. The current County Counsel is retiring and the Board, as the appointing authority, is recruiting to fill the position on a permanent basis, but that will not occur prior to the current County Counsel's retirement. The Board desires to retain the services of a law firm, and specifically, an individual from the law firm to serve as Interim County Counsel until the position is permanently filled. It is anticipated that the interim position will commence on October 6, 2021 and continue through December 31, 2021, but can be terminated as described herein.

1. APPOINTMENT

The Board hereby contracts with OMLO to provide legal services (described herein) as, and specifically appoints Steven O'Neill (O'Neill), as its Interim County Counsel for the time period specified herein. OMLO shall not replace O'Neill as the designated Interim County Counsel without the Board's prior written approval. A temporary assignment of another attorney besides O'Neill due to vacation, illness or leave if necessary will only be done with the approval of the Board.

In conjunction with the appointment of the Interim County Counsel, the Board of Supervisors finds that the best interests of the County are served by waiving the residence qualifications as set forth in Government Code section 27641.1, and hereby waives those requirements.

2. SCOPE OF WORK AND DUTIES

- A.** OMLO, specifically O'Neill, shall as directed by the Board, perform any and all work necessary for the provision of Interim County Counsel services to the County pursuant to Government Code sections 26526 and 27640, et seq. as well as County Code sections 12.1901 et seq., including, but not limited to, the following:
- i. Act as the chief legal advisor to the Board, the Chief Executive Officer, all County elected officials and department heads, special districts, other County agencies and bodies whose governing boards may be made up of members of the Board of Supervisors (in whole or in part);
 - ii. Attend all meetings (open and closed sessions) of the Board and any other meetings of boards or commissions as may be directed by the Board; research, prepare and present oral and written legal opinions pertaining to all facets of County government and operations; advise County officers and department heads on legal matters, including their respective duties, powers, functions and obligations;
 - iii. Be available for consultation or meetings with members of the Board, Chief Executive Officer and County staff as necessary and maintain regular office hours at the County Government Center;
 - iv. Act as the appointing authority, supervise and manage all work of the County Counsel staff, including management attorneys, deputies, paralegals and support staff;
 - v. Utilize in-house County Counsel staff to perform the legal work;
 - vi. Supervise and manage all outside legal services contracts and attorneys with the assistance of County Counsel staff;
 - vii. Conduct a thorough evaluation of the management and service delivery of the County Counsel's office, with an emphasis on increasing communication and shared legal advice between the County Counsel's office, the Chief Executive Officer, and the Board. The goal of this effort will be to align the work of the staff attorneys with the mission of the office. Expected tasks include:
 - Interview with Chief Executive Officer, each Supervisor's office, and appropriate County department heads to evaluate their perception of customer service they are receiving from County Counsel. Focus on satisfaction and identification of areas for improvement.
 - Interview with County Counsel deputies concerning resource allocation, mission of office, establishment of goals, metrics for measuring same, inter-department coordination and communication, guidance from County Counsel, internal morale, and advancement opportunities. Focus on facilitation of project development, problem solving, and creating space for creative legal approaches.
 - Generate confidential report and summary with recommendations for increasing performance and customer satisfaction, identifying changes that need to be made within the organization, if any.
 - Present the report as directed, including coordination with incoming County Counsel.
 - viii. Perform other legal duties as requested by the Board. If OMLO is requested by the Board to provide specialized legal services generally provided by outside counsel, such

services may only be provided when the Board approves a specific contract for such services.

All services under this Agreement shall be performed in a competent, professional and cost-effective manner.

3. COUNTY DUTIES

County agrees to provide information, assistance, cooperation, and access to books, records and other information as is necessary for OMLO to effectively render its professional services under this Agreement. County desires services to be rendered whenever possible on site and County will use its best efforts to make available sufficient office space, furniture, telephones, computers and secretarial support as may be necessary.

4. COMPENSATION AND BILLING

- A. As identified in Paragraph 1, O'Neill shall be the Interim County Counsel and lead attorney and shall supervise all OMLO work under this Agreement. The hourly rate for O'Neill, under this Agreement shall not exceed the rate of \$390 per hour. The Chairman of the Board may approve in writing other OMLO attorneys to provide services under this Agreement and authorize in writing changes to the rate indicated above.

Services related to the evaluation of the County Counsel office shall be billed at a rate of \$390 per hour.

The total compensation (including services and costs and expenses) shall not exceed \$250,000 unless approved by the Board in writing.

- B. OMLO shall submit monthly statements to the Chief of Administration, County Administrative Office in accordance with Paragraph 21 (O) fees and costs for services performed under this Agreement and each monthly statement shall include only that time worked during the calendar month period. Such monthly statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work time spent, and costs and expenses for which payment is requested under this Agreement. Time charged for eligible travel shall be a separate billing entry. Additionally, such statements requesting reimbursement for costs and expenses must include sufficient back-up documentation, such as invoices or receipts, to support the cost or expense claimed. OMLO attorneys shall separately account for work time spent, and costs and expenses for each different case, department or matter. Fees charged for attorneys' time will be charged in quarter-hour increments.
- C. Subject to Paragraph D., County shall pay OMLO's fees and expenses within a reasonable time after receipt of billings, not to exceed sixty (60) days following resolution of any billing questions or disputes. OMLO shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the OMLO's designated checking or other bank account. OMLO shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- D. County shall have the right to review and audit all billing statements prior to or after payment to OMLO. This review may include, but not be limited to:
- i. Determination that the hourly fee charged is consistent with this Agreement's approved hourly rate schedule;
 - ii. Determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;

- iii. Determination that the bill is clearly divided into billing rate categories based on hours worked on each activity for each day by each attorney/person and costs and reimbursable expenses; and,
 - iv. Determination that each item charged is the usual, customary, and reasonable charge for the particular item. If County determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, County shall either return the bill to Attorneys with a request for explanation or adjust the payment accordingly, and give notice to OMLO of the adjustment.
- E. Attorneys shall bill for their costs and expenses on a pass-through basis as an advance by Attorneys and without any profit or other mark-up.**
- i. **Reimbursable costs and expenses** shall include charges for which OMLO has obtained County's prior approval. Such expenses shall be limited to:
 - (a) OMLO's necessary out of local area travel, lodging and meals;
 - (b) Any expense item estimated to equal or exceed Five Hundred dollars (\$500.00).
 - ii. **Non-reimbursable costs and expenses** shall include, but not be limited to:
 - (a) Rent, utilities, word processing, couriers, telephone charges, office supplies, support staff, local area travel, lodging and meal expenses, alcoholic beverages of any kind (beer, wine, etc.), Westlaw, Lexis or other provider charges for legal research, postage, faxes and photocopying/document reproduction costs of any type;
 - (b) Charges for time spent to provide necessary information for monthly billing statements and,
 - (c) Charges for work performed not covered by this Agreement and otherwise reimbursable extraordinary costs and expenses which had not been authorized by County. Such work and costs/expenses shall be a gratuitous effort by OMLO.

The "local area" is defined as any place within fifty (50) miles of any Attorneys' office and any place within the southern California counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura.

5. CONFLICTS

- A.** OMLO shall not undertake the representation of any client in the pursuit of any claim against the County without first obtaining a waiver and consent from the County. OMLO shall disclose any conflict circumstance to County and obtain any needed approval or waiver by County and its officers. Any document evidencing such disclosure and any document evidencing such approval or waiver shall be deemed to be a part of this Agreement.
- B.** OMLO has read and is aware of the provisions of Section 1090 et seq., Section 1126 and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. OMLO agrees that it is unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the County may immediately terminate this Agreement by giving written notice thereof. OMLO shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.
- C.** As the appointed Interim County Counsel, O'Neill agrees that he will comply with the filing requirements of Government Code Sections 87200 and 87202.

6. INFLUENCE AND IMPROPER CONSIDERATION

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

OMLO shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement or any contract awarded by County. The County, by notice, may immediately terminate this Agreement or any County contract if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the County with respect to the proposal and award process of this Agreement or any County contract. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement or any County contract has been awarded. OMLO shall immediately report any attempt by any County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from OMLO. The report shall be made to the Chairman of the Board or the Chief Executive Officer. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

7. MATERIAL MISREPRESENTATION

If during the course of the administration of this Agreement, the County determines that OMLO has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

8. FORMER COUNTY OFFICIALS

OMLO agrees to provide or has already provided information on former County administrative officials (as defined below) who are employed by or represent OMLO. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of OMLO. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

9. DISCLOSURE OF CRIMINAL AND CIVIL PROCEDURES

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten (10) years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

10. HOLD HARMLESS AND INSURANCE

(i). Indemnification – OMLO agrees to indemnify, defend (with counsel reasonably approved by County Counsel) and hold harmless County and its authorized officers, employees, agents and volunteers ("Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of the conduct of OMLO under this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by County on account of any such claim except where such indemnification is prohibited by law. OMLO's indemnification obligation applies to County's "active" as well as "passive" negligence but does not apply to County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

(ii). Insurance - OMLO agrees to provide insurance set forth in accordance with the requirements herein. If OMLO uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, OMLO agrees to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the agreement services.

Without in any way affecting the indemnity herein provided and in addition thereto, OMLO shall have a State approved Self-Insurance Program to the levels identified herein or shall secure and maintain throughout the Agreement the following types of insurance with limits as shown:

Workers' Compensation/Employer's Liability - A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability with \$250,000 limits, covering all persons including volunteers providing services on behalf of OMLO and all risks to such persons under this Agreement.

If OMLO has no employees, OMLO may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

Commercial/General Liability Insurance – OMLO shall carry General Liability Insurance covering all operations performed by or on behalf of Attorneys providing coverage for both bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment
- b. Products and completed operations

- c. Broad form property damage (including completed operations)
- d. Personal injury
- e. Contractual liability
- f. \$2,000,000 general aggregate limit

Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If OMLO is transporting one or more non-employee passengers in performance of agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If OMLO own no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Professional Liability – Professional Liability Insurance with limits of not less than one million dollars (\$1,000,000) per claim or occurrence and two million dollars (\$2,000,000) aggregate limits or Errors and Omissions Liability Insurance with limits of not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate limits or Directors and Officers Insurance coverage with limits of not less than one million dollars (\$1,000,000) shall be required for agreements with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

Additional Insured – All policies, except for the Workers’ Compensation, Errors and Omissions and Professional Liability policies shall contain endorsements naming County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for County to vicarious liability but shall allow coverage for County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights – OMLO shall require the carriers of required coverages to waive all rights of subrogation against County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit OMLO and its employees or agents from waiving the right of subrogation prior to a loss or claim. OMLO hereby waives all rights of subrogation against County.

Policies Primary and Non-Contributory - All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by County.

Severability of Interests – OMLO agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability

exclusions that preclude coverage for suits between OMLO and County or between County and any other insured or additional insured under the policy.

Acceptability of Insurance Carrier – 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 "Best" Insurance Guide rating of "A-VII".

Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

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 cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by OMLO or County payments to OMLO will be reduced to pay for County purchased insurance.

c. Proof of Coverage - OMLO shall furnish Certificates of Insurance to the County evidencing the insurance coverage at the time the Agreement is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to County, and OMLO shall maintain such insurance from the time it commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, OMLO shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

d. Insurance Review - Insurance requirements are subject to periodic review by County. The County's Risk Manager, or designee, is authorized, but not required, to reduce, waive, or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of County. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager, or designee, is authorized, but not required, to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. OMLO 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 part of County.

11. ARBITRATION

Arbitration shall be limited to any controversy or claim between the parties concerning Attorneys' billing for professional fees, costs and expenses, and shall be arbitrated under the system and procedures established for such arbitration pursuant to California Business and Professions Code sections 6200 et seq. Judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Such arbitration award will be final and binding upon the parties hereto.

12. LEGAL FEES, COSTS AND EXPENSES

If any arbitration or legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs, expenses and attorneys' fees. This paragraph shall not apply to those costs, expenses and attorneys' fees directly

arising from any third-party legal action against a party hereto and payable under Paragraph 10., **Hold Harmless and Insurance.**

13. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT

The experience, knowledge, capability and reputation of OMLO, its partners and associates, was a substantial inducement for County to enter into this Agreement. Therefore, OMLO shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of County. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors, or otherwise, without the prior written approval of County. Adding attorneys to OMLO, changes in partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of County or amendment of this Agreement.

14. TERM, DISCHARGE AND WITHDRAWAL

This Agreement shall commence as of October 6, 2021 and shall remain in full force and effect until December 31, 2021 unless terminated early as set forth herein. County may discharge OMLO at any time, upon at least thirty (30) days' written notice to O'Neill. The Interim County Counsel shall have no right to hearing or notice and may be discharged with or without notice. OMLO may withdraw from providing legal services to County at any time, to the extent permitted by law, and the Rules of Professional Conduct, upon at least sixty (60) days' written notice to County.

In the event of such discharge or withdrawal, County will pay OMLO professional fees and costs in accordance with this Agreement, for all services provided (and costs incurred) through the date of cessation of legal services. OMLO shall deliver all documents and records of County to County, or to counsel designated by County, and assist to the fullest extent possible in the orderly transition of all pending matters to County's new counsel.

15. LICENSES AND PERMITS

OMLO shall ensure that any attorneys providing services to County have all necessary licenses and permits required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations to perform the services under this Agreement. OMLO and any attorneys providing services shall maintain these licenses and permits in effect for the duration of this Agreement. OMLO will notify County immediately of loss or suspension of any such licenses and permits of any attorney providing services. Failure to maintain required licenses and permits may result in immediate termination of this Agreement.

16. VENUE

The parties acknowledge and agree that this Agreement was entered into and intended to be performed primarily in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law, statute (including, but not limited to, Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

17. EXHIBITS

All exhibits referred to are attached to this Agreement and incorporated by reference.

18. LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of California without reference to any choice of laws provision.

19. ELECTRONIC SIGNATURES

OMLO and O'Neill shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. OMLO and O'Neill providing an electronic signature agree to promptly execute and deliver County Counsel an original signed Agreement upon request.

20. CONTRACT AND EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The terms and conditions herein (including any Exhibits) constitute the complete agreement between the parties hereto. This Agreement was jointly prepared by both parties and the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

21. GENERAL CONTRACT REQUIREMENTS

A. Contract Amendments

OMLO agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of OMLO and County.

B. Background Checks for Personnel

OMLO shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, OMLO shall conduct a background check, at OMLO's sole expense, on all its personnel providing Services. If requested by the County, OMLO shall provide the results of the background check of each to the County. Such background check shall be in the form generally used by OMLO in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. OMLO personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C. Change of Address

OMLO shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

D. Compliance with County Policy

In performing the Services and while at any County facilities, OMLO personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in

subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to OMLO or OMLO personnel or may be made available to OMLO or OMLO personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. OMLO shall be responsible for the promulgation and distribution of County Policies to OMLO personnel to the extent necessary and appropriate.

County shall have the right to require OMLO's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Agreement.

E. County Representative

The Chairman of the Board of Supervisors or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Agreement, including termination and assignment of this Agreement, and shall be the final authority in all matters pertaining to the Services by OMLO. If this Agreement was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Agreement.

F. Damage to County Property

OMLO shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of OMLO or its employees or agents. Such repairs shall be made immediately after OMLO becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If OMLO fails to make timely repairs, the County may make any necessary repairs. OMLO, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to OMLO from the County, as determined at the County's sole discretion.

G. Debarment and Suspension

OMLO certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). OMLO further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

H. Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Agreement, OMLO agrees that OMLO and OMLO's employees, while performing service for the County, on County property, or while using County equipment:

- i. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- ii. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- iii. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where OMLO or OMLO's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

OMLO shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract OMLO has with the County, if OMLO or OMLO's employees are determined by the County not to be in compliance with above.

I. Employment Discrimination

During the term of the Agreement, OMLO shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. OMLO shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

J. Nondisclosure

OMLO shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to OMLO or an agent of OMLO or otherwise made available to OMLO or OMLO's agent in connection with this Agreement; or, (2) acquired, obtained, or learned by OMLO or an agent of OMLO in the performance of this Agreement. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

K. Records

The Board shall have the absolute right to monitor the performance of Attorneys in the delivery of services provided under this Agreement. Attorneys shall cooperate with the Board in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by the Board. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County for a period of three years after final payment under the Agreement or until all pending County audits are completed, whichever is later.

All records relating to OMLO's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Agreement shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

L. Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

M. Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Agreement or OMLO's relationship with County may be made or used without prior written approval of the County.

N. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

O. Fiscal Provisions

- i. The maximum amount of payment under this Agreement shall not exceed \$250,000, including reimbursement of allowable expenses as described in Paragraph 4. Compensation and Billing, and shall be subject to availability of other funds to the County. The consideration to be paid to OMLO, as provided herein, shall be in full payment for all OMLO's services and expenses incurred in the performance hereof, including travel and per diem. Steven O'Neill shall provide services as Interim County Counsel at a rate of \$390 per hour.
- ii. OMLO shall provide itemized monthly invoices, in arrears, and in a format acceptable to the County for services performed under this Agreement within twenty (20) days of the end of the previous month. Invoices shall be issued with a net sixty (60) day payment term with corresponding Contract number stated on the invoice. Invoice shall also reflect the date range and year of services provided. OMLO will provide detailed invoices describing the services rendered during that time period. County shall pay for expenses related to performance of duties, limited to Business related Travel consistent with Paragraph 4. Compensation and Billing.
- iii. OMLO shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the OMLO's designated checking or other bank account. OMLO shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- iv. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on OMLO or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Agreement.
- v. Costs for services under the terms of this Agreement shall be incurred during the contract period except as approved by County. OMLO shall not use current year funds to pay prior or future year obligations.
- vi. OMLO shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Agreement and for which reimbursement is sought from the County. In addition, OMLO is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

P. NOTICES

All written notices provided for in this Agreement or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County
Chairman of the Board of Supervisors
385 N. Arrowhead Avenue, Fifth Floor
San Bernardino, CA 92415*

*Olivarez Madruga Lemieux O'Neill, LLP
2659 Townsgate Road, Suite 226
Westlake Village, CA 91361
Attn: Steven O'Neill*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

▶ *Curt Hagman*
Curt Hagman, Chairman, Board of Supervisors

Dated: **OCT 05 2021**

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Jennifer Monelli*
Jennifer Monelli
Clerk of the Board of Supervisors
San Bernardino County
Deputy



Olivarez Madruga Lemieux O'Neill, LLP
(Print or type name of corporation, company, contractor, etc.)

By ▶ *Steven O'Neill*
(Authorized signature - sign in blue ink)

Name Steven O'Neill
(Print or type name of person signing contract)

Title Partner
(Print or Type)

Dated: September 30, 2021

Address 2659 Townsgate Road, Suite 226

Westlake Village, CA 91361

FOR COUNTY USE ONLY

Approved as to Legal Form
▶ *Michelle D. Blakemore*
Michelle D. Blakemore, County Counsel
Date 10-1-2021

Reviewed for Contract Compliance
▶ _____
Date _____

Reviewed/Approved by Department
▶ _____
Date _____