

**FIRST AMENDMENT TO THE LEGAL SERVICES AGREEMENT
BETWEEN THE COUNTY OF SANTA CLARA
AND BRIAN C. MCCOMAS
FISCAL YEAR 2023-2024**

The legal services agreement ("AGREEMENT") by and between the County of Santa Clara ("COUNTY"), a political subdivision of the State of California and Brian C. McComas ("ATTORNEY") effective July 1, 2023, is amended as set forth below, effective May 7, 2024.

1. Section 3, regarding Compensation, is hereby deleted and replaced with the following:

3. Compensation

a. COUNTY will pay ATTORNEY for services and reimbursable expenses at the rates set forth in Exhibit A (IDO Fee Schedule for Fiscal Year 2023-2024). Total compensation paid pursuant to this AGREEMENT will not exceed \$320,000 ("AGREED AMOUNT"). This amount does not represent a commitment by the COUNTY. ATTORNEY will notify COUNTY when the total amount billed and the estimated amount of work in progress total \$262,500. COUNTY shall not be responsible for any services or costs exceeding the AGREED AMOUNT.

b. The County or IDO reserves the right to change the amounts set forth in the Fee Schedule periodically. If the Fee Schedule is modified, the Initial Case Fee will be compensated at the rate in effect on the date of the first court appearance for each case. The modified rates for all other services will be applied to services provided on or after the effective date of the modified Fee Schedule.

c. The fees set forth in the Fee Schedule include the performance of administrative work, services, and functions that are required by IDO. ATTORNEY will not receive additional compensation for administrative work or services including, but not limited to, the following: (1) seeking to obtain IDO business or negotiating with IDO to enter into this AGREEMENT; (2) preparation of invoices or other reports or memoranda required by IDO; (3) providing IDO with documentation, explanations, or justifications concerning the adequacy or accuracy of its invoices for the performance of services under this AGREEMENT and resolving the same to the reasonable satisfaction of IDO; (4) providing audit letters to IDO regarding any matters handled by ATTORNEY; or (5) other administrative work, services, or functions required by the DIRECTOR.

d. ATTORNEY will submit to COUNTY a completed ATTORNEY COMPENSATION FORM, a copy of which will be provided to ATTORNEY by IDO with each case assignment, no later than 30 days following the month in which services were rendered for each case, or as provided by COUNTY for the last month of the fiscal year in order to facilitate payment processing within the fiscal year. ATTORNEY COMPENSATION FORMS submitted later than this period may result in denial of payment. Additionally, ATTORNEY will ensure all experts, investigators, and other members of the defense team will submit invoices in compliance with this section and the

requirements of Exhibit A and Exhibit C.

e. The ATTORNEY COMPENSATION FORM must be itemized by case and list dates of services for preliminary hearing sessions, trial sessions, and post dispositional hearing sessions. Failure to provide all required information may result in a delay in payment to ATTORNEY.

f. ATTORNEY will be reimbursed at the actual cost for reasonable and necessary out-of-pocket expenses, including filing fees, printing and photographic reproduction costs, court reporter's fees, and all other expenses directly related to the case, excluding telephone charges, prorated computer research charges, and facsimile charges. ATTORNEY will not be reimbursed for secretarial, clerical, word processing or typist services, or normal office operating expenses. All requests for reimbursement for expenses must include one of the following forms of supporting documentation: receipt indicating who was paid and the dollar amount; cash register receipt; copy of a cancelled check; copy of a bank statement if cancelled check is not available; charge card receipt; or an invoice marked paid in full and indicating how it was paid (cash, charge, check, etc.).

g. ATTORNEY must submit all bills and supporting documentation as described in section 3f. above for reimbursable expenses and services with the completed ATTORNEY COMPENSATION FORM.

h. ATTORNEY shall submit the ATTORNEY COMPENSATION FORM via email to IDO.Accounting@cco.sccgov.org or via U.S. mail to "Attention: IDO Accounting" at the address identified in the section of this Agreement captioned Notices. Payment by the County shall be due net thirty (30) days from the date of receipt of a correct and properly completed ATTORNEY COMPENSATION FORM and supporting documentation that satisfies the requirements of this section 3. Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded. Any invoices, documentation, or correspondence received by the County after business hours shall be deemed to have been received on the following business day. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

i. Expenses for travel outside of Santa Clara County shall be eligible for reimbursement only if the travel is pre-approved by the DIRECTOR. All travel expenses must be reasonable and in accordance with the COUNTY's travel policy; travel-reimbursement requests must be accompanied by detailed receipts. ATTORNEY will not be reimbursed for mileage for any travel within the San Francisco Bay Area. If ATTORNEY travels outside of Santa Clara County for a Class 4 or Class 5 case, as defined in Exhibit A (IDO Fee Schedule), ATTORNEY's travel time may be paid at the hourly rate with pre-approval by the DIRECTOR.

j. ATTORNEY will keep complete records of the services provided together with all related actual, reasonable, and necessary out-of-pocket expenses applicable to the

work provided under this AGREEMENT for a period of three years after final payment under this AGREEMENT was issued or the conclusion of litigation involving this AGREEMENT, whichever is later. The DIRECTOR, or an authorized representative, will be given reasonable access to these records for the purposes of an audit.

2. Section 19, regarding Survival, is hereby deleted and replaced with the following:

19. Survival

All representations, warranties, and covenants contained in this AGREEMENT, or in any instrument, certificate, exhibit, or other writing intended by the parties to survive this AGREEMENT, shall survive the termination or expiration of this AGREEMENT, including but not limited to the terms of Sections 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 27, and Exhibit B-3 IDO.

3. Section 23, regarding Conflicts of Interest, is hereby deleted and replaced with the following:

23. Conflicts of Interest; Political Reform Act

ATTORNEY shall comply, and require its employees, agents, and subcontractors to comply, with all (1) applicable requirements governing avoidance of impermissible client conflicts; and (2) federal, state, and local conflict of interest and disclosure laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.), and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this AGREEMENT and is grounds for immediate termination of this AGREEMENT by the COUNTY.

In accepting this AGREEMENT, ATTORNEY covenants that they presently have no interest, and will not acquire any interest, direct or indirect financial or otherwise, which would conflict in any manner or degree with the performance of this AGREEMENT. ATTORNEY further covenants that, in the performance of this AGREEMENT, they will not use any contractor or employ person having such an interest. ATTORNEY, including but not limited to ATTORNEY's employees, agents, and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this AGREEMENT, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this AGREEMENT, ATTORNEY shall, upon execution of AGREEMENT, provide the COUNTY with the names, description of individual duties to be performed, and email addresses of all individuals, including but

not limited to ATTORNEY's employees, agents, and subcontractors, that could be substantively involved in "mak[ing] a governmental decision" or "serv[ing] in a staff capacity" and in that capacity "participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of ATTORNEY's service to the COUNTY under this AGREEMENT. ATTORNEY will immediately notify the COUNTY of the names and email addresses of any additional individual later assigned to provide such service to the COUNTY under this AGREEMENT in such a capacity. ATTORNEY shall immediately notify the COUNTY of the names of individuals working in such a capacity who, during the course of the AGREEMENT, end their service to the COUNTY. ATTORNEY shall ensure that all such individuals identified pursuant to this paragraph understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable conflict of interest and disclosure laws and regulations, and shall file Statements of Economic Interests within 30 days of commencing service pursuant to this AGREEMENT, annually by April 1, and within 30 days of their termination of service pursuant to this AGREEMENT.

4. Section 29, regarding COVID-19 Requirements, is hereby deleted and replaced with the following:

29. COVID-19 Requirements

ATTORNEY shall comply with all County requirements in effect relating to COVID-19 for persons who routinely perform services for County onsite and share airspace with or proximity to other people at a County facility as part of their services for County as set forth in a County Health Order (or similar directives) available at <https://covid19.sccgov.org/home>, and incorporated herein by this reference. ATTORNEY shall comply with all reasonable requests by County for documentation demonstrating ATTORNEY'S compliance with this Section.

5. Section 31, regarding Levine Act Compliance, is hereby added and incorporated into the Agreement as follows:

31. Levine Act Compliance

ATTORNEY will comply, and will ensure that its agents (as that term is defined under 2 Cal. Code Regs. § 18438.3(a)) and its subcontractors identified in ATTORNEY's proposal responding to a COUNTY solicitation and/or identified in this Agreement ("Subcontractors") comply, with California Government Code section 84308 ("Levine Act") and the applicable regulations of the Fair Political Practices Commission concerning campaign disclosure (2 California Code of Regulations sections 18438.1 – 18438.8), which (1) require a party to a proceeding involving a contract to disclose on the record of the proceeding any contribution, as defined by Government Code section 84308(a)(6), of more than \$250 that the party or their agent has made within the prior 12 months, and (2) prohibit a party to a proceeding involving a contract from making a contribution, as defined by Government Code section 84308(a)(6), of more than \$250 to

any COUNTY officer during the proceeding and for 12 months following the final decision in the proceeding. ATTORNEY agrees to submit any disclosures required to be made under the Levine Act at the Office of the Clerk of the Board of Supervisors website at <http://www.sccgov.org/levineact>, and ATTORNEY shall require Subcontractors to do the same. If this Agreement is to be considered or voted upon by the County's Board of Supervisors, ATTORNEY shall complete the Levine Act Contractor Form: Identification of Subcontractors and Agents, and if applicable, shall ensure that any Subcontractor completes the Levine Act Subcontractor Form: Identification of Agents, and ATTORNEY must submit all such forms to the COUNTY as a prerequisite to execution of the Agreement.

6. Exhibit D, Contractor Certification of Compliance with COVID-19 Vaccine Requirements, is hereby deleted.

Except as provided herein, all other provisions of the Agreement shall remain in full force and effect. In the event of a conflict between the Agreement and this amendment, the amendment shall control.

By signing below, each signatory warrants and represents that they executed this Agreement in their capacity, and that they have the authority to bind the entity listed below to contractual obligations.

COUNTY OF SANTA CLARA

ATTORNEY

SUSAN ELLENBERG
President, Board of Supervisors

DocuSigned by:
Brian McComas
BRIAN C. MCCOMAS
Attorney
Date: 4/8/2024

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.
Attest:

CURTIS BOONE
Acting Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
Laura Trice
LAURA S. TRICE
Deputy County Counsel