

**COUNTY OF TULARE  
SERVICES AGREEMENT  
MILLENNIUM CAPITAL PROJECT FUND PROGRAM ADMINISTRATION AGREEMENT**

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**THIS MILLENNIUM CAPITAL PROJECT FUND PROGRAM ADMINISTRATION AGREEMENT** (this "Agreement") is entered into as of July 30, 2024, between the **COUNTY OF TULARE**, a political subdivision of the State of California (the "County"), and **PFM ASSET MANAGEMENT LLC**, a Delaware Limited Liability Company (the "Administrator" or "CONTRACTOR"). County and Administrator are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A.** On December 8, 1999, the Board of Directors of the Tulare County Public Financing Authority (the "Authority") adopted its Resolution No. PFA-99-01, and the Board of Supervisors (the "Board") of the County adopted its Resolution No. 99-0948, approving the Authority's issuance and sale of taxable revenue bonds known as the Authority's "Variable Rate Demand Bonds, Series 1999 (Millennium Fund Program)" in an aggregate principal amount of \$45 million and with a maturity date of no later than August 1, 2034 (the "1999 Bonds") for the benefit of, and in order to provide the County with funds for the acquisition and construction of public capital improvements and the repair and maintenance costs relating thereto.
- B.** In connection with the issuance and sale of the 1999 Bonds, the County and the Authority entered into a site lease dated as of December 1, 1999 (the "1999 Site Lease"), pursuant to which the County leased certain real property and improvements described therein (the "1999 Leased Assets") to the Authority for purposes of financing the construction of certain public facilities.
- C.** In connection with the issuance and sale of the 1999 Bonds, the County and the Authority entered into a lease agreement dated as of December 1, 1999 (the "1999 Lease Agreement"), pursuant to which the County leased the 1999 Leased Assets back from the Authority for purposes of financing the construction of certain public facilities, with the 1999 Leased Assets serving as and pledged as security for the payment of the principal of, and the interest on, the 1999 Bonds.
- D.** Pursuant to an unrecorded Indenture of Trust dated as of December 1, 1999 (the "1999 Indenture of Trust"), by and between the Authority and U.S. Trust Company, National Association (the "1999 Trustee"), the Authority assigned to the 1999 Trustee, among other things, its rights to receive lease payments from the County under the 1999 Lease Agreement in order to pay the principal of, and the interest on, the 1999 Refunding Bonds, and the right to exercise rights and remedies conferred on the Authority under the 1999 Lease Agreement to enforce payment of those lease payments.
- E.** The 1999 Indenture of Trust also established the County's "Millennium Fund Program," whereby the County securitized its Tobacco Settlement Revenues (as defined in the 1999 Lease Agreement) and directed the investment of said securitized funds, including the proceeds from the 1999 Bonds, for the purpose of generating investment income that the County annually has used to help defray the costs of capital improvements to various County buildings and related facilities.
- F.** On December 8, 1999, the Board of Directors of the Authority also approved a "Program Administration Agreement" between the Authority and Pacific Financial Management, Inc. ("PFM") for PFM to serve as Administrator of the Millennium Fund Program (the "1999 Program Administrator Agreement").



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- G.** On May 23, 2000, the Board of Directors of the Authority adopted its Resolution No. PFA-2000-01 consenting to PFM's assignment of the 1999 Program Administration Agreement to its affiliate PFM Asset Management LLC.
- H.** On December 5, 2006, the Board of Directors of the Authority adopted its Resolution No. PFA-2006-02, and the Board adopted its Resolution No. 2006-0886 approving the Authority's issuance and sale of taxable revenue bonds known as the Authority's "Refunding Bonds, Series 2006 (Millennium Fund Program) (Federally Taxable)" in an aggregate principal amount not to exceed \$43 million and with a maturity date of no later than October 1, 2034 (the "2006 Refunding Bonds") in order to defease and redeem in whole the outstanding principal amount of the 1999 Bonds.
- I.** The defeasance and redemption of the 1999 Bonds had the effect of terminating the 1999 Site Lease, the 1999 Lease Agreement, and the 1999 Indenture of Trust, and releasing the security and leasehold interests in the 1999 Leased Assets.
- J.** In connection with the issuance and sale of the 2006 Refunding Bonds, the County and the Authority entered into a new site lease dated as of December 1, 2006, and recorded in the Official Records of Tulare County, California ("Official Records") on December 14, 2006, as Instrument No. 2006-0128976 (the "2006 Site Lease"), pursuant to which the County leased certain real property and improvements described therein (the "2006 Leased Assets") to the Authority for purposes of financing the construction of certain public facilities.
- K.** In connection with the issuance and sale of the 2006 Refunding Bonds, the County and the Authority entered into a new lease agreement dated as of December 1, 2006, and recorded in the Official Records on December 14, 2006, as Instrument No. 2006-0128977 (the "2006 Lease Agreement"), pursuant to which the County leased the 2006 Leased Assets back from the Authority for purposes of financing the construction of certain public facilities, with the 2006 Leased Assets serving as and pledged as security for the payment of the principal of, and the interest on, the 2006 Refunding Bonds.
- L.** Pursuant to an unrecorded Indenture of Trust dated as of December 1, 2006 (the "2006 Indenture of Trust"), by and between the Authority and The Bank of New York Trust Company, N.A. (the "2006 Trustee"), the Authority assigned to the 2006 Trustee, among other things, its rights to receive lease payments from the County under the 2006 Lease Agreement in order to pay the principal of, and the interest on, the 2006 Refunding Bonds, and the right to exercise rights and remedies conferred on the Authority under the 2006 Lease Agreement to enforce payment of those lease payments.
- M.** The 2006 Indenture of Trust also restated and continued the County's Millennium Fund Program and Administrator has continued to act as the Program Administrator pursuant to the 1999 Program Administration Agreement.
- N.** The County and the Authority have authorized prepayment of all remaining lease payments under the 2006 Lease Agreement and redemption and defeasance of the outstanding principal of and interest on the 2006 Bonds, which in turn will have the effect of terminating the 2006 Site Lease, the 2006 Lease Agreement, and the 2006 Indenture of Trust, releasing the security and leasehold interests in the 2006 Leased Assets, and assignment of the Authority's rights to and interests in the monies connected with the 2006 Indenture of Trust to the County.



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**O.** Notwithstanding the termination of the 2006 Indenture of Trust, the County intends to continue the operation of the Millennium Fund Program, henceforth to be known as the "Millennium Capital Project Fund Program" as amended and restated under the terms and conditions set forth on the attached **Exhibit A** and wishes to continue to have Administrator act as the Program Administrator for said program.

**P.** Administrator is willing to continue to act as the Program Administrator for said program, under the terms of this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. TERM:** This Agreement becomes effective as of July 30, 2024, and expires at 11:59 PM on July 29, 2029, unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.

**2. SERVICES:** Administrator shall provide County with the services and products shown on the attached **Exhibits A and A-1**. At all times, the Administrator and its staff assigned to provide services and products hereunder shall comply with the (a) the County's then-current Investment Policy of the Millennium Capital Project Fund Program, and (b) applicable requirements of the U.S. Investment Advisers Act of 1940, that Act's implementing Federal regulations, and any California statutes and regulations applicable to such services and products.

**3. PAYMENT FOR SERVICES:** As consideration for the services and products provided by Administrator hereunder, County shall pay Administrator in accordance with the attached **Exhibit B**.

**4. INSURANCE:** Before approval of this Agreement by County, Administrator must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached **Exhibit C**.

**5. GENERAL AGREEMENT TERMS AND CONDITIONS:** County's "General Agreement Terms and Conditions (Form revision approved as of 01/01/2021)" are attached as **Exhibit D** and incorporated by reference and made a part of this Agreement. If there are any inconsistencies between this Agreement and Exhibit D, this Agreement shall prevail.

**6. NOTICES:** (a). Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**County:**

County Administrative Officer  
County of Tulare  
2800 W. Burrell Ave.  
Visalia, CA 93291  
Phone No.: 559-636-5005  
Fax No.: 559-733-6318

**With a Copy to:**

Auditor-Controller/Treasurer-Tax Collector  
County of Tulare  
221 South Mooney Blvd., Room 101 E  
Visalia, CA 93291  
Phone No.: 559-636-5200  
Fax No.: 559-733-6988



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**Administrator:**

PFM Asset Management LLC  
Attn: Lauren Brant, Managing Director  
1 California St., Suite 1000  
San Francisco, CA 94111  
Phone No.: 415-393-7270

**With a Copy to:**

PFM Asset Management LLC  
Attn: Kenneth Schiebel, CFA, Chief Investment Officer  
213 Market St.  
Harrisburg, PA 17101  
Phone No.: 717-231-6215

(b). Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

**7. AUTHORITY:** Each Party represents and warrants to the other that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind that Party to its terms. Each Party acknowledges that the other Party has relied upon this representation and warranty in entering into this Agreement.

**8. COUNTERPARTS:** The Parties may sign this Agreement in counterparts, each of which shall be deemed an original and all of which taken together form one and the same agreement. A signed copy or signed counterpart of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of a signed original or signed copy of this Agreement.

**9. MANUAL OR ELECTRONIC SIGNATURES:** The Parties may sign this Agreement by means of manual or electronic signatures. The Parties agree that the electronic signature of a Party, whether digital or encrypted, is intended to authenticate this Agreement and to have the same force and effect as a manual signature. For purposes of this Agreement, the term "electronic signature" means any electronic sound, symbol, or process attached to or logically associated with this Agreement and executed and adopted by a Party with the intent to sign this Agreement, including facsimile, portable document format, or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), as it may be amended from time to time.

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**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**PFM ASSET MANAGEMENT LLC**

Date: July 18, 2024

By 

Print Name Lauren Brant

Title Managing Director

Date: July 18, 2024

By 

Print Name Kenneth Schiebel, CFA

Title Chief Investment Officer


[Pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

**COUNTY OF TULARE**

Date: 7/30/2024

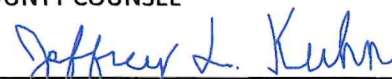
By   
Chair, Board of Supervisors

ATTEST: JASON T. BRITT  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By   
Deputy Clerk



Approved as to Form  
COUNTY COUNSEL

By   
Deputy

Matter # 2024534



**EXHIBIT A**  
Terms and Conditions of  
the Amended and Restated Millennium Capital Project Fund Program  
(Attached)

## *Exhibit A*

### **Amended and Restated Millennium Capital Project Fund Program**

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The Millennium Fund Program, heretofore established and operated on behalf of the County under the terms of the Indenture of Trust and the Lease Agreement (defined below), is hereby amended and restated, shall henceforth be known as the “Millennium Capital Project Fund,” and shall continue as amended and restated according to the terms shown in this *Exhibit A* and the attached *Exhibit B*.

**1. Definitions.** The following words and phrases shall have the following meanings unless the context otherwise requires:

“Administrative Fee” means the amount payable to the Administrator as its annual administrative fee in connection with the performance of its duties hereunder and under the Program Administration Agreement.

“Administrator” means PFM Asset Management LLC, appointed in the Program Administration Agreement with the County dated as of July 30, 2024, and any successor Administrator acting thereunder appointed by the County.

“Authority” means the Tulare County Public Financing Authority.

“Cost” or “Costs” in connection with a Project or Projects includes the cost of the acquisition of all lands, structures, equipment, rights-of-way, franchises, easements and other property rights and interests acquired by the County for a Project; the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all labor, materials, machinery and equipment, financing charges, interest prior to and during construction and for such a limited period after completion of such construction as may be approved by the County (not to exceed one year after completion of the Project); the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of costs and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing a Project; administrative expenses; and such other expenses as may be necessary or incident to the study, design, acquisition, bidding, and construction of a Project, the financing of such acquisition and construction and the placing of such Project in operation; and the costs of the maintenance and repair of any public capital improvement.

“County” means the County of Tulare.

“Eligible Investment” means any of the investments which are at the time of investment legal investments under Article 1 (commencing with section 53600) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code, as it may be amended from time-to-time, but subject to the applicable limitations of Article 2 (commencing with

section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code, as it may be amended from time-to-time and of the County's Millennium Capital Project Fund investment policy.

"Extraordinary Expenses" means all reasonable fees and expenses of the County or the Administrator relating to the Millennium Capital Project Fund Program, described herein including, but not limited to, the reasonable fees and disbursements of counsel and municipal advisors utilized by the County (including the reasonably allocated costs and expenses, if any, of in-house counsel and legal staff), and counsel for the Administrator, if any, in connection with said program.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., formerly known as The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture of Trust.

"Indenture of Trust" means that certain unrecorded Indenture of Trust dated as of December 1, 2006, by and between the Authority and the Trustee.

"Investment Agreement" means any written investment agreement or repurchase agreement to be entered into by the Administrator at the written direction of the County Treasurer for the purpose of investing monies deposited in certain of the funds referenced below, which investment agreement or repurchase agreement, and any amendments thereto or replacements thereof, is subject to the written approval of the County.

"Lease Agreement" means that certain lease agreement between the County and the Authority dated as of December 1, 2006, and recorded in the Official Records of Tulare County on December 14, 2006, as Instrument No. 2006-0128977.

"Millennium Fund" means the fund by that name originally created pursuant to Section 5.02 of the Indenture of Trust and continued hereunder, as amended and restated, as the "Millennium Capital Project Fund."

"Millennium Capital Project Fund Program" means the revenue and investment policies and practices described in this *Exhibit*.

"Millennium Capital Project Fund Program Investment Policy" means the current investment policy, adopted by the County Board of Supervisors, that together with this *Exhibit* and the Program Administration Agreement, governs the operation of the Millennium Capital Project Fund Program.

"Ongoing Expenses" means (i) the annual Administrator's Fee as provided in the Program Administration Agreement and (ii) the fee and expenses of a custodial bank or other depository, if any, whose services are contracted for by the County Treasurer in connection with the operation of the Millennium Capital Project Fund Program.



“Program Administration Agreement” means the agreement dated as of July 30, 2024, between the County and the Administrator setting forth the Administrator's duties and compensation, as such agreement may be amended from time-to-time.

“Project” or “Projects” means any public capital improvement project or projects of the County, and the maintenance and/or repairs with respect to such project or projects. A Project may include, but is not necessarily limited to, acquisition of all lands, structures, equipment, rights-of-way, franchises, easements and other property rights and interests required by the County for a Project; the demolishing, removing or relocating any buildings or structures on lands so acquired, including acquiring any lands to which such buildings or structures may be moved or relocated; all labor, materials, machinery and equipment, financing charges, interest prior to and during construction and for such a limited period after completion of such construction as may be approved by the County (not to exceed one year after completion of the Project); engineering, financial and legal services, development of plans, specifications, studies, surveys, estimates of costs and revenues, other services necessary or incident to determining the feasibility or practicability of constructing a Project; administrative; and such other services as may be necessary or incident to the study, design, acquisition and construction of a Project, and the placing of such Project into operation, and all construction of a Project.

“Revenues” means all income, revenues, issues, profits, investment earnings and other sums of money and funds referred to herein, including, without limitation, all Tobacco Settlement Revenues received by the County and deposited into the Millennium Capital Project Fund.

“Tobacco Settlement Revenues” means amounts received by the County under and pursuant to that certain Master Settlement Agreement dated as of November 23, 1998, between certain public agencies and participating tobacco companies, and the Memorandum of Understanding between the Attorney General of the State of California and various local jurisdictions, dated as of August 5, 1998, and any release and/or escrow instructions implementing said agreements.

“Tobacco Settlement Revenue Fund” or “TSR Fund” means the fund, originally established by the County pursuant to Section 407 of the Lease Agreement and section 5.04 of the Indenture of Trust, which is discontinued hereunder.

## **2. Revenues and Funds.**

### **(a.) Continuation and Closure of Certain Funds and Accounts.**

(i.) The Millennium Capital Project Fund and its subaccounts, if any, created by the County and held by the Trustee under the Indenture of Trust are hereby continued and upon receipt by the County shall be held and used by the County in accordance with the terms and conditions of this *Exhibit*. The Millennium Capital Project Fund shall be a capital fund of the County, to be held separate and apart from the County's General Fund. The Millennium Capital Project Fund shall be held and invested separately and apart from the

County's Pooled Investment Fund and shall be subject to its own investment policy, a copy of which is attached as ***Exhibit B***.

(ii.) The County is hereby authorized to create accounts and subaccounts in the Millennium Capital Project Fund in order to segregate monies or to accomplish any other administrative purpose.

(iii.) The following funds and accounts previously created by the County and held by the Trustee under the Indenture of Trust are hereby closed: (1.) the Bond Fund; (2.) the TSR Fund; (3.) the Extraordinary Expense Fund; and (4.) the Cost of Issuance Fund. Upon receipt of any monies remaining in said funds and accounts to be closed, the County shall transfer those monies into the Millennium Capital Project Fund.

**(b.) Payments into and Use of Monies in the Millennium Capital Project Fund.**

(i.) The County shall deposit into the Millennium Capital Project Fund all Tobacco Settlement Revenues which are received by the County.

(ii.) Monies in the Millennium Capital Project Fund shall be deposited into a custodial bank or other depository selected by the County Treasurer and then invested in Eligible Investments in accordance with the current approved Millennium Capital Project Fund investment policy and the Program Administration Agreement. Earnings on monies in the Millennium Capital Project Fund shall be credited to the Millennium Capital Project Fund, as received.

(iii.) On or about July 1 of each year, the County Treasurer will cause to be disbursed from the Millennium Capital Project Fund to the County an amount equal to the amount approved by the Board of Supervisors for the upcoming fiscal year, not to exceed \$4,500,000 in any Fiscal Year, except that by a 4/5 vote the Board of Supervisors may authorize disbursement of a greater amount for the fiscal year in question. These monies shall be used by the County to pay part or all of the Cost of a Project or Projects, as the case may be, and to pay Ongoing Expenses and Extraordinary Expenses, if any.

**(c.) Reports from the Administrator; Examination of Books.** The Administrator shall furnish the County Treasurer with monthly statements of the activity and assets held in the Funds and accounts created or continued hereunder, and provide the reports required by the Millennium Capital Project Fund Program Investment Policy and the Program Administration Agreement. The Administrator shall, at the prior written request of the County Treasurer, permit representatives of the County Treasurer during the Administrator's normal business hours with reasonable prior notice to examine the books and records of the Administrator relating to the Funds and accounts.

**3. Administrator and the Program Administration Agreement.** PFM Asset Management LLC is appointed as the Administrator. The Administrator shall be responsible

for providing the County with the services and products required under the Program Administration Agreement and referred to in this ***Exhibit***.

#### **4. Investment of Monies.**

(a.) **Investment of Monies in Funds.** All monies deposited in the Millennium Capital Project Fund shall be invested in Eligible Investments in accordance with the County's current approved Millennium Capital Project Fund investment policy and the Program Administration Agreement. Monies held as part of any Fund shall be immediately invested and reinvested by the Administrator in Eligible Investments. All such Eligible Investments purchased shall mature or be redeemable or be subject to repurchase by another entity on a date or dates prior to the time when the monies so invested will be required for expenditure.

Eligible Investments acquired as an investment of monies in any Fund created or continued hereunder shall be credited to such Fund. To determine the market value of the assets held in the Millennium Capital Project Fund at any time in accordance with this ***Exhibit***, except as otherwise provided herein, all Eligible Investments credited to such Fund shall be valued at fair market value. The value of Eligible Investments in each Fund shall be determined as of each April 1 and upon any transfer of monies from the Millennium Capital Project Fund to the County or upon the request of the County. The value of Eligible Investments so determined as of any such date shall constitute the "market value of assets" for purposes of this ***Exhibit*** and the Program Administration Agreement until the next date of valuation. The value of any Investment Agreement or Repurchase Agreement shall be par unless an event of default has occurred thereunder.

Subject to the provisions hereof, investments in any Funds created or continued by this ***Exhibit*** may be commingled for the purposes of making, holding, and disposing of investments. Notwithstanding provisions herein for transfer to or holding in particular Funds amounts received or such commingling, the Administrator shall at all times account for such investments in the Funds to which they are credited and otherwise as provided in this ***Exhibit***. The Administrator may act as principal or agent in the acquisition or disposition of any Eligible Investment. The Administrator may sell, or present for redemption, any Eligible Investment to the credit of any Fund created or continued by this ***Exhibit*** whenever it shall be necessary in order to provide monies to meet any required payment, transfer, withdrawal or disbursement from such Fund, and the Administrator shall not be liable for any loss resulting from such investment.

Notwithstanding any provision to the contrary contained herein, all monies subject to investment under this ***Exhibit*** shall be invested in Eligible Investments.

The County acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the County the right to receive brokerage confirmations of security transactions as they occur, the County specifically waives receipt of such confirmations to the extent allowed by law. The Administrator will furnish



the County periodic cash transaction statements which include detail for all investment transactions made by the Administrator hereunder.

**5. Management of the Millennium Capital Project Fund Program.** The County Treasurer, in consultation with the County Administrative Officer or their designees, is authorized and directed to manage the Millennium Capital Project Fund Program in accordance with the terms and conditions of this ***Exhibit***. As the program manager, the County Treasurer or designee is authorized to issue and enforce supplemental instructions and directives to implement the Millennium Capital Project Fund Program as may be necessary or convenient.

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**EXHIBIT A-1**  
Scope of Services  
(Attached)

## **EXHIBIT A-1**

### **SCOPE OF SERVICES**

Specific responsibilities of the selected investment adviser will include, but are not limited to, the following:

- A. Advise the County on all matters pertaining to the investment management of the MCPFP in accordance with the Investment Policy.
- B. Provide the following discretionary investment management services:
  - 1. Execute investment trades on behalf of the Program in accordance with the Investment Policy and all applicable statutes.
  - 2. Solicit competitive quotes from financial institutions and broker/dealers for investments and maintain written documentation of such quotes for review by the County, upon request.
  - 3. Provide copies of the trade ticket for each trade PFMAM executes.
  - 4. Interface with the Program's custodian and staff to assure the coordination of investments, delivery of securities and availability of funds as needed.
  - 5. Monitor the portfolio in relation to the investment market to determine if investments should be repositioned.
  - 6. Monitor the credit worthiness of financial institutions and investments in the portfolio.
- C. Provide input regarding the appropriate measurement of portfolio performance and benchmark(s) to assess performance.
- D. Reporting requirements to be delivered to the County:
  - 1. Monthly statements detailing investment activity, earnings, and the market value of the portfolio holdings,
  - 2. Quarterly reports showing the portfolio's rate of return and sufficient detail for accounting (recording and management reporting) and financial statement (auditing) purposes,
  - 3. Annual Program report to be prepared for the Board of Supervisors, the Auditor/Treasurer, County Administrative Officer, and the Treasury Oversight Committee, per Policy.
- E. Perform an annual review and evaluation of the MCPFP Investment Policy and provide written comments and recommend changes as needed.
- F. Communicate regularly with County staff on investment decisions and strategy. Provide information regarding current and forecasted market and economic conditions, as needed.
- G. Other investment management services, as may be mutually agreed to in writing, if the firm has expertise and experience in these areas.

**EXHIBIT B**  
Payment For Services  
(Attached)

## **EXHIBIT B**

### **PAYMENT FOR SERVICES**

For services provided by PFMAM pursuant to this agreement, the County shall pay PFMAM an annual fee, in monthly installments, based on the daily net assets under management according to the fee schedule below:

Average Assets Under Management	Fees
First \$100 million of AUM	9 basis points (0.09%)
Over \$100 million of AUM	6 basis points (0.06%)

\*Minimum annual fee of \$40,000 applies to all accounts.

"Daily net assets" is defined to include the amortized value of securities, accrued interest, and cash or any money market fund balances.

PFMAM will bill the County monthly for services performed under this agreement, said bill to include a statement indicating the basis upon which the fee was calculated. The County shall pay to PFMAM the amount payable pursuant to this agreement no later than on the 15th day of the month following the month during which PFMAM's statement was rendered.

**EXHIBIT C**  
**PROFESSIONAL SERVICES CONTRACTS**  
**INSURANCE REQUIREMENTS**

Administrator shall maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the Administrator, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the Administrator has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the Administrator's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. Administrator must submit endorsements to the General Liability reflecting the following provisions:
  - a. *The County, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the Administrator including material, parts, or equipment furnished in connection with such work or operations.*
  - b. *For any claims related to this project, the Administrator's insurance coverage shall be primary insurance as respects the County, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, agents, officials, employees or volunteers shall be excess of the Administrator's insurance and shall not contribute with it.*

- c. Administrator hereby grants to County a waiver of any right to subrogation which any insurer of Administrator may acquire against the county by virtue of the payment of any loss under such insurance. Administrator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.*
  - d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after written notice has been provided to the County.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Administrator, its employees, agents and subcontractors. Administrator waives all rights against the County and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Self-insured retentions and Deductions are the sole responsibility of the Administrator.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the County, the Administrator shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the County. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer.

Rev. 3/3/17

**EXHIBIT D**  
County's  
General Agreement Terms and Conditions  
(Attached)



**COUNTY OF TULARE'S  
GENERAL AGREEMENT TERMS AND CONDITIONS  
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**1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK:** CONTRACTOR is not entitled to any payments from COUNTY until the County Department for which services are provided under the Agreement approves services, including any furnished deliverables, as satisfying all of the requirements of this Agreement. Payments to CONTRACTOR by COUNTY shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by CONTRACTOR without delay and at no cost to the COUNTY.

**2. DISALLOWANCE:** If CONTRACTOR requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and COUNTY. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.

**3. LIABILITY OF COUNTY:** COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

**4. QUALIFIED PERSONNEL:** CONTRACTOR shall utilize only competent personnel under the supervision of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with COUNTY'S reasonable requests regarding assignment and/or removal of

personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**5. INDEPENDENT CONTRACTOR STATUS:** The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY, except that CONTRACTOR shall be an Agent of COUNTY when making trades in securities on behalf of the COUNTY.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

**6. COMPLIANCE WITH LAW:** CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to

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wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

**7. LICENSES AND PERMITS:** CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

**8. GOVERNING LAW:** The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in Tulare County, California.

**9. RECORDS AND AUDIT:** CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon its reasonable prior request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records to review CONTRACTOR'S compliance with the terms of CONTRACTOR'S agreement with the COUNTY, during CONTRACTOR'S regular business hours and no more frequently than annually for a period of five (5) years from the date of final payment under this Agreement.

**10. CONFLICT OF INTEREST:**

(a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer,

employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question.

**11. INSURANCE:** The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

**12. INDEMNIFICATION AND DEFENSE:**

(a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature

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whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the wrongful acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the

Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to COUNTY for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

(d) To the fullest extent permitted by law, COUNTY must indemnify, defend (at COUNTY'S sole cost and expense and with legal counsel approved by CONTRACTOR, which approval may not be unreasonably withheld), protect and hold harmless CONTRACTOR, all subsidiaries and divisions of CONTRACTOR, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, a "Contractor Indemnified Party" and collectively, the "Contractor Indemnified Parties"), from and against all Claims which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of COUNTY in connection with this Agreement (including, without limitation, the wrongful acts, errors and/or omissions of COUNTY, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). COUNTY'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of a Contractor Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of a Contractor Indemnified Party, then COUNTY's indemnification obligation shall be reduced in proportion to the

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established comparative liability.

(e) The duty to defend is a separate and distinct obligation from COUNTY'S duty to indemnify. COUNTY shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to COUNTY of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to COUNTY by any Contractor Indemnified Party or the payment or advance of defense costs by any Contractor Indemnified Party cannot be a condition precedent to enforcing the Contractor Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than COUNTY are responsible for the Claim does not relieve COUNTY from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if COUNTY asserts that liability is caused in whole or in part by the negligence or willful misconduct of a Contractor Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of a Contractor Indemnified Party, then COUNTY may submit a claim to the CONTRACTOR for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Contractor Indemnified Party. COUNTY'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Contractor Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. COUNTY'S liability for indemnification under this Agreement is in addition to any liability COUNTY may have to CONTRACTOR for a breach by COUNTY of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit COUNTY'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

**13. TERMINATION:**

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of

termination. COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on CONTRACTOR under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to CONTRACTOR.



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Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the nondefaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages

against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

**14. LOSS OF FUNDING:** It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment. The COUNTY agrees to provide the CONTRACTOR with prompt notice of any event of non-appropriation.

**15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Under applicable federal and state law, if CONTRACTOR submits a false claim to COUNTY under this Agreement, then CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to COUNTY if CONTRACTOR:

(a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;

(c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease

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an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

**16. FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE-542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

**17. WORKS FOR HIRE:** CONTRACTOR acknowledges that all original work(s) created for the COUNTY under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) (provided the works are afforded protection under the code) and hereby assigns to COUNTY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR solely for the COUNTY in performance of this Agreement for COUNTY will be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section. To perform the services and support the operations of the Contractor, the Contractor will have a perpetual, no-cost license to use the property that falls under the County's ownership.

**18. WORK PRODUCT:** All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and CONTRACTOR must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of

this Agreement.

**19. TIME OF ESSENCE:** The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

**20. CONFIDENTIALITY:** CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY; if required by law or judicial process or in connection with a regulator's examination of CONTRACTOR. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If the County believes they are obligated to disclose, they must notify the Contractor in writing. The Contractor will have thirty (30) days to determine if they will allow the County to disclose. If the Contractor decides to move to protect the confidential information, the County will not disclose until: (1) the Contractor has exhausted its options to protect the confidential information or (2) the County obtains a judicial order to disclose.

The duty of COUNTY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

**21. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

**22. DISPUTES AND DISPUTE RESOLUTION:** (a) CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute.

(b) **Informal Negotiations.** If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, then the Parties shall make their best efforts to informally resolve such disputes. To foster a spirit of cooperation and efficiency in the administration of this

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Agreement, disputes between the Parties shall first be subjected to a good faith negotiations process as follows:

The aggrieved Party shall give the other Party, as soon as possible after the event giving rise to the concern, written notice setting forth, with specificity, the issues to be resolved. Notice shall be provided consistent with the terms of the Agreement. Said notice shall suggest a date, time and place for the negotiations session. The Parties may jointly decide to meet at another time and place; provided, however, the Parties agree that such negotiations session shall commence within fifteen (15) calendar days after the date that the original notice was given to the applicable Party, unless the Parties agree that there is good cause to extend this time limit.

(1) The Parties agree that the negotiations session(s), including proceedings or discussions concerning the proposed negotiations session(s), are to be considered confidential settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a negotiations session by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including mediation and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or otherwise admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the negotiations session(s).

(2) Absent mutual consent of the Parties, if a noticed negotiations session fails to commence within the fifteen (15) calendar day period, or if a reasonable attempt to schedule or reschedule the negotiations session has not been made within those fifteen (15) calendar days, then the negotiations obligation imposed under this Section shall be deemed to have been satisfied and the Parties shall be free to pursue their rights and remedies under this Section 22, unless the reason for such failure to convene a negotiations session is the refusal of the Party asserting a claim to participate in the negotiations session, in which event said claim will be deemed to have been waived.

(3) If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first negotiations session, then upon the written request of either Party, the dispute may be submitted to non-binding mediation in accordance with this Section 22 ("Mediation Request").

(c) **Mediation.** If a dispute arising out of or relating to this Agreement is not resolved through the above-described negotiations process, then within thirty (30) days after notice is provided through a Mediation Request, the Parties shall participate in nonbinding mediation administered by a mediator to help mediate and settle the dispute as soon as practicable. The mediation shall proceed as follows:

(1) The mediation shall be held at a mutually agreeable location within Tulare County, California.

(2) The Parties shall mutually select the mediator, who shall be an attorney currently licensed to practice law in the State of California, or be a retired federal or state judge or magistrate. If the Parties disagree on selection of the mediator, then the Parties will select the mediator by lot from among two nominations provided by each Party.

(3) The mediator shall meet with and hear presentations by the Parties as soon as practicable after appointment.

(4) Mediation will be conducted consistent with California Evidence Code Sections 1115-1128. The mediator shall owe a professional duty to both Parties, and shall be barred from testifying in any litigation concerning any information obtained or disclosed in the course of the mediation.

(5) Each side shall bear its own costs and attorneys' fees, and one-half of all fees and expenses of the mediator.

(6) Unless otherwise agreed upon by the Parties in writing, the mediation shall be completed within thirty (30) days of the selection of the mediator.

(7) The Parties agree that the mediation, including proceedings or discussions concerning the mediation, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written,

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made during the mediation by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the mediation.

(8) The mediator's decision shall not be binding on or admissible against either Party. If mediation fails to resolve the dispute, then either Party may pursue litigation to resolve the dispute.

**23. PROPERTY TAXES:** Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

**24. FURTHER ASSURANCES:** Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

**25. CONSTRUCTION:** This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

**26. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

**27. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**28. WAIVERS:** The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either

Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

**29. ORDER OF PRECEDENCE:** In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

**30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

**31. ENTIRE AGREEMENT:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

**32. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or



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harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

**33. DRUG-FREE WORKPLACE POLICY:** CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises.

CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

**34. RECYCLED PAPER CONTENT:** To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.

