

AGREEMENT FOR LEGAL SERVICES
Between
TULARE PUBLIC CEMETERY DISTRICT
And
COUNTY OF TULARE

This Agreement ("Agreement") is made and entered into as of _____, 2018 ("Effective Date") between the TULARE PUBLIC CEMETERY DISTRICT ("Client") and the COUNTY OF TULARE, through its County Counsel's Office ("Attorney"). Client and Attorney are each a "Party" and together are the "Parties" to this Agreement.

WHEREAS, Client desires to retain Attorney to provide it with certain legal services; and

WHEREAS, Attorney is willing to undertake the representation of Client under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE as follows:

1. Scope and Performance of Legal Services; Member in Good Standing of State Bar Association.

(a) Client hires Attorney to provide legal services in such matters as Client may request, and in which Attorney consents to representation. These services may include counsel and advice regarding specific issues, attendance at Client's Board meetings and such other meetings as Client may request (but subject to Attorney's availability), and such other matters as Client may refer to Attorney for legal services and representation. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Client agrees to be forthcoming with Attorney, to cooperate with Attorney in protecting Client's interests, to keep Attorney fully informed of developments material to Attorney's representation of Client, and to abide by this Agreement. Client is hereby advised of the right to seek independent legal advice regarding this Agreement.

(b) With Client's advance written approval, Attorney may associate expert outside counsel to assist Attorney in providing legal services to Client, at such rates and in such particular matters as Client and Attorney may agree.

(c) This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or governmental agency hearings, including, but not limited to, matters related to charges by or inquiries from the California Public Employment Relations Board, the California Department of Fair Employment and Housing, and the U.S. Equal Employment Opportunity Commission. Services in any matter not described in paragraph 1. (a) above will require a separate written agreement, which Attorney has the authority to enter into in its discretion.

(d) Attorney shall perform legal services for Client in a professional manner with regard to general legal advisory issues and similar matters that are referred to Attorney unless Attorney would have a conflict of interest therein or for other reasons declines to accept the referral from Client.

(e) Attorney warrants that all attorneys of the office are now, and will at all times that services are performed during the term hereof be, members in good standing of the State Bar of California.

(f) Nothing in this Agreement and nothing in Attorney's statements to Client, will be construed as a promise or guarantee about the outcome of any particular matter for which Attorney provides services hereunder. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of any particular matter are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given.

2. **Communications between Attorney and Client.** The Parties recognize that all legal advice provided by Attorney is protected by the Attorney-Client and Work Product Privileges. In addition to regular telephone, mail and other common business communication methods, Client hereby authorizes Attorney to use facsimile transmissions, cellular telephone calls and text, unencrypted email, and other electronic transmissions in communicating with Client. Unless otherwise instructed by Client, any such communications may include confidential information.

3. **Compensation and Expense Reimbursement; Billings.** Client shall compensate Attorney for actual legal services performed at the hourly rates established by the Tulare County Counsel's Office. The current rates are attached as Exhibit A and incorporated herein. The rates may change annually, and Attorney will provide Client written notification of any applicable rate change. Client will pay the rates in effect at the time the service is provided. Client shall reimburse Attorney for any of its actual and reasonable expenses incurred in connection with providing services under this Agreement, as shown in Exhibit A.

4. **Client Does Not Include Officers, Agents, and Employees.** In accordance with Rule 1.13 of the California Rules of Professional Conduct governing Attorney's services, Client under this Agreement is the governmental organization known as the TULARE PUBLIC CEMETERY DISTRICT itself, acting through a majority of its duly authorized directors, or through its officers, employees, or other constituents overseeing the particular matter for which Attorney is asked to provide services hereunder. In that respect, Client acknowledges that the individual directors, officers, employees, members, and agents of the TULARE PUBLIC CEMETERY DISTRICT are not themselves clients of Attorney under this Agreement and are not entitled to be individually represented by Attorney hereunder.

5. **Discharge and Withdrawal; File Materials.** Client may discharge Attorney at any time. Attorney may withdraw from representation of Client with Client's consent or for good cause. Good cause includes, but is not limited to, Client's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matter, or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney shall, upon Client's request, deliver Client's files and property in Attorney's possession to Client or as directed by Client, whether or not Client has paid for all services. Client agrees that unless Client takes possession of Client's files and property, Attorney may dispose of the files and property in accordance with Attorney's record retention schedule.

6. **Independent Contractors.** It is specifically and expressly understood that this Agreement does not create an employer/employee relationship between the Parties, that each Party is an independent contractor and not an employee of the other Party and that neither Party, nor its staff, are eligible to participate in the other Party's health and dental protection, vacation, holiday, retirement, or other programs which are applicable to other Party's employees. Neither Party will pay for or provide the other Party's workers' compensation insurance, state disability insurance benefits, unemployment insurance benefits, or social security. Each Party shall be responsible to pay or provide for such insurance or benefits and to pay for its officers and employee's federal and state income tax obligations, social security, and any other payroll tax obligations that it may owe according to law.

7. **Non-assignable.** Neither Party shall assign this Agreement without the other Party's prior written consent.

8. **Professional Liability Insurance.** Attorney shall maintain professional liability insurance for the services to be provided to Client under this Agreement through the County of Tulare's customary policy of general liability insurance.

9. **Addresses for Correspondence.** For purposes of this Agreement, all referred reports, correspondence and communications between the Parties shall be addressed as follows:

To Client

Tulare Public Cemetery District
900 E. Kern Avenue
Tulare, CA 93274
Phone: (559) 686-5544
Facsimile: (559) 686-7484

To Attorney

Tulare County Counsel
2900 W. Burrel Avenue
Visalia, CA 93291
Phone: (559) 636-4950
Facsimile: (559) 713-3240

10. **Authority.** Each Party represents and warrants to the other Party that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind it to its terms. Each Party acknowledges that the other Party has relied upon this representation and warranty in entering into this Agreement. Client designates its then-current Board Chairperson and District or Office Manager as Client's representatives in communicating with Attorney. This designation is intended to establish clear lines of authority and to minimize potential uncertainty, but not to preclude communication between Attorney and other representatives of Client as necessary or desirable. Should Client desire to change its designated representatives, Client shall provide Attorney with a resolution of the governing body designating the replacement representatives.

11. **Representational Conflicts.** Client understands that Attorney primarily serves as Tulare County's legal advisor and representative on all matters. Attorney also serves as the legal advisor for a number of other separate legal entities that are governed by the same five individuals who sit as the Board of Supervisors for the County of Tulare, ("Related Public Entities"). In addition, Attorney may, upon request, represent local governmental entities that are distinct from Tulare County government, such as joint powers agencies and special districts ("Other Clients"). From time to time, the interests of Client may potentially conflict with the interests of the County of Tulare, Related Public Entities, or Other

Clients, such as in a situation where Client and the County of Tulare both require assistance of Attorney in negotiating a contract with each other. As required by the California Rules of Professional Conduct, Attorney will take all steps reasonably necessary to safeguard the confidential information of Client in such a situation, including establishing "ethical walls" to screen the specific lawyers and legal staff providing services to Client from the lawyers and legal staff providing services to the County of Tulare, Related Public Entities, or other Clients in such situations. Upon execution of this Agreement, Client shall also execute the Waiver of Conflict attached hereto as Exhibit B herein, so that Attorney may continue to represent the County of Tulare, Related Public Entities, or Other Clients and Client in the absence of an actual conflict. Further, should an actual conflict develop between Client and the County of Tulare, Related Public Entities, or Other Clients, then Client hereby agrees and understands that Attorney will continue to represent the County of Tulare, Related Public Entities, or Other Clients, as the case may be. Subject to Attorney taking all necessary steps to safeguard Client's confidential information, and to the extent permitted by the California Rules of Professional Conduct, Client hereby expressly waives its right to disqualify Attorney from representing the County of Tulare, the Related Public Entities, or Other Clients in any matter involving Client.

12. Complete Agreement; Amendment. This Agreement, together with exhibits thereto, expresses the understandings of the Parties concerning all matters covered and supersedes all prior negotiations, representations or agreements, either written or oral. No additions to, or alteration of the terms of this Agreement, whether by written or verbal understanding of the Parties, their officers, agents or employees, shall be valid unless made in the form of a written amendment to this Agreement and formally approved by the Parties.

13. Disputes and Dispute Resolution. Consistent with the California Rules of Professional Conduct, Attorney shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute. Any dispute as to attorney fees and/or costs charged under this Agreement shall to the extent required by law be resolved under the California Mandatory Fee Arbitration Act (Bus. & Prof. Code §§ 6200, et al.).

14. 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.

15. 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.

16. Counterparts. The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

Date: 10/22/2018

TULARE PUBLIC CEMETERY DISTRICT:

By: [Signature]

Name: Xavier Ariza

Title: Chairman of the Board

Approved by the Governing Board of the Tulare Public Cemetery District at a regular or special meeting held on 10/22, 2018.

Date: _____

COUNTY OF TULARE:

By: _____

Deanne H. Peterson, County Counsel

Attached Exhibits:

Exhibit A - Rate Sheet

Exhibit B - Conflict Waiver

EXHIBIT A
RATE SHEET

(Effective July 1, 2018)

1. HOURLY PROFESSIONAL RATES:

Client agrees to pay Attorney by the following standard hourly rates:

Legal Professional	Hourly Rate
Attorney I, Civil	\$60 per hour
Attorney II, Civil	\$74 per hour
Attorney III, Civil	\$86 per hour
Attorney IV, Civil	\$102 per hour
Attorney V, Civil	\$110 per hour
Chief Deputy County Counsel	\$119 per hour
County Counsel	\$160 per hour
Paralegals / Law Clerks	\$43 per hour

2. BILLING PRACTICE:

Attorney will provide a monthly, itemized Statement for services rendered. Time billed is broken into 1/10 (.10) hour increments, allowing for maximum efficiency in the use of attorney time. Invoices will clearly indicate the department or individuals for whom services were rendered. Client shall make payment within 30 days of receipt of Attorney's bill.

Written responses to audit letter inquiries will be charged to Client on an hourly basis, with the minimum charge for such responses equaling .5 hours. Client will be charged for Attorney's travel time, which time shall be prorated if the assigned attorney travels for two or more clients on the same trip.

3. COSTS AND EXPENSES:

Item	Cost
In-office copying/electronic communication printing	\$0.10 per page
Facsimile	\$0.10 per page
Postage	Actual Usage
Mileage	IRS Standard Rate
Other costs, such as messenger services, shall be charged on an actual and necessary basis. Meals, lodging, and other travel costs, if approved in advance by Client, will be charged on an actual and necessary basis.	

EXHIBIT B
WAIVER OF CONFLICTS OF INTEREST

You have asked the office of the Tulare County Counsel ("Attorney") to provide legal services to the TULARE PUBLIC CEMETERY DISTRICT ("Client") for certain matters, as detailed in the Agreement to which this Exhibit is attached ("the Matters"). Attorney proposes to provide such services to Client under the terms of the Agreement, including this Exhibit.

As Client is aware, Attorney has previously and continues to represent the County of Tulare ("County") in other legal matters. Attorney also serves as the legal advisor for a number of other separate legal entities that are governed by the same five individuals who sit as the Board of Supervisors for the County ("Related Public Entities"). In addition, Attorney may, upon request, represent local governmental entities that are distinct from Tulare County government, such as joint powers agencies and special districts ("Other Clients").

Attorney's ability to represent any and all clients is governed by what are commonly called the California Rules of Professional Conduct, which include, but are not limited to, rules regarding conflicts of interest between multiple clients of a law office or between a law office and its clients (collectively, "the Conflicts Rules"). Although Attorney is not presently aware of a conflict created by the proposed work on the Matters that would trigger the Conflicts Rules at this time, the nature and scope of Attorney's work for its primary clients, namely the County, Related Public Entities, and Other Clients, may give rise to conflicts of interest in the future. The purpose of this Exhibit is to explain how Attorney proposes to resolve future conflicts issues so that Client can decide whether or not to be represented by Attorney. In other words, the purpose of this Exhibit is to seek a waiver of future conflicts but to do so subject to the conditions and limitations noted herein.

The Scope of the Requested Waiver

Attorney does not request a waiver that would allow it

- at any time, to attack the work that Attorney performs for Client in the Matters;
- at any time, to disclose or use adversely to Client, or to place itself in a position to disclose or use, any confidential and nonpublic information of Client;
- at any time, to allow individual lawyers or non-lawyer staff who work on Matters for Client simultaneously to work adversely to Client; or
- for so long as Attorney continues to represent Client, to allege criminal, fraudulent or intentionally tortious conduct by Client.

Outside of these limitations, and to the extent permitted by the California Rules of Professional Conduct, Attorney is and will remain free to represent the County, Related Public Entities, and Other Clients adversely to Client. In other words, we may represent or continue to represent the County, Related Public Entities, and Other Clients in negotiations, business transactions, litigation, alternative dispute resolution, administrative proceedings, discovery disputes, or other legal matters even if those matters are adverse to Client, and Client will not be able to disqualify Attorney from such representation due to conflicts of interest. For example, and solely by way of illustration, Attorney could represent both

County and Client in negotiating a contract for Client to provide burial services to County, with separate individual lawyers assigned to County and to Client and the establishment of "ethical walls" to screen the separate individual lawyers and legal staff providing services to Client from the lawyers and legal staff providing services to the County in such situations.

Although Client may revoke this waiver as to future matters at any time, such revocation will not affect any matters undertaken by Attorney prior to receipt of notice of the revocation. In addition, and to the extent permitted by the applicable Rules of Professional Conduct, Client must consent to Attorney's withdrawal from Client's matters if withdrawal is necessary for Attorney to continue representing other clients. If Attorney does withdraw from a matter, however, it will assist Client in transferring the matter to other counsel of Client's choice and will not bill Client for legal fees, expenses, or other charges arising from the need to assist successor counsel in coming up to speed on the transferred matters.

Considerations Relating to the Decision to Waive

As you know, we have discussed this conflicts waiver and its potential implications with you and we strongly urge you not to sign this waiver if you have any unanswered or unaddressed reservations or concerns. We also recommend that you discuss this waiver with independent legal counsel of your choice.

As we have already explained, there are questions that Client should address before a decision to waive future conflicts is made:

- Is there a material risk of adverse disclosure or use of confidential client information?
- Is there a material risk that Attorney will be less zealous or eager when representing Client in the Matters because of other adverse representations?
- Is Client ready, willing, and able to live by its commitments in the future?

As to the first two questions, we believe that any risk to Client is minimal to nonexistent in light of the protections and limitations contained in this Exhibit. As to the final question, that is necessarily Client's choice and not ours. Although we are certainly willing to discuss potential amendments to this Waiver that you would like us to consider, you should know that without a mutually acceptable Waiver, we will not be able to represent Client in the Matters.

If you find these conditions acceptable, please sign the enclosed extra copy of this Exhibit and return it to us for our files at your earliest possible convenience. If not, please let us know. Thank you.

Date: _____

TULARE PUBLIC CEMETERY DISTRICT ("Client"):

By: _____

Name: _____

Title: _____