

**COUNTY OF CALAVERAS
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT ("Agreement") made and entered by and between the County of Calaveras, a political subdivision of the State of California, whose principal place of business is 891 Mountain Ranch Road, Calaveras, California 95249 (hereinafter referred to as "County"), and O'Connell & Dempsey, LLC, a Washington, D.C. Limited Liability Company, whose principal place of business is 20 F Street NW, Suite 700, Washington, DC 20001 (hereinafter referred to as "Consultant"); both County and Consultant constituting "the Parties" to the Agreement;

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to provide federal advocacy services ("Services") for the County of Calaveras; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are authorized by Government Code 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

SECTION 1.

Scope of Services: Consultant agrees to furnish the personnel, services, and equipment necessary to provide federal advocacy services ("Services"). Services shall include, but not be limited to, those services as set forth in Exhibit A, marked "Scope of Work", incorporated herein and made by reference a part hereof.

SECTION 2.

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire one (1) year from the date of execution of this Agreement. This Agreement may be extended for up to two (2) additional one (1) year terms if mutually agreed to by the parties hereto in writing in accordance with SECTION 4. - Changes to Agreement.

SECTION 3.

Compensation for Services and Reimbursement of Expenses: For services provided herein, County agrees to pay Consultant a monthly fee of Five Thousand Dollars (\$5,000.00), in arrears and within thirty (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered. In addition, expenses, including necessary and reasonable expenses incurred traveling to California and returning to Washington, D.C., to the extent that such travel is requested and approved in writing by the County Administrative Officer, shall be reimbursed ("Travel Expenses") within thirty (30) days following the County's receipt and approval of itemized invoice(s) identifying such Travel Expenses. The County shall also reimburse Consultant for reasonable and necessary out-of-pocket expenses, such as postage, reproduction, long-distance calls, meetings, and intra-city travel to the extent directly related to Consultant's services ("Expenses"), which reimbursement shall be made within thirty (30) days following the County's receipt and approval of itemized invoice(s) identifying such Expenses.

The total amount for Services is not to exceed Sixty Thousand Dollars (\$60,000.00). The total amount for travel expenses and expenses is not to exceed Four Thousand Dollars (\$4,000.00). In the event additional Services, travel expenses and/or expenses are requested by the County Administrative Officer on behalf of the County, such additional expenses shall be authorized only when in writing pursuant to Section 4. - Changes to Agreement. The total amount of this Agreement, inclusive of expenses, shall not exceed Sixty Four Thousand Dollars (\$64,000.00).

SECTION 4.

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

SECTION 5.

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

SECTION 6.

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

SECTION 7.

Subcontracting: Consultant shall not subcontract any portion of the services required of Consultant by this Agreement without the express written consent of the County Administrative Officer. If any portion of the services required of Consultant is subcontracted, the sub-consultant(s) shall maintain the same insurance as required of Consultant by this Agreement and Consultant shall be fully responsible to the County for all work undertaken by sub-consultant(s).

SECTION 8.

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and sub-consultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

SECTION 9.

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, Calaveras County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

SECTION 10.

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within fifteen (15) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this SECTION 10. shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar day's written notice by County without cause. If such prior termination is effected, County will pay for satisfactory Services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

SECTION 11.

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

In providing any defense under this SECTION 12., Consultant shall use counsel reasonably acceptable to the County.

SECTION 13.

Insurance:

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Coverage shall be at least as broad as, and not less than:

- A. **Commercial General Liability (CGL):** Insurance covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.
- B. **Automobile Liability:** Insurance with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- C. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
- D. **Professional Liability: (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limits no less than \$1,000,000 per claim, and \$2,000,000 in the aggregate.
- E. **Excess Coverage:** If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.
- F. **Other Insurance Provisions:** The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - (1) **Additional Insured Status:** The County, its elected representatives, officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
 - (2) **Primary Coverage:** For any claims related to this Agreement, the Consultant's insurance coverage shall be primary as respects the County, its elected representatives, officers, officials, employees, and volunteers.

Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- (3) **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with at least 30 days' prior written notice to the County.
- (4) **Waiver of Subrogation:** Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant 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.
- (5) **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
- (6) **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (7) **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

- (8) **Verification of Coverage:** Consultant shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this SECTION 13. All certificates and endorsements are to be received and approved by the County Risk Manager before work commences, and shall be signed by person authorized by that insurer to bind coverage on its behalf. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The County, its elected representatives, officers, agents, employees, and volunteers shall be named as additional insureds on the commercial general and automobile liability insurance policies.
- (9) **Subcontractors:** If subcontractors are permitted pursuant to SECTION 7. – **Subcontracting of this Agreement,** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.
- (10) **Special Risks or Circumstances:** County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SECTION 14.

Public Records Act: Consultant is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Consultant to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

SECTION 15.

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 16.

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement;

or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

SECTION 17.

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees.

Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement.

County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

SECTION 18.

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with this Agreement, individual questionnaires, interviews, data analysis, cross tabulation and survey results issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without written authorization from the County Administrative Officer or his/her designee. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

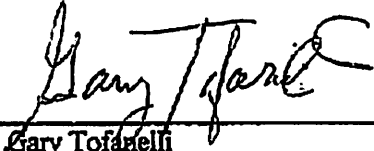
SECTION 19.

Taxpayer Identification Number (Form W-9): All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

SECTION 20.

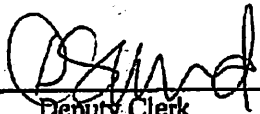
County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of Calaveras County without possessing a County business license unless exempt under County Code Section 5.04.090.

-- COUNTY OF CALAVERAS --

By: 
Gary Tofaneli
Board Chair
"County"

Dated: 7/10/18

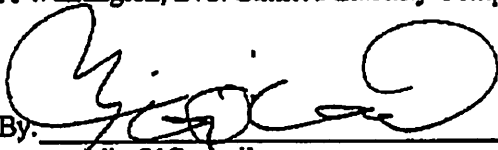
ATTEST: Rebecca Turner, Clerk-Recorder and
Ex-Officio Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 7/10/18

-- CONSULTANT --

O'CONNELL & DEMPSEY, LLC,
A Washington, D.C. Limited Liability Company

By: 
Mia O'Connell
Its Managing Member, President
"Consultant"

Dated: 7/3/18

Approved As To Form:

Date: 7/2/18

By: 
Deputy County Counsel

EXHIBIT A

Scope of Work

O'Connell & Dempsey's Activities on Behalf of Calaveras County:

- **Ms. O'Connell of O'Connell & Dempsey will participate in the Calaveras County Board of Supervisors' Study Session to review the key legislative and federal funding/grant areas of interest, with the objective of assisting the Board in its development of its Federal Legislative Platform for 2018 ("Federal Legislative Platform" or "Platform"). The session will include discussion by Ms. O'Connell of the three priority areas of interest identified below, which are based on discussions with Calaveras County staff. O'Connell & Dempsey will also outline current and near-term federal legislative and agency funding/grant opportunity areas in order to increase the chances for success for the County in addressing its needs.**

Such priority areas of interest for the Board's consideration in developing its Federal Legislative Platform shall include the following with the sub-areas to be discussed with the Board to determine Board interest and direction:

A. Water Resources

- **Water Supply and Aging Infrastructure**
- **Flood Protection**

B. Forest Management

- **Improved Forest Management Practices**
- **Reduction of Hazardous Fuels and Tree Mortality**

C. Rural Development

- **Rural Broadband Access and Loan Guarantees**
- **Water and Waste Water Disposal Loan & Grant Program**

- **Based on Board discussion of key areas of interest, current areas of opportunity in Washington, and the follow-on determination by the Board of its legislative and agency priorities, Ms. O'Connell will help draft the Board's Federal Legislative Platform under Board direction. The objective of the Platform is to identify the key priority areas and sub-areas of interest for the County for which federal initiatives and funding are or will be available that could be pursued at the federal level by Calaveras County to address its key funding and other needs in the County.**
- **Once the Board has finalized its Federal Legislative Platform, O'Connell & Dempsey will work to execute the Platform in Washington under the Board's direction. In order to**

execute the program, Ms. O'Connell will participate in meetings and discussions with key federal agency staff in Washington to pursue specific federal funding and program opportunities, and will help identify opportunities and support the County's efforts in pursuing specific grant and federal funding opportunities, and generate support for such applications.

- **O'Connell & Dempsey will pursue legislative priorities stemming from the Board's Federal Legislative Platform and funding opportunities through direct work with the County's Congressional delegation, including developing legislative language, filling out appropriation forms, working with Members' staffs to shape legislative solutions for the County's priority issues, and working with Members' staffs to support funding for County priorities. O'Connell & Dempsey will provide written updates on developing initiatives in Washington.**
- **O'Connell & Dempsey will arrange and participate in the County's Legislative Advocacy trip to Washington by shaping the program and setting key meetings with the County's Congressional delegation and key federal agency decision-makers. O'Connell & Dempsey will develop talking points and materials for Board Members to use in the sessions, and will participate in meetings, draft follow-up memos on the meetings, outcomes, and next steps. O'Connell & Dempsey will conduct follow up work with the delegation and agencies to further the County's priorities.**
- **O'Connell & Dempsey will arrange and participate in regular conference calls with County staff and leadership to discuss the status of issues and County priorities and will draft a monthly report for the Board providing an overview of key activities engaged in by O'Connell & Dempsey on behalf of the County in pursuing its Federal Legislative Platform.**