

AGREEMENT FOR LEGAL SERVICES BETWEEN  
EL DORADO COUNTY AND SCHARFF, BRADY & VINDING

This Agreement is made and entered into between EL DORADO COUNTY (“COUNTY”), a governmental entity organized and existing under the laws of the State of California, and SCHARFF, BRADY & VINDING, (“Attorney”), a law firm duly authorized to do business in the State of California, whose address is 400 Capitol Mall, Suite 2640, Sacramento, California, 95814, effective on the date services were first performed for the county in the matters described below, for the performance of specified legal services for county.

1. Scope of Services. County hereby retains Attorney to advise, assist, and represent County as co-counsel with County Counsel in the proceedings entitled *Paul Sayegh v. County of El Dorado, et al.*, El Dorado County Superior Court Case No. PC20100101 and *Alto, LLC, a California Limited Liability Company v. County of El Dorado, et al.*, El Dorado County Superior Court Case No. PC20100104, and any related administrative proceedings or other matters.

2. Independent Contractor. Attorney and all persons who perform services for or through Attorney pursuant to this Agreement shall be an independent contractor and shall not be deemed to be an employee of County for any purpose. Attorney's services shall be under the general direction of the County Counsel who shall also be responsible for administering this Agreement. Louis B. Green, or designee shall be the contract administrator on behalf of the County.

3. Standards of Performance. Attorney and every employee thereof shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. Attorney represents that it is specially trained, experienced, expert and competent to perform the services required under this Agreement, and that each individual providing legal services is a member in good standing of the State Bar and is

1 licensed to practice in California. Further, Attorney certifies that it will not accept  
2 representation in any matters, including litigation, under this Agreement if it or any employee  
3 thereof has any personal or financial interest therein.

4       4. Compensation. County shall compensate Attorney for professional services  
5 rendered at the respective hourly rates of the individuals employed by Attorney providing the  
6 services at a blended rate of \$290.00 per hour for attorneys, and at the customary rate for  
7 paralegals.

8       Attorney shall keep proper records to enable County to verify the services rendered,  
9 and such records shall be made reasonably available to County or its agents for inspection and  
10 audit.

11       5. Cost Reimbursement. In addition to the above, County shall reimburse  
12 Attorney for the actual, reasonable and necessary expense of travel in accordance with the  
13 policies of El Dorado County set forth in Exhibit A, attached hereto and incorporated herein  
14 by this reference. Any individual travel expense which will exceed \$100.00 must be  
15 approved by County in advance. County shall reimburse Attorney for the reasonable costs of  
16 long distance telephone calls, mailing, photocopying, legal research on electronic databases,  
17 and, upon prior approval, for extraordinary photocopying and extraordinary facsimile  
18 transmissions. Other reasonable, customary and necessary expenses, including but not limited  
19 to statutory fees, witness fees, reporters' per diem and transcription fees, jury fees, and  
20 expenses of serving process, shall be advanced by Attorney and reimbursed by County.  
21 Expert consultants and witnesses may be retained by Attorney on terms acceptable to County.  
22 Such expert consultants and witnesses shall invoice Attorney. Attorney may submit approved  
23 invoices in excess of \$750.00 to County in special billings for expedited payment, to be  
24 deposited in Attorney's trust account for payment from Attorney to said expert consultants  
25 and witnesses.

26       6. Billings. Attorney shall submit to County for County Counsel's review and  
27 approval a confidential itemized statement of services rendered and costs incurred under this  
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Agreement monthly. Such statement shall describe the nature of the services rendered, and specify the time expended in rendering such services, calculated in one-quarter (.25) hour segments. Provided, however, that in Attorney's discretion, such statements need not be submitted until the total amount due exceeds five hundred (\$500.00) dollars.

Attorney acknowledges that the County is being indemnified for the costs of the lawsuit by the developer of the project challenged. County may elect to forward the Attorneys invoices to said developer for payment directly to Attorney on behalf of County. Attorney agrees to accept payment from the developer as though made by the County. In the event timely payment is not received from the developer, Attorney shall immediately notify County. Notwithstanding payment by the developer, Attorney represents only the County and Attorney's duty of loyalty runs only to the County.

7. Qualifications. Attorney certifies that it accepts this retention because it has the time, energy, skills and ability necessary to perform the duties required in an efficient, trustworthy, professional and businesslike manner. It is understood that the services under this Agreement must be provided immediately, and that they are time-critical. Attorney is engaged by County for its unique qualifications and skills. Attorney shall not subcontract, delegate or assign the services to be provided under this Agreement, in whole or in part, to any other person or entity not employed in Attorney's firm without consent of County. It is specifically agreed that a partner attorney of the firm will be primarily involved in the conduct of the work, and that a partner will be available to attend meetings of the County Board of Supervisors as directed.

8. Insurance. Attorney shall continuously maintain, and shall provide proof of, insurance in a form acceptable to County to be in full force and effect from the first day of the term of this Agreement, as set forth below:

a. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Law Firm as required by law in the State of California

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b. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

c. Automobile liability insurance of not less than \$500,000 is required in the event motor vehicles are used by Attorney in the performance of the contract.

d. Professional liability (for example, malpractice insurance) covering services provided under this Agreement is required with a limit of liability not less than \$1,000,000 per occurrence.

e. Attorney shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

f. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

g. Attorney agrees that the insurance required above shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Attorney agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of the Risk Management Division and Attorney agrees that no work or services shall be performed prior to the giving of such approval. In the event Attorney fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.

h. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) day prior written notice to the County; and

2. The County, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this contract are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

i. Attorney's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of Attorney's insurance and shall not contribute with it.

j. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or Attorney shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expense.

k. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

1. The insurance companies shall have no recourse against the County, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

m. Attorney's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

n. In the event Attorney cannot provide an occurrence policy, Attorney shall provide insurance covering claims made as a result of performance of this contract for not less than three years following completion of performance of this agreement.

o. The certificate of insurance shall meet such additional standards as may be determined by the contracting County either independently or in consultation with the Risk Management Division, as essential for protection of the County.

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1           9. Standard of Liability. County understands and acknowledges that the  
2 performance of the services provided for herein may invite criticism, controversy, or litigation  
3 which may be motivated by public or private opposition to any project although not based on  
4 the adequacy or accuracy of Attorney's performance. County agrees that any such criticism,  
5 controversy, or litigation alone shall not cause County to withhold payments due to Attorney  
6 hereunder. County further agrees that the mere failure of County or any third party, including  
7 a court in litigation, to agree with Attorney's findings, conclusions, or recommendations alone  
8 shall not be construed as a failure on the part of Consultant to perform its obligations under  
9 this Agreement, or to meet the standard of care this Agreement requires.

10          10. Attorney-Client Relationship. Attorney agrees that it will comply with all  
11 ethical duties, will maintain the integrity of the attorney-client relationship, and will take all  
12 steps available to preserve all applicable legal privileges, confidences, and records from  
13 disclosure. All documents and information obtained by or generated by Attorney pursuant to  
14 this Agreement, all opinions and conclusions of Attorney, any reports, information, data,  
15 statistics, forms, procedures, systems, studies and all communications with County, are  
16 confidential. Attorney agrees to take all steps reasonably necessary to maintain this  
17 confidentiality. Attorney is responsible for insuring that it and all of its employees faithfully  
18 adhere to the confidentiality requirements of law and this Agreement.

19          11. Ownership of Documents. All documents and writings prepared by or for  
20 Attorney in the course of performing this Agreement shall become County's property  
21 immediately and County shall have the right to use such materials in its discretion without  
22 notice or compensation to Attorney or anyone else other than compensation provided under  
23 this Agreement.

24          12. Notification of Conflict. Attorney shall immediately notify County if any  
25 services to be performed under this Agreement involves an actual or potential conflict of  
26 interest, financial or otherwise. Attorney shall not engage in any activity under this  
27 Agreement that involves any actual or potential conflict of interest unless Attorney first makes  
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1 a full and complete disclosure of all relevant facts and obtains a written waiver of such  
2 conflict in advance from County.

3 13. Indemnity. Attorney shall be responsible for performing the work under this  
4 Agreement a safe, professional, skillful and workmanlike manner, and shall be liable for its  
5 own negligence and the negligent acts of its employees. To the fullest extend allowed by law,  
6 Attorney shall defend, indemnify, and hold harmless the County against and from any and all  
7 claims, suits, losses, damages, and liability for damages of every name, kind and description,  
8 including reasonable attorneys' fees and costs incurred, which are claimed to or in any way  
9 arise out of, directly or indirectly, or are connected with: (1) any negligent act, whether  
10 passive or active, error or omission, or willful misconduct, of Attorney, its subcontractor(s),  
11 agents or employee(s) or any of these; or (2) any breach of any statutory, regulatory,  
12 contractual or legal duty of any kind related, directly or indirectly, to the services,  
13 responsibilities or duties required of Attorney by this Agreement. This duty of Attorney to  
14 indemnify and save County harmless includes the duties to defend set forth in California Civil  
15 Code section 2778.

16 14. Term. The term of this Agreement shall begin on the date first stated above,  
17 and shall remain in effect until terminated by any party or until all work contemplated  
18 hereunder shall be completed. However, this Agreement shall be terminable by County at any  
19 time and for any reason, or without cause. Funds budgeted for the purpose of this Agreement  
20 are made available on a fiscal year basis, and budgeting is subject to change at any time.  
21 Should funding not be made available, this Agreement shall be automatically terminated in its  
22 entirety. Attorney may terminate this Agreement upon sufficient written notice to County,  
23 made in such a manner so that the County shall not be prejudiced, but in no event less than  
24 thirty (30) days notice. Upon termination of this Agreement for any reason, Attorney shall  
25 immediately cease all work, except as may be reasonably required to avoid prejudice to  
26 County which shall be immediately reported to County, shall immediately transfer all files  
27 relating to County's matters either to County or any other lawyer hired by County, at  
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1 County's direction, and within ten (10) days shall provide a final bill to County for all  
2 services rendered. The obligation of confidentiality shall continue and shall not terminate  
3 when this Agreement ends. Attorney shall take all steps necessary to ensure smooth transition  
4 to any other counsel which may be designated by County.

5 15. State Filing. All independent consultants providing services to the County  
6 must file a State of California Form 590 certifying their California residency or, in the case of  
7 a corporation, certifying that it has a permanent place of business in California. Attorney will  
8 be required to submit a Form 590 prior to execution of this Agreement or County shall  
9 withhold seven (7) percent of each payment to be made to Attorney during the term of this  
10 Agreement. Attorney's taxpayer identification number is 26-1739425.

11 16. Contract Administrator. For the purpose of administering this Agreement, the  
12 County shall be represented by its County Counsel, Louis Green, or successor. Notices  
13 provided pursuant to this Agreement shall be effective immediately upon receipt and shall be  
14 directed as follows:

15 For County: Louis Green, County Counsel  
16 El Dorado County  
17 330 Fair Lane  
Placerville, California 95667

18 For Attorney: Michael Brady  
19 Scharff, Brady & Vinding  
20 2625 Fair Oaks Blvd., Suite 7  
Sacramento, California 95864

21 17. Entire Agreement. This Agreement and the exhibits thereto are the entire  
22 agreement between the parties and they supersede all prior written or oral agreements or  
23 understandings between the parties. This Agreement may be modified only with the consent  
24 of the parties in writing fully executed by duly authorized officers of the parties.

25 18. Venue. Any dispute resolution action arising out of this Agreement, including  
26 but not limited to litigation, mediation or arbitration, shall be brought in El Dorado County,  
27 California, and shall be resolved in accordance with the laws of the State of California. In any  
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1 action to enforce the terms of this Agreement, the prevailing party shall recover its reasonable  
2 attorneys' fees. Attorney waives any removal rights it may have under Code of Civil  
3 Procedure section 394.

4 Dated: \_\_\_\_\_

5 COUNTY OF EL DORADO

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7 By: \_\_\_\_\_  
8 Chair, Board of Supervisors  
9 "County"

10 ATTEST:

11 SUZANN ALLEN DE SANCHEZ  
12 Clerk of the Board of Supervisors

13 By \_\_\_\_\_  
14 Deputy Clerk

15 Dated: \_\_\_\_\_

16 SCHARFF, BRADY & VINDING

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18 By: \_\_\_\_\_  
19 Mike Brady,  
20 "Attorney"  
21 State Bar Number

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