

COUNTY OF SANTA BARBARA

**AGREEMENT FOR SPECIAL COUNSEL SERVICES
2010 CERTIFICATES OF PARTICIPATION
SERIES A-1 AND
TAXABLE SERIES A-2 (RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS)**

THIS AGREEMENT is made and entered into as of this ____ day of April, 2010, by and between the **COUNTY OF SANTA BARBARA**, a political subdivision of the State of California (the "County"), and **ORRICK, HERRINGTON & SUTCLIFFE LLP**, San Francisco, California ("Counsel").

RECITALS

WHEREAS, the County desires to employ Counsel to perform legal services as special counsel incident to the execution and delivery of 2010 Certificates of Participation, Series A-1 and 2010 Certificates of Participation, Taxable Series A-2 (Recovery Zone Economic Development Bonds) (the "Certificates"); and

WHEREAS, Counsel is prepared and able to provide all legal services required and necessary as special counsel incident to the execution and delivery of the Certificates;

COVENANTS

NOW, THEREFORE, it is mutually agreed by the parties hereto as follows:

Section 1. AGREEMENT FOR SERVICES. The County employs Counsel to render and Counsel agrees to render legal services as special counsel incident to the execution and delivery of the Certificates as follows:

(a) Preparation of all resolutions, agreements (other than the certificate purchase agreement), certificates, form of Certificates and other papers and documents required in the relevant proceedings.

(b) Review of the certificate purchase agreement and official statement and assistance with the sale of the Certificates by negotiation.

(c) The preparation of documents for the delivery of the Certificates and coordination of the closing.

(d) The rendering of Counsel's usual and customary legal opinion with respect to the Certificates and the tax status thereof.

(e) Preparation of a transcript of the legal proceedings for the use of the County.

The services of Counsel under this agreement shall not include the following:

(a) Legal services in connection with litigation.

(b) Services relating to continuing disclosure, tax rebate matters or compliance with environmental laws.

(c) Rendering an opinion with respect to the official statement.

Barring any conflict not otherwise waived or waivable, Counsel would be willing to perform such excluded services on such terms as might be mutually agreed to at the time. The performance by Counsel of services excluded by this paragraph, if required by the County, shall be under separate written agreement.

Section 2. *LEGAL FEES AND EXPENSES.* The County agrees to pay Counsel the amount of \$49,000 for Counsel's fees and expenses with respect to the issuance of the Certificates. The foregoing fees and expenses shall be paid as soon as practicable on or after the date of delivery of the Certificates to a bona fide purchaser. If Certificates are not sold, no amount shall be paid by the County to Counsel.

Section 3. *ENTIRE AGREEMENT.* This Agreement is the entire agreement between the parties relating to the matters covered herein.

Section 4. *AMENDMENT.* Any amendment to this Agreement shall be of no force and effect unless in writing and signed by both parties hereto.

Section 5. *CONFLICT OF INTEREST.* The County understands that Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Some of these clients may have some direct or indirect relationship with the County or the County's other consultants or agents, as, for example, underwriters, financial advisors, fiscal agents, paying agents, trustees, insurers, suppliers, lenders, bankers, landlords, developers or owners of property within the jurisdiction of the County. Counsel may now or in the future represent or may have in the past represented the underwriter, fiscal agent or other participants in the financing on other matters. With such varied client representation, there is always the possibility of other transactions between clients or disputes among them. It is agreed that the County does not object to Counsel performing such services now or in the future; provided, that Counsel does not represent any participant other than the County in connection with the financing which is the subject of this agreement and the County waives any actual or potential conflict which may be posed by such representation.

Section 6. *INDEPENDENT CONTRACTOR.* Counsel shall perform all of its services hereunder as an independent contractor and not as an employee of the County. Counsel understands it shall not be entitled to any of the benefits of a County employee. It is understood and agreed that Counsel has the professional skills and expertise necessary to perform the work agreed to be performed hereunder and that the County relies upon the expertise of Counsel to do and perform its work in a skillful and professional manner, and Counsel agrees to so perform its work hereunder.

Section 7. *ASSIGNMENT.* This Agreement shall not be assigned by either party without the prior written approval of the other.

Section 8. NONDISCRIMINATION. The County hereby notifies Counsel that the County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement.

Section 9. INDEMNIFICATION AND INSURANCE. Counsel agrees to defend, indemnify and save harmless the County and to procure and maintain insurance in accordance with the provisions of Exhibit A attached hereto and incorporated herein by reference.

Section 10. NOTICES. All notices and other communications hereunder shall be sufficiently given and shall be deemed given (i) if hand delivered, when delivered to the appropriate notice address, (ii) if mailed by first class mail, postage prepaid, three business days after deposit in the United States mail addressed to the appropriate notice address or (iii) if delivered by courier providing receipt of delivery, when delivered to the appropriate notice address. The parties listed below may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent. Any notice required or permitted hereunder shall be directed to the following notice address:

As to the County:

County of Santa Barbara
105 East Anapamu Street
Santa Barbara, California 93101
Attention: Treasurer-Tax Collector

with a copy to:

Attention: County Counsel

As to Counsel:

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Attention: Philip C. Morgan

Section 11. EXECUTION IN SEVERAL COUNTERPARTS. This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the County and Counsel shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereof have executed this Agreement as of the date and year first above written.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By Philip C. Morgan
Philip C. Morgan

COUNTY OF SANTA BARBARA

By _____
Chair of the Board of Supervisors

ATTEST:

Michael F. Brown,
Clerk of the Board of Supervisors

APPROVED AS TO ACCOUNTING

Robert W. Geis, C.P.A.,
Auditor-Controller

By _____

By _____

APPROVED AS TO FORM:

Dennis Marshall,
County Counsel

By _____

EXHIBIT A

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

Counsel shall be referred to as CONTRACTOR throughout this Exhibit A.

INDEMNIFICATION

CONTRACTOR agrees to indemnify and hold harmless COUNTY and COUNTY's officers, employees and agents from and, if requested, defend against, any claim, demand, liability, action, proceeding, losses, damages and costs (including without limitation reimbursing all the COUNTY's costs of defense thereof) arising from the negligence or malpractice of CONTRACTOR in connection with the performance of this Agreement, or any supplement hereto. Notwithstanding the foregoing, nothing herein shall (i) serve to expand CONTRACTOR's scope of professional responsibilities as set forth in the laws and canons of ethics, (ii) extend any statute of limitations governing any claim arising from CONTRACTOR's acts or omissions, or (iii) waive any claims or defenses that CONTRACTOR may have against the COUNTY or any other party.

INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

EXHIBIT A

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.