

Attachment 5

Agreement for Professional Legal Services

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Jones Hall, A Professional Law Corporation, with an address at 650 California Street, 18th Floor, San Francisco, CA 94108 (hereafter ATTORNEY) wherein ATTORNEY agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY requires the services of bond counsel to assist COUNTY with the establishment of an energy and water efficiency financing district; and

WHEREAS, ATTORNEY represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of ATTORNEY pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Anne Rierson, at phone number 805-568-2950 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Chris Lynch at phone number 415-391-5780 is the authorized representative for ATTORNEY. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Anne Rierson
Deputy County Counsel
Office of County Counsel
County of Santa Barbara
105 East Anapamu Street, #201
Santa Barbara, CA 93101
Fax. No. 805-568-2982

To ATTORNEY: Chris Lynch
Attorney and Vice President
Jones Hall, A Professional Law Corporation
650 California Street
18th Floor
San Francisco, CA 94108
Fax. No. 415-391-5784

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. **SCOPE OF SERVICES.** ATTORNEY agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** ATTORNEY shall commence performance on December 1, 2009 and end performance upon completion, but no later than November 30, 2014 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF ATTORNEY.** In full consideration for ATTORNEY's services, ATTORNEY shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT A. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that ATTORNEY, (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which ATTORNEY shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that ATTORNEY is performing its obligations in accordance with the terms and conditions hereof. ATTORNEY understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, ATTORNEY shall be solely responsible and save COUNTY harmless from all matters relating to payment of ATTORNEY's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, ATTORNEY may be providing services to others unrelated to the COUNTY or to this Agreement.

7. **STANDARD OF PERFORMANCE.** ATTORNEY represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNEY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNEY is engaged. All products of whatsoever nature, which ATTORNEY delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in ATTORNEY's profession. ATTORNEY shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. All required permits and/or licenses shall be obtained and maintained by ATTORNEY without additional compensation.

8. **DEBARMENT AND SUSPENSION.** ATTORNEY certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or county government contracts. ATTORNEY certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** ATTORNEY shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on ATTORNEY's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, ATTORNEY agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. **CONFLICT OF INTEREST.** ATTORNEY covenants that ATTORNEY presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with

the performance of services required to be performed under this Agreement. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by ATTORNEY. ATTORNEY has conducted a conflicts evaluation and has discovered no potential conflicts, other than those disclosed to COUNTY prior to this Agreement. ATTORNEY shall inform COUNTY immediately of any potential ethical issues or conflicts that may arise in the course of ATTORNEY's representation of the COUNTY in this matter or at any time in the future, as soon as such an issue or conflict becomes known. COUNTY retains the right to waive a conflict of interest disclosed by ATTORNEY if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to ATTORNEY in writing.

11. **EXPERTS/CONSULTANTS/OTHER LAW FIRMS.** ATTORNEY shall get COUNTY's written approval prior to retaining any expert/consultant, or other outside attorney to assist with any matter covered by this Agreement.

12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. ATTORNEY shall not release any of such items to other parties except after prior written approval of COUNTY. Unless otherwise specified in Exhibit A, ATTORNEY hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by ATTORNEY pursuant to this Agreement (collectively referred to herein as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. ATTORNEY agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. ATTORNEY warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. ATTORNEY at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by ATTORNEY hereunder infringe upon any intellectual property or other proprietary rights of a third party, and ATTORNEY shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of the Agreement.

13. **NO PUBLICITY OR ENDORSEMENT.** ATTORNEY shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. ATTORNEY shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing ATTORNEY. ATTORNEY shall not in any way contract on behalf of or in the name of COUNTY. ATTORNEY shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects without obtaining the prior written approval of COUNTY.

14. **COUNTY PROPERTY AND INFORMATION.** All of COUNTY's property, documents, and information provided for ATTORNEY's use in connection with the services shall remain COUNTY's property, and ATTORNEY shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. ATTORNEY may use such items only in connection with providing the services. ATTORNEY shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

15. **RECORDS, AUDIT, AND REVIEW.** ATTORNEY shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of ATTORNEY's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during ATTORNEY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) ATTORNEY shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ATTORNEY shall participate in any audits and review, whether by COUNTY or the State, at no charge to COUNTY.

16. **INDEMNIFICATION AND INSURANCE.** ATTORNEY agrees to defend, indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

17. **NONDISCRIMINATION.** COUNTY hereby notifies ATTORNEY that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and ATTORNEY agrees to comply with said ordinance.

18. **NONEXCLUSIVE AGREEMENT.** ATTORNEY understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by ATTORNEY as the COUNTY desires.

19. **NON-ASSIGNMENT.** ATTORNEY shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to ATTORNEY, terminate this Agreement in whole or in part, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of ATTORNEY to fulfill the obligations herein.

1. For Convenience. COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, ATTORNEY shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.

2. For Nonappropriation of Funds. Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify ATTORNEY of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

3. For Cause. Should ATTORNEY default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, ATTORNEY shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status

of its performance. The date of termination shall be the date the notice is received by ATTORNEY, unless the notice directs otherwise.

B. By ATTORNEY. Should COUNTY fail to pay ATTORNEY all or any part of the payment set forth in EXHIBIT B, ATTORNEY may, at ATTORNEY's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

C. Upon termination, ATTORNEY shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by ATTORNEY in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit ATTORNEY to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay ATTORNEY for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall ATTORNEY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNEY shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

21. SECTION HEADINGS. The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

22. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

24. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

25. NO WAIVER OF DEFAULT. No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

26. ENTIRE AGREEMENT AND AMENDMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

27. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

28. **COMPLIANCE WITH LAW.** ATTORNEY shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of ATTORNEY in any action or proceeding against ATTORNEY, whether COUNTY is a party thereto or not, that ATTORNEY has violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNEY and COUNTY.

29. **CALIFORNIA LAW AND JURISDICTION.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

30. **EXECUTION OF 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 parties shall preserve undestroyed, shall together constitute one and the same instrument.

31. **AUTHORITY.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, ATTORNEY hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which ATTORNEY is obligated, which breach would have a material effect hereon.

32. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

33. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Professional Legal Services between the County of Santa Barbara and Jones Hall, A Professional Law Corporation.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

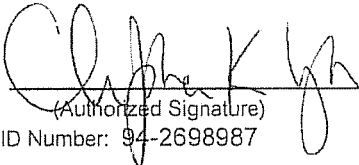
By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

ATTORNEY

By: _____
Deputy

By:  _____
(Authorized Signature)
TaxID Number: 94-2698987

APPROVED AS TO FORM:
DENNIS A. MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

By: _____
Risk Program Administrator

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

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By: _____
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Date: _____

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ATTORNEY

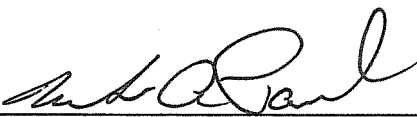
By: _____
Deputy

By: _____
(Authorized Signature)
TaxID Number: 94-2698987

APPROVED AS TO FORM:
DENNIS A. MARSHALL
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ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy County Counsel

By: 
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

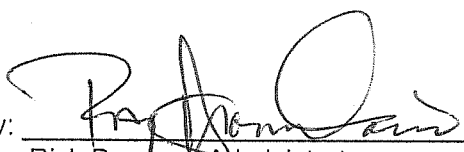
By: 
Risk Program Administrator

EXHIBIT A

STATEMENT OF WORK

If requested by COUNTY, ATTORNEY shall provide the following specialized bond counsel services in connection with an energy and water efficiency financing program:

1. Phase 1: Provide legal advice as to short-term and long-term financing options for an energy and water efficiency financing program, draft formation documents and required legal notices, review feasibility studies and reports, draft the form assessment contract, and draft applicable form financing documents. After completion of Phase 1, COUNTY shall pay ATTORNEY for services at the applicable hourly rate with a cap of \$25,000 and for expenses as described below.
2. Phase 2: Provide bond counsel services in connection with a potential issuance of bonds, notes, or certificates of participation to be purchased by the Treasurer's investment pool. COUNTY anticipates that such issuance would be in \$3 million to \$5 million increments. For the initial such issuance, the bond counsel fee would be up to \$15,000. For future such issuances, the fee would be the same or less, as agreed upon by the parties.
3. Phase 3: Draft, file and litigate a judicial validation action regarding the energy and water efficiency financing program. After completion of Phase 3, COUNTY shall pay ATTORNEY for services at the applicable hourly rate with a cap of \$25,000 for an uncontested validation, and for expenses as described below. If the validation is contested, COUNTY and ATTORNEY may amend the not-to-exceed amount of this Agreement to provide for further compensation to ATTORNEY at the rates provided below. COUNTY acknowledges that if the validation action is contested, ATTORNEY would need to partner or subcontract with a litigation firm. COUNTY reserves the right to select an attorney or firm to handle a contested validation action or to approve an attorney or firm selected by ATTORNEY.
4. Phase 4: Provide bond counsel services to issue take-out financing such as bonds, notes, or certificates of participation. ATTORNEY would perform all customary bond counsel services, including but not limited to: drafting all required resolutions, agreements, and other documents, reviewing the official statement, coordinating the closing, preparing a transcript of the proceedings for the COUNTY, and providing ATTORNEY's usual legal opinion with respect to the validity of the bonds, notes, or certificates and their federal tax law status, if applicable. For a \$10 million financing, the bond counsel fee would be up to \$45,000 plus expenses other than travel, contingent on successful issuance. COUNTY will not reimburse ATTORNEY for travel expenses for Phase 4. If the bonds, notes, or certificates of participation are not sold, no amount shall be paid by COUNTY to ATTORNEY for Phase 4.

Chris Lynch will be the primary attorney providing services to COUNTY under this Agreement. Individual attorneys providing legal services to COUNTY pursuant to this Agreement and their hourly billable rates are set forth below:

<u>Attorney</u>	<u>Hourly Rate</u>
Chris Lynch (partner)	\$350
Scott Ferguson (partner)	\$350
David Walton (partner)	\$350
Alison Bengé (senior associate)	\$325

In addition, COUNTY will pay to ATTORNEY all reasonable direct out-of-pocket expenses for travel previously approved by the COUNTY, messenger and delivery service, photocopying, closing costs (including transcript preparation costs), filing fees, legal publication expenses and other reasonable costs and expenses incurred by attorneys in connection with their services. Total expenses under this Agreement shall not exceed \$7,500.

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation at Selected Milestones

- A. For ATTORNEY services to be rendered under this Agreement, ATTORNEY shall be paid a total contract amount, including cost reimbursements, not to exceed \$117,500.
- B. Payment for services and /or reimbursement of costs shall be made upon ATTORNEY's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **EXHIBIT A**. Invoices submitted for payment that are based upon **EXHIBIT A** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- C. Upon completion of the work for each Phase described in **EXHIBIT A**, ATTORNEY shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed in accomplishing each Phase. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or item(s) delivered and if found to be satisfactory and within the cost basis of **EXHIBIT A**, shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from ATTORNEY.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require ATTORNEY to correct such work or billings or seek any other legal remedy.

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

1. Indemnification Pertaining to other than Professional Services – ATTORNEY agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. ATTORNEY's indemnification obligation applies to COUNTY's "active" as well as "passive" negligence but does not apply to COUNTY's "sole negligence" or "willful misconduct" within the meaning of California Civil Code Section 2782. ATTORNEY shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Indemnification Pertaining to Professional Services – ATTORNEY shall indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities determined by a court of law to arise out of the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on the part of the ATTORNEY or his agents or employees or other independent contractors directly responsible to ATTORNEY to the fullest extent allowable by law.

These Indemnification provisions shall survive any expiration or termination of this Agreement.

2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability and Automobile Liability policies, shall contain endorsements naming COUNTY and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for COUNTY to vicarious liability but shall allow coverage for COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. Waiver of Subrogation Rights – ATTORNEY shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit ATTORNEY and ATTORNEY's employees or agents from waiving the right of subrogation prior to a loss or claim. ATTORNEY hereby waives all rights of subrogation against COUNTY.

4. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by COUNTY.

5. Severability of Interests – ATTORNEY agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between ATTORNEY and COUNTY or between COUNTY and any other insured or additional insured under the policy.

6. Proof of Coverage – ATTORNEY shall furnish Certificates of Insurance to the COUNTY Department administering the Agreement evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the

Department, and ATTORNEY shall maintain such insurance from the time ATTORNEY commences performance of services hereunder until the completion of such services. Immediately upon request of the COUNTY, ATTORNEY shall provide complete certified copies of the insurance policies and endorsements.

7. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A VII".

8. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

9. Failure to Procure Coverage – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by COUNTY will be promptly reimbursed by ATTORNEY or COUNTY payments to ATTORNEY will be reduced to pay for COUNTY purchased insurance.

10. Insurance Review – Insurance requirements are subject to periodic review by COUNTY. The Risk Program Administrator or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of COUNTY. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Program Administrator or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against COUNTY, inflation, or any other item reasonably related to COUNTY's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. ATTORNEY agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

11. Insurance Specifications – ATTORNEY agrees to provide insurance set forth in accordance with the requirements herein. If ATTORNEY uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, ATTORNEY agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in any way affecting the indemnity herein provided and in addition thereto, ATTORNEY shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

A Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollar (\$1,000,000) limits covering all persons including volunteers

providing services on behalf of ATTORNEY and all risks to such persons under this Agreement.

If ATTORNEY has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Program Administrator.

With respect to ATTORNEYS that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

B. Commercial/General Liability Insurance – ATTORNEY shall carry General Liability Insurance covering all operations performed by or on behalf of ATTORNEY providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit.

C. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If ATTORNEY owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

D. Professional Services Contracts - *(Including architects, engineers, consultants, counselors, medical professionals, hospitals, clinics, attorneys, accountants, and others who work on developing outcomes and make recommendations for strategic planning specific to the department or County)*

In addition to the Basic Requirements/Specifications for all Contracts, professional service contracts shall include the following additional requirements:

Professional Liability Insurance – ATTORNEY shall carry Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

D. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy

shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Contract Summary Form:

Contract Number : BC - 10 - 083

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$100,000). If less than (<\$100,000) submit a Purchasing Requisition to the Purchasing Division of General Services. See "online purchasing manual" under General Services, Purchasing, Policies and Procedures. Form not applicable to revenue contracts.

- D1. Fiscal Year : FY09-10
- D2. Budget Unit Number (plus -Ship/-Bill codes in paren's) :
- D3. Requisition Number :
- D4. Department Name : County Counsel (paid by HCD)
- D5. Contact Person..... : Anne Rierson
- D6. Phone : 415-568-2950

- K1. Contract Type (check one): Personal Service Capital Project/Construction
- K2. Brief Summary of Contract Description/Purpose: bond counsel for energy and water efficiency financing program
- K3. Original Contract Amount : \$117,500
- K4. Contract Begin Date : December 1, 2009
- K5. Original Contract End Date..... : November 30, 2014
- K6. Amendment History (leave blank if no prior amendments):

<u>Seq#EffectiveDateThisAmndtAmtCumAmndtToDateNewTotalAmtNewEndDate</u>	<u>Purpose</u>
(2-4 words)	
\$	\$
\$	\$

- K7. Department Project Number..... :
- B1. Is this a Board Contract? (Yes/No) : Yes
- B2. Number of Workers Displaced (if any) : 0
- B3. Number of Competitive Bids (if any)..... :
- B4. Lowest Bid Amount (if bid) : \$
- B5. If Board waived bids, show Agenda Date :
- B6. ... and Agenda Item Number : #
- B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) : Exhibit C Indemnification for Professional Services changed - approved by Risk Management.

- F1. Encumbrance Transaction Code :
- F2. Current Year Encumbrance Amount..... : \$
- F3. Fund Number : 1940
- F4. Department Number : 055
- F5. Division Number (if applicable) :
- F6. Account Number..... : 7510
- F7. Cost Center number (if applicable) :
- F8. Payment Terms : Net 30

- V1. Vendor Numbers (A=uditor; P=urchasing)..... :
- V2. Payee/Contractor Name.....: Jones Hall, A Professional Law Corporation
- V3. Mailing Address..... : 650 California Street, 18th Floor,
- V4. City State (two-letter) Zip (include +4 if known) : San Francisco, CA 94108
- V5. Telephone Number : 415-391-5780
- V6. Contractor's Federal Tax ID Number..... : 94-2698987

V7. Contact Person: Chris Lynch
V8. Workers Comp Insurance Expiration Date: 4/1/2010
V9. Liability Insurance Expiration Date[s] (*G=enl; P=rofl*) : G 10/1/2010 P 2/25/10
V10. Professional License Number.....: #
V11. Verified by (*name of County staff*).....: Anne Rierson/Ray Aromatorio
V12. Company Type (*Check one*): Individual Sole Proprietorship Partnership
 Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date: 11/20/09

Authorized Signature: 